

CHAPTER 8

SCHOOL FEES

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This chapter is an update of an earlier version
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THE CONSTITUTION

The Constitution says that EVERYONE has the right to basic education, including adult basic education.

‘Everyone’ means that the right to basic education is not just available to South Africans, but also to refugees and asylum seekers.

Section 153 of the National Norms and Standards for School Funding states that ‘school fees must not be allowed to become an obstacle in the schooling process, or a barrier preventing access to schooling.’

Section 9 and 10 of the Constitution state:

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

INTRODUCTION

Many of the problems that beset the South African education system today are a direct consequence of apartheid and its use of education as a tool of oppression. The education system was segregated along racial lines with the distribution of funding disproportionately weighted in favour of white learners, while black learners received the least funding of all race groups. This uneven distribution of school funding along racial lines meant that schools for black, coloured and Indian learners had less money than schools for white learners. The quality of education was significantly poorer in black schools.

Although apartheid policies are long since abolished, South Africa’s public education system is still unequal. Not enough has been done to get black children into previously whites-only schools. The majority of black learners still attend overcrowded, under-resourced schools with poor infrastructure and inexperienced teachers.

The South African Constitution is based on the idea that every person is equally protected by the law and

aims to improve the quality of life of all citizens and to free their potential. Education can be a tool to achieve this ideal. The right to a basic education (Section 29(1)(b) of the Constitution), the right to equality (Section 9) and the right to dignity (Section 10) must therefore work to equalise the effects of apartheid and advance the quality of everyone’s life. This will enable all people to become active citizens capable of participating meaningfully in building a democratic and open society.

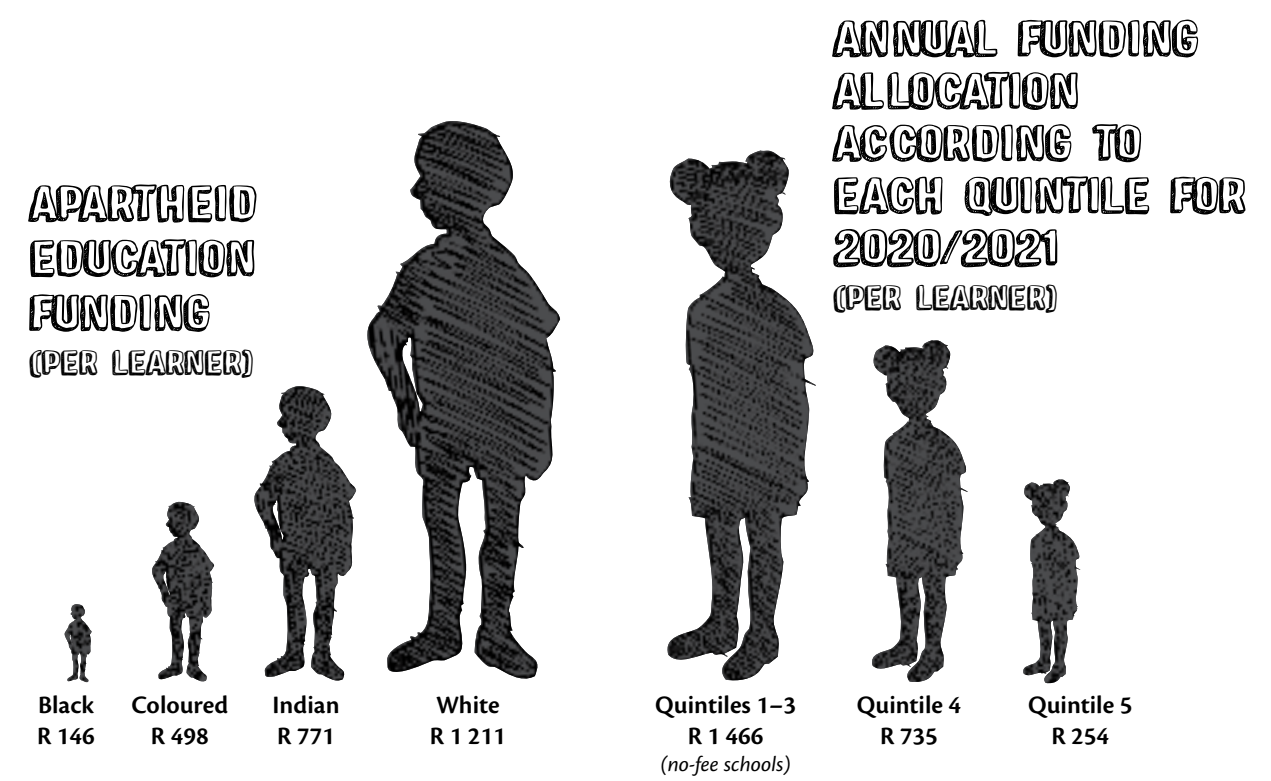


Figure 7.1: A comparison of the state’s approach to school funding during and after Apartheid.

In order to achieve these ideals, in 1996 the government created the South African Schools Act (SASA). The main objective of the Act was to provide for a uniform system for the organisation, governance and funding of schools.

