



## **Draft Regulations for the Exemption of Parents from Payment of School Fees, 2005**

*Call for comment by Department of Education by 28 February 2005.  
Government Gazette, 8 December 2004, Notice 2793 of 2004*

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### **Introduction**

In South Africa, where levels of poverty are high and the legacy of Apartheid education needs to be addressed, the levying of school fees becomes a challenge to realising the right of access to education. There is the danger that schools can exclude learners and resist transformation through levying school fees that will protect the status quo. School fees may also act as a barrier towards embracing diversity by ensuring that a school does not reflect the broader South African community through the exclusion of those who cannot afford the school fees. In order to counteract the potential inequalities that this may cause the South African Schools Act specifically creates provisions for a school fees exemption policy, which are contained in Department of Education Regulations.

The Department of Education has recently published for comment new draft Regulations that will replace the *1998, Regulations for the Exemption of Parents from Payment of School Fees*. The aim of the latest Draft Regulation is to address some of the problems that have been encountered with the previous Regulations. To this end, the Department of Education must be commended in their efforts of continuously seeking to improve the Regulations and thereby contributing towards the realisation of the right of access to education.

This submission will consider the proposed changes to the new Draft Regulations and comment on them specifically. It must however, be realised at the outset that the debate over the levying of school fees and the potential that they may pose to the entrenchment of inequality in access to schooling needs to remain on the table for debate.

The following extract is apt:

“The result of South Africa’s fee paying policy has been that richer public schools have been able to retain their privilege and edge over poor schools by employing additional teachers and improved resources to ensure better quality teaching. Poorer

schools, on the other hand, have not charged high fees but are often unable to extract even their low fees from impoverished parents. Poor parents are exempt from fees, and pro poor funding mechanisms have been instituted, but are virtually unknown in rural areas. Unscrupulous and not-so-scrupulous principals, who require income additional to that provided by the Department, often fail to inform or are unable to implement fee-exemption policies. In urban areas, access to former white, Indian and coloured schools are limited by the high fees they set. The rapid growth of informal settlements, and lack of schools in them, means that families here rely on access to neighbouring schools – but are often excluded by the inability to pay fees. The shame and humiliation imposed by the inability to pay even meagre fees is a pervasive feature of the lives of the poor.” (Linda Chisholm, *The State of the Nation 2004 – 2005*, p211)

### **The South African Schools Act**

The Regulations are made in terms of sections 39(4) and 61 of the South African Schools Act 84/96. The relevant sections state as follows:

#### Section 39 – School fees at public schools

39(1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting referred to in section 38(2)

(2) A resolution contemplated in subsection (1) must provide for –

(a) The amount of fees to be charged; and

(b) equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.

(3) ...

(4) The Minister, must, after consultation with the Council of Education Ministers and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2)(b).

#### Section 61 Regulations

The Minister may make regulations on any matter which must or may be prescribed by regulations under this Act and any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

### **The need for new Regulations**

The Explanatory Memorandum to the Draft Regulations sets out the reasons for the drafting of these new regulations. The 1998 Regulations have proved to contain vague and contradictory wording. This has led to different interpretations of the Regulations by School Governing Bodies (SGB's) and made the administration of the Regulations unmanageable. The new Regulations aim to be more flexible and less rigid. This submission will concentrate on the amendments that seek to cure the previous defects.

## **Definitions that have been added to the Regulations “foster parent”**

In terms of the 1998 Regulations, a person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety is exempted from payment of any school fees (section 3 (2)). The Explanatory Memorandum states that a definition of foster parent has been inserted for the purpose of avoiding vagueness and contradictions in the Regulations.

The proposed definition states as follows:

### *“foster parent”*

- (a) a person who has the responsibility of a parent of a learner placed in :
  - a. a foster home*
  - b. a youth care centre*
  - c. a place of safety; or*
  - d. an orphanage**
- (b) a person who is a kinship caregiver; or*
- (c) a parent who receives a social grant on behalf of a learner*

The importance of this definition is realised upon a reading of the definition of “total exemption” which states:

*“total exemption” means the parent is not liable for the payment of any compulsory school fees and it includes automatic exemption of a foster parent*

In other words, a “foster parent”, as defined in the Regulations is automatically exempted from paying any compulsory school fees.

It should be noted that the Draft Regulations in defining foster parent is broadening the category of parents who are not responsible for the payment of compulsory school fees. As was noted above the 1998 Draft Regulations only provided exemption for a person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety.

### ***The definition term does not reflect the categories of parents that are exempted***

It is ideologically unsound and confusing to refer to kinship caregivers and parents who receive social grants as “foster parents”. These categories of carers are not generally referred to as a foster parent in every day language. Given the social stigmatisation that exists in some communities concerning foster care, it is not acceptable to refer to a parent who receives a child support grant on behalf of a child as a foster parent. Clear and understandable language must be used in order to avoid confusion.

