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Education Law Project

School Fees: Your Rights

Contents

- 1 Introduction.....1
- 2 Can a learner be refused access to a school for non-payment of school fees?.....2
- 3 Can a school charge school fees?.....4
- 4 Can a school sue a parent/caregiver for outstanding school fees?.....6
- 5 What should a parent/caregiver do if s/he cannot afford to pay school fees?.....7
- 6 When will a parent/caregiver qualify for an exemption?.....9
- 7 Who are caregivers?.....12
- 8 A shortened example of an exemption application.....13
- 9 Provincial Heads of Department.....14
- 10 More about the Education Law Project (ELP).....15
- 11 Glossary of terms.....16
- 12 Contact details.....17

1 Introduction

The **Education Law Project (ELP)** has received many complaints from parents/caregivers and learners about school fees. In some cases, learners' reports are withheld because their parents/caregivers have not paid school fees. In other cases, debt collectors intimidate parents/caregivers because they have not paid their children's school fees.

This booklet sets out the law relating to school fees as stated in the South African Schools Act 84 of 1996 ('SASA'), the Exemption of Parents from the Payment of School Fees Regulations, 1998 ('Regulations') and the Admission Policy for Ordinary Public Schools, 1998 ('The Admission Policy').

This booklet assists parents/caregivers who cannot afford to pay fees to:



- Enforce their children's rights when schools act unlawfully by denying their children access to school.
- Apply for exemptions from the payment of school fees.

2 Can a learner be refused access to a school for non-payment of school fees?

No. The law states clearly that no learner should be treated differently or unfairly because his/her parent/caregiver has not paid school fees.

This means that where a parent/caregiver cannot afford to pay school fees, or even where a parent/caregiver has simply forgotten to pay the fees, the school **cannot punish** the learner by sending him/her home, refusing him/her access to classes or other school facilities, or withholding his/her report card.

A school that punishes a learner for a parent's/caregiver's failure or inability to pay school fees is **breaking the law**.



What does the law say?

Section 5(1) of SASA says that:

A public school must admit learners and serve their requirements without unfairly discriminating in any way.

Section 5(3) of SASA says that:

No learner may be refused admission to a public school on the grounds that his/her parent/caregiver is unable to pay, or has not paid, school fees that have been lawfully determined.

Section 10 of the Admissions Policy says that:

A learner is admitted to the **total school programme** and may not be suspended from classes, denied access to cultural, sporting or social activities of the school, denied a school report or transfer certificates, or otherwise victimised on the grounds that his/her parent/caregiver is unable to pay, or has not paid, the required fees.

3 Can a school charge school fees?

Yes. A school is entitled to charge school fees.

But to be able to charge school fees:

â *The school must lawfully determine the amount of fees to be charged, by doing the following:*

- It must call a general meeting of parents/caregivers and give parents/caregivers 30 days' notice so that they can plan to be at that meeting.
- At this meeting, parents/caregivers must decide if they want to charge school fees. If a majority of the parents/caregivers present vote for this, fees can be charged. If a majority of the parents/caregivers vote **against** charging school fees, a school may **not** charge fees.
- If parents/caregivers decided to charge school fees at this meeting, they must also decide on the amount of the fees to be charged and on the policy for exempting poorer parents/caregivers from paying fees.

C The school governing body must then notify all parents/caregivers in writing of:

- The amount of the annual school fees to be paid and the criteria and procedures for exemption from school fees.*
- The fact that a parent/caregiver can be sued for not paying school fees unless a parent/caregiver has been exempted from paying school fees.*
- The contents of Sections 3, 4, and 5 of the Exemption Regulations.*

E When a parent/caregiver asks, the School Governing Body must make a full copy of the Regulations available to him/her.

Where the school's fees have not been lawfully determined, or where school governing bodies have failed to inform parents/caregivers of their **right to apply for an exemption**, any claim the school may make for outstanding school fees **can be challenged** by the parent/caregiver.

This is set out in Sections 38 & 39 of SASA and Sections 4 & 5 of the Regulations.

4 Can a school sue a parent/caregiver for outstanding school fees?

Yes. A school can sue parents/caregivers for outstanding school fees. But if a school does this, it **cannot** deny the learner concerned access to the school or any of the school's facilities.

Also, a school may only sue a parent/caregiver for outstanding school fees if:

- The fees at the school were **lawfully** determined as set out on pages 4 and 5.
- The school governing body has notified all parents/caregivers **in writing** of the details relating to school fees as set out on pages 4 and 5.
- The parent/caregiver failed to apply for an exemption for school fees.