Public education is funded by government through a pro-poor funding model. This means previously black schools receive more funding from the government than former white schools. The funding model creates five categories of schools, called quintiles.

These quintiles determine how much government funding each school gets. The schools in the lower quintiles (1 to 3) are declared no-fee schools and do not charge school fees. These schools get the majority of the government’s funding.

Schools in quintiles 4 and 5 receive a small amount of funding from the government and are therefore allowed to charge school fees. The school’s fees are determined by the parents of the school. Parents who are unable to afford the school fees have the right

to apply for a school fee exemption. This ensures that learners are not discriminated against because their parents are unable to pay the full fees.

This chapter will speak about the right of parents to apply for fee exemptions, and will discuss the experiences and challenges that parents face when applying for a school fee exemption. It will also discuss some of the challenges for parents, for example being asked for ‘compulsory donations’ at no-fee schools.

THE LIMITATION OF RIGHTS

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INTERNATIONAL LAW

International law also recognises the need for governments to immediately realise the right to free education. South Africa has signed the International Convention on Social, Economic and Cultural Rights (ICESCR). The Convention calls for the removal of fees, especially for the poorest and most vulnerable.

International law calls for government to meet its obligation to provide the right to education, including access to public schooling, which must be economically accessible.

LAW AND POLICY

The charging or exemption from payment of school fees is guided by a number of constitutional and legislative directives, as well as international law.

ACCESS TO EDUCATION AND THE CONSTITUTION

Everyone has the right to a basic education.

This right means that:

- Basic education is an immediately realisable right and is not dependent on the availability of government resources
- Government must provide access to basic education to everyone living in South Africa, immediately
- Education must be accessible, and this means public schooling must be free or at least affordable.

Ideally, this right means that all learners have access to free education, and that the government has a duty to ensure that this happens. In reality, the government had to recognise that in order to benefit the majority of school-going learners from previously disadvantaged groups, they would have to develop a funding model that would provide for cross-subsidisation of school fees from the parents of learners who were in a position to pay school fees. Cross-subsidisation means that the government pays less money to a school that can raise money through school fees or other fundraising mechanisms.

THE FUNDING OF SCHOOLS THROUGH COLLECTION OF SCHOOL FEES

SASA provides that schools must be funded through public funds. In order to address past inequities in school funding, SASA allows for certain schools in more affluent areas to raise their own funds, while government subsidises learners in poorer areas in full. SASA also allows for learners who attend partially subsidised schools, but whose parents cannot afford to pay the school fees, to apply for full, partial and conditional exemptions from the payment of school fees.

THE SCHOOLS ACT

Section 34 of SASA states that the State must “fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision”.

SCHOOL FUNDING THROUGH THE QUINTILE SYSTEM

SASA requires that the Minister of Basic Education annually determine the national quintiles for public schools. This is how the system works:

- The Minister classifies schools according to the level of poverty in surrounding areas.
- The factors considered include the surrounding infrastructure and how many homes in the area are made from brick, wood, iron sheeting and so on.
- Each school is then ranked as one of five quintiles, with quintile 1 being schools in very poor areas and quintile 5 being schools in wealthier areas.
- Schools in quintiles 1 to 3 are no-fee schools, and schools in quintiles 4 and 5 are fee-charging schools.
- Government wholly subsidises schools in quintiles 1 to 3, and partially subsidises schools in quintiles 4 and 5.
- For each province, the Minister must publish a list of no-fee-paying schools where learners are entitled to enrol without paying any school fees. A list of all no-fee schools can be found at the nearest education district or on the website of the Department of Basic Education (DBE).

There are circumstances in which schools are incorrectly classified as quintile 4 or 5 schools. Despite the Norms and Standards for School Funding allowing for a school to be reassigned to another quintile, in general schools find it difficult to change their classification. However, Section 103(c) of the Norms and Standards for School Funding does say that special circumstances could exist that would warrant a school being reassigned to another quintile. School governing bodies may also apply for such reassignment. The Norms and Standards require provincial education departments to establish a fair and objective administrative mechanism for considering such requests from school governing bodies, and for deciding on them.

The consequences of a school being incorrectly classified could be that poor children who attend schools in areas not rated among the poorest will be forced to attend schools that charge fees. The ability of a parent to apply for a fee exemption is therefore critical, to ensure

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that a parent is not disadvantaged by the incorrect classification of a school.

This problem of misclassification is particularly serious in the context of special schools, where – because of the hostel-based system – even when schools are located in wealthy urban areas, learners come to the schools from poor areas around the country. It is often impossible for their parents to pay fees.

In a 2015 report, the Department of Basic Education recommended that to remedy this situation, special schools should be permitted – through a process of ‘voluntary classification’ – to be reclassified as no-fee schools. In November 2018, the United Nations Committee on Economic, Cultural, and Social Rights (CESCR) in their consideration of the initial report filed by South Africa on the implementation of the International Covenant on Economic, Social, and Cultural Rights observed that special schools are not no-fee schools. The Committee recommended the immediate roll-out of the no-fee schools programme in public special schools. It is unfortunate, however, that despite this stance and recommendation, there has been little follow-through by the Department of

Basic Education with this process. In 2019, Human Rights Watch found that Gauteng had only classified five out of a total of 128 special-needs schools as no-fee schools in the province. What this means is that children with disabilities, whose education is already sorely disadvantaged by various other shortcomings in the education system, could be further denied access to schooling because of this failure to declare special schools to be no-fee schools.

