

SUPPLEMENTARY SUBMISSION ON THE DRAFT REGULATIONS FOR THE EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES, 2004

Introduction

The Education Law Project (ELP) at the Centre for Applied Legal Studies, and the Alliance for Children's Entitlement to Social Security both welcome the opportunity to comment on the Draft Regulations for the Exemption of Parents from the Payment of School Fees, 2004 (the "Draft Regulations").

We understand the Draft Regulations to be part of 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. It should also be read with our Supplementary Submission on the Draft Norms and Standards for School Funding, which was submitted to the Department in January 2005. Our submission on the Bill and our supplement on the draft norms are attached for ease of reference.

Comment One: Still No Free Education

As a preliminary, we re-state our position that, no matter what the level of protection for poor parents, and no matter what the state's budgetary constraints, the social costs of school fees in and of themselves outweigh the supposed social benefits the school fee system brings.

This is primarily because school fees represent a significant barrier to access to quality basic education in South Africa. While South Africa's school enrolment rates are high by middle-income country standards, they are declining, especially in Grades 10 to 12, where the school fee burden is at its greatest. If media coverage of fee-based exclusions from school is anything to go by, then actual school attendance (as opposed to mere enrolment) is itself inhibited by the charging of school fees. While fee-based discrimination is illegal, the practice is widespread. It is disappointing that national government has paid little attention to studying and documenting this phenomenon over the past several years. It has been left to civil

society to highlight and enforce sanctions against fees based discrimination, while provincial departments of education have often stood idly by in the face of often endemic discrimination in schools.

Given the state's failure to implement an equitable school fees exemption system, we submit that the time has come to unconditionally abolish the school fees system in all but the richest 15% of schools and to allow parents to choose freely whether or not to make a financial contribution to their children's schools.

Ideally, this step should be accompanied by a stepped increase in the levels of funding available to the poorest 85% of schools. But, even if it isn't, the actual loss of revenue to the education system is likely to be minimal. In our experience, if parents can't pay school fees (whether or not they are charged legally) they invariably do not. If they can, they would invariably make the a financial contribution to their child's school whether or not the contribution was compulsory.

Comment Two: Balancing Complexity with Implementability

Comment One notwithstanding, we welcome the intention which lies behind the Draft Regulations. They are clearly intended to make the exemption system fairer by:

- Placing the onus on a school to prove that it has implemented the regulations before taking action against a parent;
- Standardising the forms and procedures for application for an exemption;
- Insisting that compulsory costs over and above the standard school fee be defined as "fees" for the purposes of exemption calculations; and
- Requiring that the number of children in respect of which a parent is paying fees be taken into account for the purposes of calculating exemption entitlements.

Unfortunately, this has been achieved by a significant complication of the regulations. The formulae for the calculation of an exemption entitlement are so complex as to be likely to baffle most parents and governors, and to constitute a significant barrier to transparency and accountability in the calculation of exemption entitlements.

While most teachers might, conceivably, be able to understand and apply the formulae, the task will fall to them to explain to parents and governors how the

formulae work. We have little hope that this will be done openly and transparently in most cash-hungry schools. Every ambiguity in the regulations and every possible mathematical obfuscation, will be enlisted in an attempt by the school to extract as much money from parents as possible. This has been the practice in the past. And without a more concerted effort to enforce the Regulations at a national and provincial level (which is nowhere in evidence) the task of enforcement will fall to parents themselves. The complexity of the Draft Regulations will make this self-enforcement much harder. As a result, it is, in our view, highly unlikely that these regulations will be properly implemented in most schools, especially those from historically disadvantaged parts of the education system.

Comment Three: Duties to Assist and Enforce

One possible solution to the problem identified in Comment Two, would be to relocate the onus to implement the regulations from schools themselves (which will always have an interest in ensuring that as many parents as possible pay fees) to provincial departments of education. Section 9 of the Draft Regulations places a duty on educators and/or schools to assist parents in making applications and/or appeals against decisions on the value exemptions granted. Given widespread non-implementation of the exemptions system, the provincial department of education should at least share this duty, or have some obligation to formally oversee – other than through the consideration of appeals – the implementation of the regulations.

Comment Four: “Payment in Kind”

Section 6 (14) (b) of the Draft Regulations require a school to give a parent the opportunity to pay fees in kind before it takes legal action to recover fees, **if** the parent(s) has/have been denied an exemption and have not paid the prescribed fee.

On the face of it, this regulation appears to operate in favour of the parent. However, we foresee the danger that the mere appearance of official condonation of “payment in kind” in the regulations will inevitably lead (as it has done in the past) to parents who are entitled to exemptions, being forced to offer their labour or goods to a school in lieu of fees.

Further, the definition of “payment in kind” set out in Section 1 of the Draft Regulations is too broad. It does not exclude demeaning or dangerous forms of

labour and does not exclude the provision of “material contributions” which may demand an unacceptable sacrifice from parents. Is a parent to be required to part with furniture, food or other basic items in lieu of school fees? All this is left to the discretion of school governors and/or Principals. In our experience (which includes parents being forced to clean toilets in full view of their children, and in lieu of school fees which they are under no legal obligation to pay) there is little reason to believe that this discretion will be exercised in favour of parents themselves.

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