This is set out in Sections 40 & 41 of SASA.

5 What should a parent/caregiver do if s/he cannot afford to pay school fees?

Apply for an Exemption

Parents/caregivers who cannot afford to pay school fees should apply to the School Governing Body in writing for an exemption from school fees. The parent/caregiver can request an **application form** from the school. An example of what an application form looks like is included at the back of this booklet. If the school has not already given a parent/caregiver a copy of the exemption policy, the parent/caregiver can demand that a copy be given to him/her.

Assistance in Making the Application

A parent/caregiver who needs help to apply for an exemption may ask an educator, or any other person, to assist him/her with the application. If these people are **not able** to help, the principal of the school **must** help the parent/caregiver.

Appeal

The School Governing Body has **14 days (two weeks)** to consider and decide on the application. The decision must follow what the law says in the Regulations. The School Governing Body then has **7 days (one week)** to tell the parent/caregiver what it decided. If the parent/caregiver is unhappy with the decision, s/he has **30 days (one month)** to appeal the decision in writing to the Head of the Department of Education in the province.

The contact details of the Head of your province's Education Department are set out at the back of this booklet.

Full details are set out in Regulations 4, 5, 7 & 8 of the Exemption Regulations.

calendar	S	M	T	W	T	F	S
		1	2	3	4	5	6
	7	8	9	10	11	12	13
	14	15	16	17	18	19	20
	21	22	23	24	25	26	27
	28	29	30				

6 When will a parent/caregiver qualify for an exemption?



- If the combined gross annual income of both parents/caregivers (or just one if there is only one) is less than ten times the annual school fees per learner, the parent/caregiver can get a full exemption.
- If the combined gross annual income of the parent(s)/caregiver(s) is less than thirty times, but more than ten times, the annual school fees per learner, the parent/caregiver can get a partial exemption.
- If the combined gross annual income of the parent(s)/caregiver(s) is more than thirty times the annual school fees per learner, the parent/caregiver cannot get an exemption.

For example:

If the school fees are one thousand Rand a year:

- 1** A parent/caregiver will be fully exempted if his/her income is less than ten thousand Rand a year or,
- 2** A parent/caregiver will be partially exempted if he/she earns more than ten thousand Rand but less than thirty thousand Rand a year, or
- 3** A parent will not receive any exemption if his/her income is more than thirty thousand Rand a year.

This is set out in Regulation 3 of the Exemption Regulations.

For an exemption to be fair the following factors must also be considered:

- School Governing Bodies cannot give smaller exemptions than that stated in the law as set out above. But, under **special circumstances** they may give a bigger exemption than that provided by the law. For example, a single parent/caregiver with more than one child at a school may get a bigger exemption than s/he qualifies for in terms of his/her income.
- School Governing Bodies should decide partial exemptions along a sliding scale according to the income of the parent/caregiver. This means that if a parent/caregiver earns 12 times more than the schools fees charged in a year, that parent/caregiver should get almost a full exemption. However, if that parent/caregiver earns 28 times more than the school fees the exemption will be smaller.

- When deciding exemptions, School Governing Bodies must look at all factors, such as the number of dependants a parent/caregiver has, and the expenses a parent/caregiver has.
- A School Governing Body may grant a **conditional exemption**. This means that they may grant an exemption on condition that the parent/caregiver provides them with certain information at a later stage. An example of this is where a School Governing Body grants an exemption but only on condition that a parent/caregiver informs the school of any change in his/her financial position. The School Governing Body may at that stage want to think again about whether or not the parent/caregiver should have an exemption, or what kind of exemption s/he should have.
- A School Governing Body may consider the combined gross annual income of both parents/caregivers only if both parents/caregivers are supporting a child. This means that where one parent/caregiver has disappeared or does not maintain a child his/her income should not be a consideration when deciding an application.
- Although a parent/caregiver can volunteer to help a school out by doing odd jobs or giving money, **a parent/caregiver can never be forced to work for the school in return for an exemption.**

Where a parent/caregiver suspects that an exemption has not been **fairly** decided s/he can **appeal** the exemption granted.

See Sections 3, 4 & 5 of the Regulations.

7 Who are caregivers?



- Caregivers are any persons in whose custody and care children live if their parents are deceased or no longer care for them. These caregivers provide for the children's daily needs out of their own means. They can be grandparents, aunts and uncles, older brothers and sisters, or friends. These caregivers should be treated in the same manner as parents. This means that **caregivers are entitled to apply for exemptions in the same way as parents.**
- Where a child is placed in a foster home, foster care or a place of safety by a court or a government official such as a social worker or a police officer, the Regulations say that the person responsible for the foster home, foster care or place of safety will be **fully exempted from the payment of school fees.**

This is set out in Regulation 3(2) of the Exemption Regulations.