In January 2018, the draft National Guidelines for Resourcing an Inclusive Education System (the ‘guidelines’) were published by the Department of Basic Education. The guidelines speak to resourcing the implementation of the Screening, Identification, Assessment and Support Policy, as well as funding allocations to special schools. These guidelines are still to be finalised. They do not, however, declare or stipulate that special schools should be no-fee schools. Instead these guidelines adopt an approach which promotes the use of fee exemptions rather than a blanket no-fee status. As such, the guidelines state that special schools may charge school fees.

NATIONAL QUINTILES

According to Section 39(7) of the South African Schools Act, by notice in the Government Gazette the Minister must annually determine the national quintiles for public schools, or part of such quintiles, which must be used by the Provincial Member of the Executive Council for Education to identify schools that may not charge school fees.

DIFFERENCES AT PROVINCIAL LEVEL

Some provinces, such as the Western Cape, have adopted practices that designate some schools that charge school fees of less than R400 a month as no-fee schools.

CONTRIBUTIONS

Contributions can be in the form of money, in kind, or in the form of any service a parent may render to a school.

UNITED NATIONS COMMITTEE ON ECONOMIC, CULTURAL, AND SOCIAL RIGHTS

The CESCR, in their 2018 observations, noted with concern the practice in no-fee schools of charging fees in the form of voluntary contributions. The Committee recommended that the South African government take steps to ensure that no-fee schools stop charging parents fees.

NO-FEE SCHOOLS

No-fee schools are prohibited from charging fees but are allowed to raise extra funds for the benefit of the school or sporting programmes through donations and ‘voluntary contributions’. According to the Department of Basic Education, “any parent, including those granted any type of exemption, can make voluntary contributions to the school fund”. School governing bodies are therefore permitted to encourage parents, learners, educators and other staff at the school to render voluntary services to the school.

Given the difficulty that no-fee-paying schools face in trying to access resources that fall outside of the funding they receive from the state, there are often instances in which schools try to force parents to pay a voluntary donation. This is sometimes referred to as a ‘compulsory donation’. This practice is prohibited, and learners should not suffer any discrimination or victimisation if their parents are unable to pay the voluntary contributions. Here are some examples.

EXAMPLE OF REGISTRATION FEES

A mother has three children at a no-fee school. Every year she is asked to pay a registration fee of R300 per child. This means she must pay R900 every year, even though her children are already at the school. Registration fees are unlawful whether a child is starting at a new school or already enrolled at the school.

EXAMPLE OF FEES FOR SPECIFIC SCHOOL ACTIVITIES

A school governing body (SGB) of a no-fee secondary school in the Mopani District in Limpopo met with parents of learners in Grades 11 and 12 who were informed that they were required to pay R60 per month so that the children could attend the ‘Saturday school’ and ‘Winter school’. One parent said he felt obliged to pay even if he could not afford this monthly contribution. He said: “I don’t want to put my daughter into trouble.”

Victimisation and discrimination for the non-payment of ‘compulsory fees’ is also prohibited. ‘Victimisation’ or ‘discrimination’ is where there is some form of coercion to force a monetary contribution. SASA and the Admission Policy both state that a learner may not be deprived of

his or her right to participate in any of the school programmes for not paying school fees. These laws also ban schools from victimising learners for not paying school fees. Examples of such victimisation include schools withholding report cards, matriculation certificates or transfer cards; suspension from classes; verbal or non-verbal abuse; and denial of access to school feeding schemes, or to school cultural, sporting or social activities.

EXAMPLE OF DISCRIMINATION OR VICTIMISATION

At a primary school in Mopani District, every Friday is ‘civvies day’. This means that learners can come dressed in ordinary clothes instead of their uniforms if they pay R2. This would be lawful if it was voluntary; the problem is that when learners come to school in their uniforms on a Friday they are forced to go home, and are not allowed to return unless they pay the R2. This means that learners are prevented from attending school unless they pay R2.

FEE-PAYING SCHOOLS

Section 39 of SASA empowers the parent body to determine (at a general meeting) the school fees to be charged at a public school. There is no cap on how much each school can charge for school fees. This amount is agreed by the parent body of the school.

The school may only charge an amount for fees that has been approved by the majority of parents at a meeting, and the school must inform all the parents of what the school fees of the school will be.

The Minister of Basic Education provides regulations on what the

criteria and procedures for determining fee exemptions should be.

In order to prevent financial discrimination in school admissions, SASA states that no public school, in any quintile, may charge any registration, administration or other fee, except school fees.

GOVERNING BODY RESPONSIBILITIES

The Schools Act, in section 36(1), states that a governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the state in order to improve the quality of education provided by the school to all learners at the school.

