

SUPPLEMENTARY SUBMISSION ON THE DRAFT AMMENDMENTS TO THE STANDARDS AND NORMS FOR SCHOOL FUNDING

Introduction

The Education Law Project (ELP) at the Centre for Applied Legal Studies welcomes the opportunity to comment on the draft amendments to the Standards and Norms for School Funding (the “Draft Norms”).

We understand the Draft School Funding Norms to be a more detailed statement of how the Department of Education intends to implement the broad commitments made in its *Plan of Action for Ensuring Access to Free Quality Basic Education for All*, the statutory implications of which were set out in the Draft Education Laws Amendment Bill (“the Bill”), published for comment in 2004. This document should therefore be read as a supplement to our submission on the Bill, which was made to the Department of Education in November 2004. Our submission on the Bill is attached for ease of reference.

Comment One: The Centrality of Free Education

Broadly speaking, the ELP is of the view that the Draft Norms represent an incremental, but significant, step toward free education in South Africa. The overall aim of the Draft Norms appears to be to move toward a situation in which parents of 60% of all learners are no longer required to pay fees to send their children to school. It is therefore unfortunate that Section 98E of the Draft Norms does not explicitly commit the government to the end goal of free quality basic education for all, as the Plan of Action did.

Comment Two: Failure to Explicitly Define Non-Fee Schools

Instead of explicitly defining which class of schools will no longer be allowed to charge school fees, the Draft Norms, in line with the Bill, give the Minister powers to determine this on an *ad hoc* basis, guided by a school’s poverty ranking. Although there is an implicit commitment in the Norms to aim for

around three-fifths of schools having “no-fee” status, the exact proportion of schools to be stopped from charging fees may change from year to year. This has serious consequences for the assertion of parental rights, especially since, in the introductory memorandum on the Draft Norms, the Department envisages that information on school poverty rankings will be made available through the Government Gazette and on the internet. The poorest households, who are, after all, the intended beneficiaries of the advent of “no-fee schools”, are unlikely to have access to these sources of information.

The task of informing a parent whether or not a particular school in a particular year is permitted to charge fees will therefore fall to provincial education departments and schools themselves. As is implicitly acknowledged in the Draft Norms, these two agencies have been notoriously unreliable in informing parents of their rights in the past.

Further, as they stand, the Bill and the Norms read together allow still appear to allow a “no-fee” school from charging fees if it does not *receive* the adequate allocation to which it is entitled. As the Draft Norms acknowledge, provincial departments of education often fail to pass on adequate budgetary allocations to schools. And the national Department has no power to enforce spending on specific classes of schools at a specific level. It can only establish “guidelines” and then “work together” with provincial departments to ensure adequate allocations. This is an inevitable (if, in these circumstances, somewhat undesirable) consequence of the system of co-operative government envisaged in the Constitution. But taken together with the Draft Norms and the Bill, it creates a loophole in the enforcement of the principle of “no-fee” schools which could render the principle meaningless to many poor parents. How are they to know whether a school has actually received its pro-poor allocation in a particular year?

In our view, it would have been preferable to define the class of “no-fee” schools explicitly and unconditionally by regulation, with a regulatory commitment never to decrease the size of the class.

Comment 3: School Fees and Accountability

Section 125B of the Draft Norms re-asserts the supposed connection between school fees and enhanced parental accountability:

“School fees . . . encourage parent participation in school governance and promote accountability to the communities they serve”

While in some cases this may be true, the broad application of this principle is yet to be supported by any significant empirical data. In fact, in the many hundreds of disputes between schools and parents that the ELP has dealt with over the past 3 years, school fees have appeared to operate as a disincentive to parent participation in school governance.

Time and again, ELP lawyers and paralegals have found themselves mediating disputes between parents and school principals which have arisen from a breakdown in communication usually caused by a school refusing to discuss anything with a parent other than an unsettled (and often illegally charged) fee account. One concrete example of this is the widespread practice of a school principal refusing to release a child’s report until a parent has come to his/her office to discuss the payment of school fees. Other examples include parents who have not paid their fees (whether charged lawfully or not) being excluded from school meetings.

In our view, the Department should either research and present empirical data to show that school fees enhance school accountability, or concede that they, in fact, do not. Clarity on this point will assist the broader national debate on the merits of the state’s school fee policy.

Comment 4: The General Education and Training Phase

Section 126D of the Draft Norms envisages that the Minister may take special measures to support the compulsory school attendance of 7 to 15 year old

children. Measures to support any class of children's regular attendance at school are important and welcome.

However, there appears to be no rational basis for concentrating these measures exclusively on the General Education and Training (GET) phase, especially since it creates the impression that completion of the GET phase somehow denotes that a child has received a minimally adequate education. In the current economic climate, this cannot be true. Even completion of Matric does not guarantee an education adequate to participate meaningfully in the formal economy.

Instead of creating an artificial distinction between the GET phase and Grades R, 10, 11 and 12, the Department should insist on measures to raise attendance across the entire pre-tertiary phase. Such measures are urgently required, given that enrolment in the GET phase remains consistently high, and drops sharply through Grades 10 to 12. Grade R enrolment rates are also significantly lower than enrolment in the GET phase.

Comment 5: Partial Exemptions

The new formulae for calculating partial exemptions in Sections 128M through 135F are extremely complicated. We acknowledge that they are not intended for use by parents. We note that they are intended, as Section 128C puts it:

“to guide the formulation of more user-friendly examples and advice that could enable parents to understand their right to school fees exemptions”

The question arises of where this advice is going to come from. And how are the inevitable disagreements on entitlements to partial exemption going to be resolved? As the Draft Norms acknowledge, the relatively simple “sliding scale” approach to partial exemptions (which the Draft Norms build on and complicate) was poorly understood by parents, Principals and School Governors.

In our view, the Department would have been better advised to attempt to simplify, rather than complicate, the sliding scale system. One option would be to introduce a simpler “stepped scale” system, whereby a few fixed proportion ranges of parental income taken up by the standard school fee (plus any compulsory extras) would correspond directly to a fixed partial exemption.

For example, a simple table could have been introduced as presented below:

Full School Fee as a Proportion of Parents Income	Value of Fee Exemption
10%	100%
7.5% - 9.999%	75%
5%-7.499%	50%
3.333%-4.999%	33%
Less than 3.333%	Nil

Of course, this particular table would make the partial exemption system less perfectly equitable than the one proposed in the Draft Norms. In particular, parents would receive a smaller exemption than they are currently entitled to.

We do not propose that the precise scheme set out above be adopted. We present it to illustrate our submission that there is a trade-off between perfect equity on the one hand, and user-friendless and enforceability on the other. While a “stepped scale” would admittedly make the calculation of partial exemption less equitable, it would, in our view, make the entire scheme more understandable to, and enforceable by, parents. In the absence of any significant moves to effectively enforce the partial exemption system at provincial or school level, making the system easier to understand for parents increases the chances of the scheme actually being implemented.

Education Law Project

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