8 A shortened example of an exemption application

ANNEXURE A APPLICATION FORM FOR EXEMPTION SOUTH AFRICAN SCHOOLS ACT, 1996 (NO 84 OF 1996)

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES REGULATIONS, 1998

PARTICULARS OF SCHOOL

Name:
Postal Address:
Physical Address:
Tel:
Fax:

PARTICULARS OF APPLICANT

Name of parent:
Name/s of learner/s:
Residential Address:
Tel:
Fax:

APPLICATION FOR

1. Full exemption R.....
2. Partial exemption R.....
3. Additional information which you request to be considered...
4. All supplementary documentation to prove the application...
5. The application form and accompanying documents must be sealed...

9 Provincial Heads of Departments



Eastern Cape

Dr D W M Edley

Private Bag X0032

Bisho 5605

TEL (040) 608 4205

FAX (040) 608 4249

Free State

Mr M S Rakometsi

Private Bag X20565

Bloemfontein 9300

TEL (051) 404 8428/8429

FAX (051) 404 8269

Gauteng

Mr M Petje

P O Box 7710

Johannesburg 2000

TEL (011) 355 1510/1511

FAX (011) 333 5546

KwaZulu-Natal

Dr R C Lubisi

Private Bag X9137

Pietermaritzburg 3200

TEL (033) 355 2355/846 5100

FAX (033) 355 2337/846 5180

Limpopo

Prof R H Nengwekhulu

Private Bag X9489

Polokwane 0700

TEL (015) 297 0895

FAX (015) 297 0937/4452

Mpumalanga

Mr C M Mashaba

Private Bag X11341

Nelspruit 1200

TEL (013) 766 5462/5298

FAX (013) 766 5577

Northern Cape

Mr EAB Williams

Private Bag X5029

Kimberley 8300

TEL (053) 839 6500/6683/6696

FAX (053) 839 6640

North West

Dr A M Karodia

Private Bag X2044

Mmabatho 2735

TEL (018) 387 3428/3429

FAX (018) 387 3430/3297

Western Cape

Mr R B Swartz

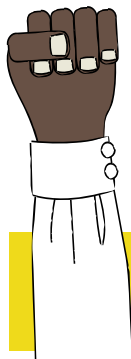
Private Bag X9161

Cape Town 8000

TEL (021) 467 2000/2535/2536

FAX (021) 467 2363/3694

10 More about the Education Law Project (ELP)



The **ELP** is an initiative of the Centre for Applied Legal Studies (CALS). The Project assists individuals and communities to assert and realise their right to basic education.

The main areas of the ELP's work are:

- س School fees and funding
- س Farm schools
- س Access to education

In each of these areas, the **ELP** conducts research and provides training, advocacy and legal services to people who wish to widen access to and improve the quality of the education provided in their communities.

11 Glossary of terms

= **appeal**

If you are unhappy with a decision of the School Governing Body, you can approach a more senior person to decide if that decision was correct.

= **criteria**

A set of conditions you must meet before a School Governing Body will give you permission not to pay school fees.

= **exemption**

Permission not to pay some or all of the annual school fees.

= **gross annual income**

All the money someone receives in a year from any source, before tax and other expenses are taken away.

= **law**

Rules made by parliament or government.

= **sliding scale**

The measurement a School Governing Body uses to decide the value of a partial exemption. The higher your income, the lower the value of the exemption, within certain limits.

= **sue**

To make a claim against a person/s in a court of law, usually to get them to pay a debt or compensation.

12 Contact details

For further assistance the
Education Law Project (ELP)
may be contacted at:

Centre for Applied Legal Studies (CALS)

Private Bag 3

Wits University 2050

TEL (011) 717 8600

FAX (011) 403 2341

Website

www.law.wits.ac.za/cals

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*It will be a great day when our schools get all the
money they need and the military has to have a
cake sale to buy corvettes and jets!*

School Fees: Your Rights

assists parents/caregivers who cannot afford to pay school fees to: **enforce** their children's rights when schools act unlawfully by denying their children access to school and **apply** for exemptions from the payment of fees.

The information in this booklet is based on the laws applicable as at 30 July 2005.

Written by the Education Law Project

Illustration and design by Ellen Papciak-Rose



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