SCHOOL-FEE EXEMPTIONS

Parents who cannot afford to pay school fees at a fee-charging school (schools in quintiles 4 and 5) have the right to apply for a fee exemption. SASA and the Regulations Relating to the Exemption of Parents from the Payment of School Fees (the Regulations) provide a mechanism for parents to apply to be ‘exempt’ from payment of school fees.

Depending on the income of the parent, or whether the parent, guardian or a learner receives a social grant on behalf of the child, a parent or guardian may be given an automatic exemption, a total exemption, a partial exemption, a conditional exemption, or no exemption.

Regulation 3 requires that the school principal tell all parents how much school fees are, and that they have the right to apply for an exemption; and if necessary, must assist parents who want to apply for an exemption. Parents must also sign a form that confirms that they were informed about the school fees and school-fee exemptions. The school governing body must display the exemption regulations in a prominent place in the school, and parents must be given copies of the regulations on request. School governing bodies must treat all information provided by parents in support of their applications for exemption as confidential, and may not disclose such information without the consent of the parent, except to the relevant provincial education department (PED), head of

department (HOD), or person that the HOD has designated for this function.

Automatic exemption is given to a person with the parental responsibility of a child who is in foster care, an orphanage, a youth care centre or a place of safety. Automatic exemption is also given to a child who heads a household, a person who receives a social grant on behalf of a child, a caregiver of an orphan, and a child abandoned by parents. These categories of people must complete a fee-exemption form from the school and provide a court order, or an affidavit confirmed by SAPS, or a sworn statement by a social worker or other competent authority, confirming their status. If you qualify for an automatic exemption, you cannot be asked to pay any fees.

Parents who qualify for a **partial exemption** will get a discount on school fees. The amount would depend on the income of the parents in relation to the school fees. The Regulations provide a formula to calculate the amount parents would be required to pay if they qualify for a partial exemption.

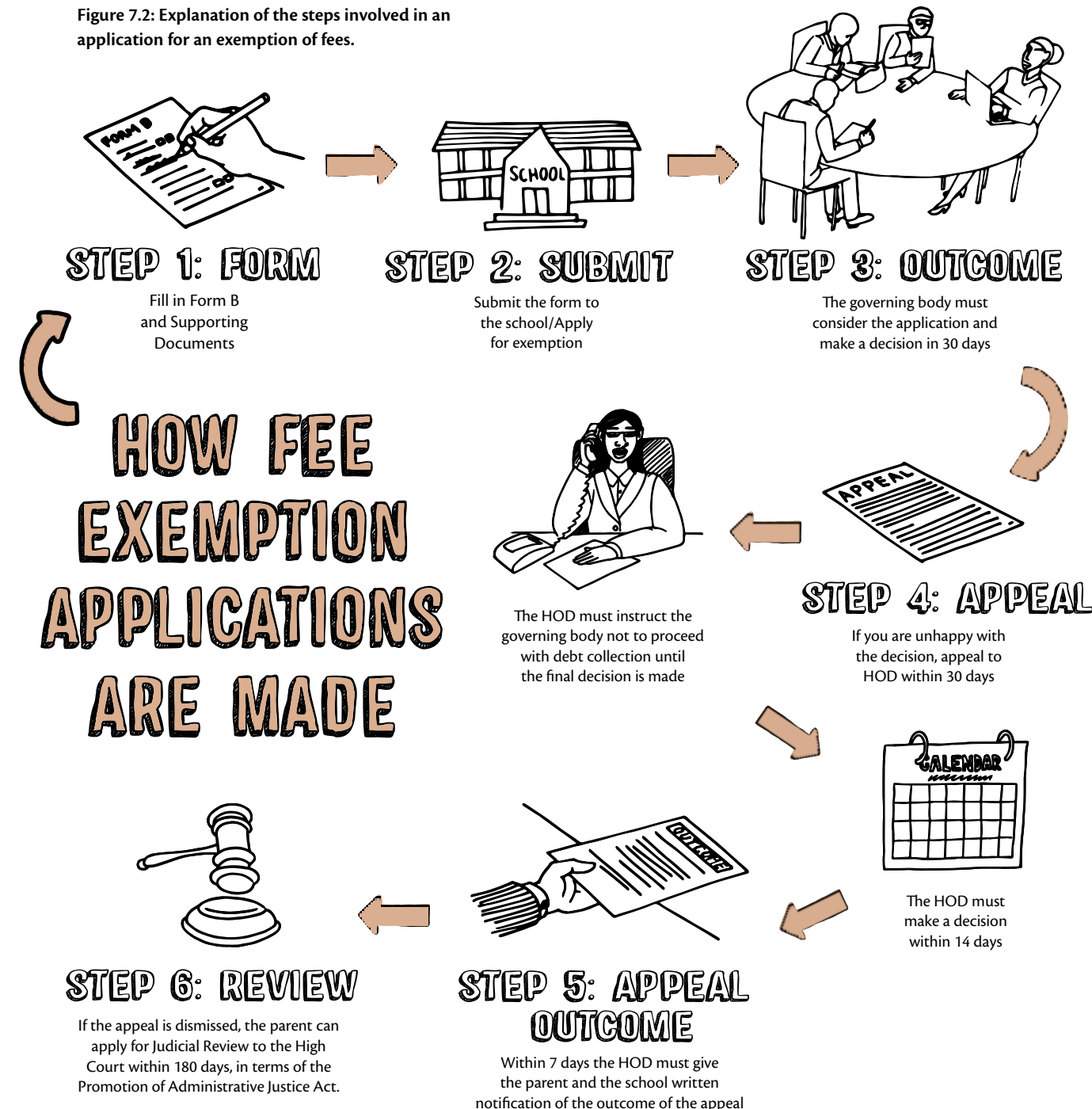
This formula takes into account:

- The annual school fees for one child that a school charges
- Additional monetary contributions such as piano lessons, art class, school outings and so on
- The combined annual gross income of both parents of the learner.