It is suggested that another definitional term or phrase be chosen to describe the category of parents / caregivers who will be automatically exempt from paying school fees.

***The definition is vague and confusing in referring to social grants***

It needs to be carefully considered and determined which categories of recipients of social grants should fall within the definition of those who are automatically excluded from paying compulsory school fees.

Social assistance is delivered through many different types of grants. These include:

- Old age grant
- Disability grant
- War veterans grant
- Care dependency grant,
- Foster child grant
- Grant in aid
- Social relief or distress

As the definition currently stands a parent who receives a foster child grant and, in specific circumstances, a care dependency grant; grant in aid; and, social relief and distress grant when awarded in respect of a learner, will qualify for automatic exemption.

It is unclear whether the above interpretation is the intention of the drafters of the Regulations. This needs to be clarified by specifically stating the types of grants, which parents receive on behalf of a learner that shall entitle the learner to an automatic exemption.

It is suggested that as it is unclear which social grants are being referred to in this section, that the specific grants should be listed. The fee exemption policy is aimed at providing relief to those who are poor. In the circumstances it is supported that the categories of grants that are listed be as wide as possible.

***There are further categories of parents / caregivers who ought to be included in this definition***

The category of automatic exemption does not recognise the following vulnerable groups who should also qualify for automatic exemption:

(a) Child headed households

The Regulations fail to address the reality of child headed households. This particularly vulnerable group must be specifically referred to in the Regulations in order to ensure that they receive adequate protection from the law. By failing to mention this group, there is the potential that children from child headed households will not be automatically granted exemption from the payment of school fees. The Children's Bill, which is currently being debated within the National Assembly, recognises child headed households as a reality that must be confronted in South Africa. To this end, where the rights of these vulnerable children are affected they must be addressed in law. Should

we fail to recognise child headed households they may well fall through the cracks of protection that the law provides.

(b) Grandmothers who care for their grand children

The HIV/AIDS pandemic has led to dramatic changes in the structure of the nuclear family within South Africa. This has been particularly demonstrated in the work that the SAHRC has conducted in all the provinces recently with the elderly. In all of the provinces there were many older persons who are caring for their grandchildren, as their children have died of HIV/AIDS. This places enormous financial, social and emotional strain on the elderly. The Regulations should provide that the grandchildren who are in the care of their grandparents who are recipients of state old age pensions should be automatically excluded from paying school fees.

(c) Parents of children who are recipients of disability grants

The Regulations should also provide that parents who are recipients of state disability grants should be automatically excluded from paying school fees.

***The category of automatic exemption must be clearly determined and defined***

The comments above indicate that a clear decision must be taken as to which parents and or caregivers will automatically be entitled to exemption. A category of such persons should be created and then an appropriate name or term be given to describe the category.

***“income”***

It must be noted that this new definition impacts upon another definition in the definitions sections namely “combined gross income of the parents”.

In the draft Regulations

*“income” means-*

- (a) gross salary or wages;*
- (b) money received from investments; and*
- (c) profit gained from any form of business undertaking;*

The definition is important as income is one of the factors considered when parents apply for an exemption (Section 4(2)(a)); and, it is also used in the mathematical formula that is given to determine whether parents qualify for an exemption (see section 6(2) and the examples of how calculations are to be calculated further on in the draft Regulations).

The Explanatory Memorandum states that the purpose of including this definition is to avoid any vagueness in the Regulations and the resulting differing interpretations by various SGB’s. The question thus to be posed is to what extent this definition will assist in curing this defect of vagueness?

Many parents in South Africa are not engaged in formal salary or wage earning employment. Rather, many parents earn a living through the informal sector. A recent study released by Statistics SA indicates that 8.8 million persons are in formal employment, 2.2 million people are employed in the

informal sector and 1 million persons are employed as domestic workers (Stats SA, Labour Force Survey, 2004).

Persons who are employed in the informal sector do not always have registered businesses or are registered to pay income tax. It is thus very difficult in these circumstances for the parent to demonstrate his or her earnings. The definition thus provides little further guidance in resolving the dilemma of determining the income of such parents.

#### **Further comments**

***There is potential confusion between the requirements for automatic and total exemption.***

Section 5 creates categories for the purposes of exemption, these include: total, partial; no exemption and conditional exemption. The definition of “total exemption” states that this includes automatic exemption for foster parents.

Section 4 of the Regulations sets out the various documentary evidence that a “foster parent” must supply to a school in order to qualify for automatic exemption.

The requirements for automatic exemption appear to be different from the requirements for other categories of exemption. It is therefore suggested that those who are automatically excluded from paying school fees should be dealt with in a separate section in the Regulations.

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