If the school fees as a proportion of the income of the parents is greater than 10%, the parents qualify for a full exemption from the payment of school fees. If the school fees are less than 10% of the income, the parents qualify for a partial exemption on a graded scale.

Regulation 4 requires the parents to furnish any relevant documents that the school governing body may request when deciding on a fee exemption. The application also requires parents to submit salary slips from the employers of both parents, or a letter explaining how much the parent(s) earn. If a parent is unemployed, or self-employed, an affidavit stating how much they earn and how they support the child is required.

Figure 7.2: Explanation of the steps involved in an application for an exemption of fees.



EXAMPLE OF CONDITIONAL EXEMPTION

An example of a conditional exemption would be where at the time of applying, a parent did not qualify for a fee exemption because they earned too much; but during the course of the year they became unemployed. In this instance the school could even accept non-financial contributions towards school fees, such as assisting with building renovations.

A **conditional exemption** may be granted to parents who qualify for a partial exemption, but because of some personal circumstance cannot pay the reduced amount.

A conditional exemption may also be granted to parents who do not qualify for a fee exemption, but provide information of their inability to pay school fees due to personal circumstances beyond their control.

Furthermore, a conditional exemption may be granted in circumstances where a single or divorced parent who wishes to apply for a fee exemption is unable to provide the financial information of the non-custodial parent.

Regulation 7 allows for the school governing body to reconsider the decision to grant an exemption and amend the amount that the parents must pay if they obtain information later that the parents' financial position has changed substantially. They must reconsider the decision to grant an exemption, and amend the amount that the parents must pay from the date on which the change took place.

The following formula is applied:

$$E = 100 \left[\frac{F + A}{C} \right]$$

E = school fees as a proportion of the income of the parent.

F = the annual school fees for one child that a school charges in terms of section 39 of the Act

A = additional monetary contributions paid by a parent in relation to a learner's attendance of, or participation in any programme of, a public school.

C = combined annual gross income of parents.

100 = the number by which the answer arrived at in brackets is multiplied, so as to convert it to a percentage
The value E is then applied to a table designated in the Regulations that determines the percentage of exemption for which a parent would qualify.

Example *If the income of a mother and father is R2000 per month, their total income for the year is R24 000. The school fee at their son's school is R1000 for the year. The school also has a school trip every year costing R400. The formula will be worked out as follows:*

$$E = 100 \left[\frac{1000 + 400}{2400} \right]$$

E = 5,83% (rounded off to 6%)

In terms of the table from the Exemption regulations, these parents qualify for a 67% discount in their school fees. This means they would pay R1000 – R670 = R239

Regulation 8 provides that if parents have been denied a fee exemption and they believe that the formula was not applied correctly or was applied unfairly, they can appeal to the head of the provincial education department to have their exemption application reconsidered. An appeal must be lodged with the head of department within 30 days of being notified of the rejection.

COMPENSATION TO SCHOOLS GRANTING FEE EXEMPTIONS

To alleviate the problem of the limited funding that fee-charging schools get from the government, schools that grant fee exemptions are sometimes compensated by the government. This compensation is very limited, and fee-charging schools often don't receive compensation from the provincial government, even though the provincial education department must budget for refunds to schools who grant fee exemptions. Provinces that do reimburse a school only refund a small portion of what a school would receive in funding if a parent paid the full school fees.

This disparity between the compensation that a school gets and the fees generated from full-fee-paying parents often leads to schools discouraging parents from applying for school-fee exemptions, or refusing admission to learners who they believe will be unable to pay school fees. Additionally, through their admission policy a school may create school feeder zones or catchment areas that include more affluent areas, and exclude bordering poorer townships. When exemptions are granted, the

Department of Basic Education has acknowledged that compensation is even more important in special and full-service schools, given the high costs of providing education for children with disabilities. As a 2015 report on education for visually impaired learners in special schools revealed: "Often, even special schools located in wealthier communities accommodate many learners from areas far outside of these communities, where the average household is poor and relies on low-paying jobs and/or social grants."

COMPENSATION PAYMENTS BY THE WESTERN CAPE EDUCATION DEPARTMENT (WCED)

In 2018, the WCED paid out a total of R55.3 million in compensation to schools granting fee exemptions, on behalf of 81 303 learners.

CURRENT CHALLENGES IN THE IMPLEMENTING OF SCHOOL-FEE-EXEMPTION REGULATIONS

The integration of former white schools into the new, unified, and non-segregated public schooling system gave rise to what were commonly referred to as ‘Model C’ schools. These schools are schools situated more commonly in former white areas and are seen as more affluent and better resourced. The Model C system has been done away with; most of these schools are now quintile 5 schools and are able to charge school fees.

The government does not limit the amount of school fees a school can charge. School fees are determined solely by the parent body of the school. This system gives rise to many challenges faced by parents who are unable to pay exorbitant fees. These parents are usually the minority group among the parent body, and are usually outvoted at parent-body meetings.

Some schools also adopt exclusionary practices to prevent the acceptance of learners who they believe may be unable to afford the school fees. These are some of the experiences parents have had when attempting to enrol their children and apply for fee exemptions at fee-paying schools:

“I applied for my daughter to be admitted into FHHS. From the outset I made it clear that I would be applying for a fee exemption. Initially, the school refused to accept my application when I made it clear that I could not afford the full school fees and therefore I could not sign the undertaking to pay the full school fees.” – Parent applying at Fish Hoek High School in the Western Cape.

“Immigrants and refugees are not allowed to apply for Financial Assistance. Your school fees have to be paid in advance at the beginning of each year, and all Study Permits, Passports and Visas have to be up to date.” – Letter from Tableview Primary School received by a refugee when he applied for a fee exemption.

A parent from Khayelitsha in the Western Cape applied for the admission of her daughter to De Hoop Primary School in Somerset West. The school rejected her application. The school’s admission application incorrectly states that “parents who reside in the feeder area of the school may apply for a full exemption or partial remission in respect of school fees...” The school’s argument was that since the learner did not reside in the feeder area, her parents could not apply for a school-fee exemption. SASA does not prescribe that a parent must reside in the feeder area of a school in order to apply for a school-fee exemption. The school’s

admission policy in respect of exemptions from school fees was thus unlawful. Parents are also sometimes dissuaded from applying for fee exemptions.

“I was told to find another school to take my daughter to if I couldn’t afford the school fees.” – Single mother applying for a fee exemption at Sun Valley Primary School

Some schools use language in their fee-exemption forms that discourages or shames parents into not applying for a fee-exemption:

“Please note, however, that the loss of income due to the fee exemptions is borne by the fee-paying parents.” – Fish Hoek High School

“Parents must be aware that requests for exemption may place an additional financial burden on those parents who do pay their fees.” – Wynberg Boys’ High School

Finally, schools sometimes do not comply with SASA when attempting to recover outstanding school fees. They hand

parents over to debt collectors or debt-collection attorneys, who often obtain a judgment against the parent without ensuring that the school has determined whether or not a parent qualifies for a fee exemption.

Some parents also complain that they have never been informed about the possibility of fee exemptions, or that the fee-exemption process is

too complicated. The documents required are complex and often difficult for parents to obtain – especially if they are foreign nationals. Parents whose children are in special or full-service schools, which are often far away from their homes, also struggle to afford the travel involved in completing the exemption process.

LIABILITY FOR SCHOOL FEES

Both biological parents are liable for the payment of school fees. However, the Schools Act creates liability for other categories of ‘parents’, such as adoptive parents, legal guardians, custodians, and other persons who have undertaken parental responsibility over a child. This means, for example, that a grandparent who assumes the responsibility of a biological parent may be liable for school fees, and in turn may apply for a school-fee exemption. In recent years the courts have expanded the liability to pay school fees.

In *MB v NB*, the court said that not only biological parents could be held responsible for school fees.

In this case, a stepfather who assumed the role of a biological father was held liable for the payment of school fees.

SECTION 41 OF THE SOUTH AFRICAN SCHOOLS ACT

A public school may only enforce the payment of school fees after it has ascertained that a parent does not qualify for a fee exemption.

CUSTODIAN PARENTS, AND JOINT AND SEVERAL LIABILITY

In the past, there has been much debate about the responsibility of non-custodian and custodian parents respectively for paying school fees.

A custodian parent is a parent with whom the child lives for most of the time, and who is responsible for the child's daily well-being. In most instances, the custodian parent is the mother. South African common law places a joint liability on both parents to maintain their children. This means that both parents are equally responsible for maintaining their children. However, most often the parent who has custody of the child bears more of the financial burden in raising the child, with the collection of maintenance from a recalcitrant parent presenting many challenges to divorced and single parents.

By law, a non-custodian parent is liable for 50% of the costs of maintaining his or her child. This includes costs towards the child's education. The law does not cater for the actual amount needed to educate a child in terms of school fees. A divorce order might stipulate that a non-custodian parent is liable for half – or all – of the school fees; but a maintenance order will look at how much a non-custodian parent can afford to pay. A custodian parent therefore would not necessarily be able to recover half of the school fees from an ex-spouse if the other parent is unable to afford that amount.

Furthermore, SASA treats ex-spouses or ex-partners as part of the family unit in calculating the amount of a fee exemption. Both SASA and the Regulations require the combined annual income of both parents to determine whether parents are entitled to a fee exemption. This is problematic for single and divorced parents who are unable to provide the financial information of a non-custodian parent. All that they can provide is the amount of maintenance they receive from the ex-spouse or ex-partner. These provisions therefore discriminate against parents who do not fall within the traditional definition of a 'family'.

Several cases have attempted to address the discriminatory effect of the current fee-exemption regulations.

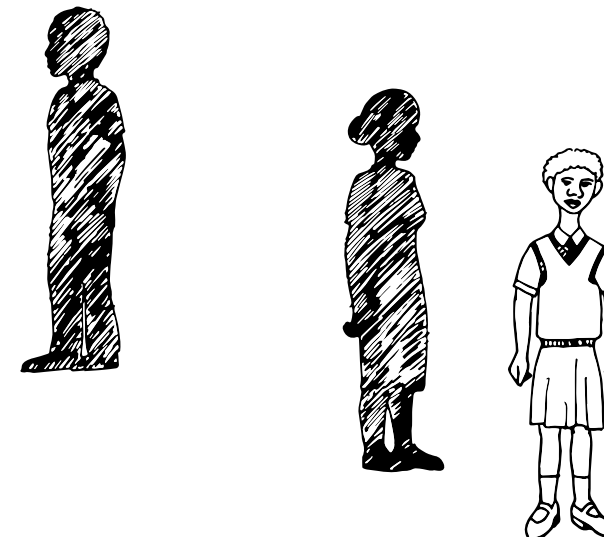
In *Bestuursraad van Laerskool Sentraal, Kakamas v Sersant van Kradenburg and Another*, the court held that in respect of the collecting of school fees, the definition of 'parent' in the South African Schools Act does not include a parent who does not carry any parental responsibility, and therefore Sections 40 and 41 do not apply. However, the decision in this matter was overturned by the judgment *Fish Hoek Primary School v G W*. In *Fish Hoek*

Primary School v G W, the Court held that a non-custodian parent does have liability for a child's school fees, and that such parents are not excluded from the meaning of the word 'parent'. The Court held that it is in the best interests of a child that a non-custodian parent should be held liable for payment of school fees.

The courts have also been asked to determine whether a non-custodian parent who agrees to pay 100 percent of a child's school fees in terms of a divorce order absolves the custodian parent from the payment of school fees.

In terms of our common law, both parents are jointly and severally liable for the payment of maintenance, which includes school fees. This means that a creditor (in this case, the school) can choose which parent they want to sue for the collection of the full school fees outstanding. The custodian parent then has a right to claim back what they paid from their ex-spouse.

This presents various challenges to a custodian parent. If a custodian parent cannot pay the full amount of the school fees, it is highly unlikely that they will be able to recover what they



...treating a separated family as a joint unit infringes on a custodian parent's rights to dignity and equality by expecting them to provide financial information about an ex-spouse or partner.

paid from their ex-spouse by using expensive court processes. The amount of maintenance that the custodian parent gets may be limited and/or capped at a certain amount, and this amount may not necessarily cover the full amount of school fees levelled by the school. It is also very common for a non-custodian parent to disregard their obligations to pay maintenance, as they often do not take an active role in the upbringing of their child.

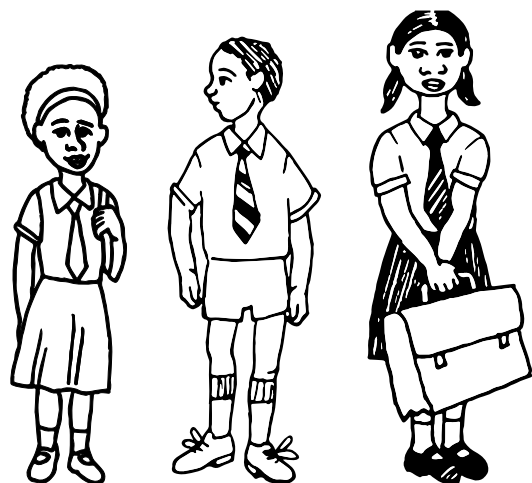
In *Meeding v Hoër Tegniese Skool Sasolburg*, which also dealt with the liability of custodian and non-custodian parents in paying school fees, the ex-husband had agreed in the divorce agreement to pay the school fees in full. The mother of the child asked the school to recover the school fees from her ex-husband, because of this divorce order. However, the court said that the divorce order applied only between Ms Meeding and her ex-husband. It did not apply to the school. The school could

therefore choose to recover the school fees from either Ms Meeding or her ex-husband. If the school chooses to recover the fees from Ms Meeding, she would then have to sue her ex-husband for the money she paid for school fees. This is what joint and several liability means. The court said that both Ms Meeding and her ex-husband were jointly and severally liable for school fees and not jointly liable. The Meeding case failed to address the practical challenges faced by single and divorced parents.

A notable challenge to the implementation of the fee-exemption regulations is that schools are refusing to accept or decide on a fee-exemption application which the school deems to be incomplete. This is an incorrect interpretation and application of the regulations, as Regulation 9 states clearly that a parent who applies for an exemption cannot be disqualified from such an application on the basis that their

application is incomplete. Regulation 9 places an obligation on the principal to assist a parent in completing their application, which should include taking steps to obtain the required financial information from a non-custodian parent.

Unfortunately, many schools are still refusing to accept fee-exemption applications that do not include the financial information of both custodian and non-custodian parents. Therefore, a custodian parent who declares her full income, including the maintenance she receives from a non-custodian parent, may find her application declined, even though on her income taken on its own she would qualify for a fee exemption. This insistence on treating a separated family as a joint unit infringes on a custodian parent's rights to dignity and equality by expecting them to provide financial information about an ex-spouse or partner.



In the Supreme Court of Appeal judgment, *Head of Department: Western Cape Education Department & another v S (Women's Legal Centre as Amicus Curiae)*, new legal principles were established that must be considered and applied by schools when a single, divorced or separated parent applies for an exemption. These principles are as follows:

- If a learner at a fee-charging school has two living parents and one of the parents applies for a partial or total fee exemption ("the applying parent"), that parent must give particulars of his or her total annual gross income.
- If the applying parent does not give the particulars of the total annual gross income of the other parent, the applying parent may show that the other parent has refused or failed to provide their particulars.
- After the parent has provided the details in the first two steps above, the school must consider the applying parent's financial information as if he or she were the sole parent of the

learner. If the parent qualifies for a total or partial fee exemption, the school must grant that parent a conditional fee exemption (either total or partial).

- If the applying parent has a protection order against the other parent, the applying parent must attach a copy of the protection order to the fee-exemption application.
- If the other parent is contactable (i.e. the applying parent has their telephone number, email address, postal address or home address), the applying parent must take steps to request the financial information of that parent. This can be written or verbal. If the steps taken by the applying parent are verbal, then the other parent's response must be set out in an affidavit. A copy of the affidavit must be attached to the fee-exemption application.
- If the other parent is not contactable (i.e. the applying parent does not have, and cannot obtain, any contact information for the other parent, and cannot request the other parent's

financial information – this also includes instances where the other parent cannot be contacted due to safety concerns), the applying parent must prepare an affidavit and under oath set out the reasons why they were unable to contact the other parent or get their contact information. A copy of the affidavit must be attached to the fee-exemption application.

- A fee-charging school must grant a conditional exemption to parents if the above criteria have been met. A fee-charging school cannot refuse a qualifying parent a fee exemption if these steps have been met.

The Department of Education is in the process of amending SASA and the Regulations to align with the legal principles set out in the aforesaid SCA case of *Head of Department: Western Cape Education Department & Another v S (Women's Legal Centre as Amicus Curiae)*, so that they do not infringe on the rights of single and divorced parents.

COLLECTION OF FEES

Debt collection cases for school fees appear before magistrates' courts daily. Parents who are unable to pay fees are also unable to defend a summons for the attachment of their assets for their children's school fees. Often, parents in these situations are unaware that they can apply for fee exemptions. SASA sets out strict obligations for a school in collecting school fees that are in arrears.

Section 41 of SASA allows a public school to hand over a school fee account that is in arrears to an attorney for debt collection in two circumstances:

1. STEPS HAVE BEEN TAKEN TO ENSURE THAT A PARENT DOES NOT QUALIFY FOR A SCHOOL-FEE EXEMPTION.

Before a parent is handed over to an attorney for a fee account that is in arrears, the school must ensure that:

- they have ascertained whether or not a parent qualifies for a school fee exemption
- if a parent did qualify for a fee exemption, then those deductions have been made to the total school fee payable
- the parent has completed and signed a form confirming that they were advised about the amount of school fees payable, that they are liable for the full payment fees, and

that they are aware of their rights to apply for a fee exemption.

A school must comply with these obligations before they can hand a parent over to a debt collection attorney to enforce the payment of school fees.

2. WRITTEN NOTIFICATION HAS BEEN ISSUED.

SASA also allows a school to hand over the arrear account if:

- the school has proof that written notification was sent to a parent by hand or registered post informing the parent that he or she has not applied for a school-fee exemption
- the parent has still not paid the school fees three months or more after the date this written notice was sent.

Section 41 of SASA specifically provides that a residential property cannot be attached for the non-payment of school fees.

In addition, a learner cannot be excluded from participating in any aspect of a public school because of non-payment of school fees. A learner's report card or transfer certificate cannot be withheld due to non-payment of school fees.

Despite these provisions many schools adopt unsavoury debt-collection practices, flaunt the strict regulations regarding the collection of school fees, and often withhold report cards and victimise and exclude learners from school activities.

In *Centre for Applied Legal Studies and Others v Hunt Road Secondary School and Others*, the school was interdicted from proceeding with any further action for the recovery of outstanding school fees unless and until it had delivered to the applicant's attorneys proof that it had complied with their obligations in terms of section 41 of the Schools Act.



In my travels all over the world, I have come to realize that what distinguishes one child from another is not ability, but access. Access to education, access to opportunity, access to love.
- Lauryn Hill

CONCLUSION

'No-fee' schools and fee exemptions in fee-charging schools are there to ensure that there are no barriers to access to education, and that parents and their children are not discriminated against based on their inability to pay fees. Despite the challenges of the implementation of the Schools Act and the Regulations, these mechanisms assist parents who have financial constraints to access schooling for their children.

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