



## ***Education Laws Amendment Bill [B23 – 2005]*** **School disciplinary proceedings & school funding and fees**

**Submission to Education Portfolio Committee, National Assembly, Parliament,  
23 August 2005**

---

### **Introduction**

The South African Human Rights Commission (SAHRC) welcomes the Education Laws Amendment Bill B [23 – 2005] (the 'Bill') as a further endeavour by the Department of Education to protect and promote the rights of learners to access to education.

Over the years the SAHRC has received and handled many complaints concerning the expulsion of learners from schools and issues pertaining to the non-payment of school fees.

We also monitor the progressive realisation of the right to education as specifically mandated in terms of section 184(3) of the Constitution, which states:

“Each year, the Human Rights Commission must require relevant organs of state to provide the commission with information on the measures that they have taken towards the realisation of the rights in the bill of Rights concerning housing, health care, food, water, social security, **education** and the environment.”

To this end the Commission produces each year an Economic and Social Rights Report. The *5<sup>th</sup> Economic and Social Rights Report 2003/4* of the SAHRC concluded that the Department of Education had succeeded in achieving progressive realisation of the right to education. However, the report highlighted insufficient public education on school fee exemptions as one of the areas in which the Department fell short of its obligations to progressively realise the right to education. The Report also found that some schools expel learners for not paying school fees and that schools do not always inform parents of the school fees exemption policy.

In September 2003, the SAHRC hosted a public debate in Cape Town entitled “Right to education – At what cost?” as one way in which to facilitate discussion about school fees and their impact on the right to education of learners. The debate discussed how school fees, in some instances, acts as a bar to accessing education.

Later this year, the Commission will be holding a Public Hearing on the Right to Basic Education. The hearings will:

1. Investigate the meaning of the right to basic education;
2. Explore the impact of the context in which basic education is delivered; and
3. Assess the realisation of the right to basic education in the country.

In terms of the framework the hearings will explore the right to basic education within the following parameters:

- Availability
- Accessibility (this includes economic accessibility)
- Adaptability
- Acceptability

In light of the above work of the Commission, we will concentrate our comments on the Bill to clauses 2, 4, and 5.

### **CLAUSE 2 – Expulsion**

Clause 2 amends section 9 (Suspension and expulsion from public school) of the South African School Act 84/96 (SASA). The amendments provide for the instances in which a learner may be suspended. The proposed new section 9(1) reads:

“The governing body may on reasonable grounds and as a precautionary measure suspend a learner who is suspected of serious misconduct from attending school, but may only enforce such suspension after the learner has been granted a reasonable opportunity to make representations to it in relation to such suspension.”

The Bill then proceeds to set out stipulated time periods within which disciplinary proceedings must comply. For example, a governing body must conduct disciplinary proceedings within **seven days** after the suspension (1A). If this is not done, then the **approval** of the Head of Department must be obtained for the continuation of the suspension of the learner (1B). A governing body may impose the suspension of a learner for a period of **one week** or any other sanction contemplated in the code of conduct or make a recommendation to the Head of Department to expel the learner (1C). A recommendation to expel the learner must be considered within **14 days** and a decision made by the Head of Department (1D). During this period the learner’s suspension may be extended but only with the **agreement** of the Head of Department (1E)

The decision to expel a learner by the Head of Department can be appealed to the Member of the Executive Council within **14 days** from the date of expulsion (Clause 2©).

The amendments further state that a learner who has been expelled may attend school in the manner determined by the HOD pending the outcome of the appeal to the MEC; that if the decision to expel is overturned on appeal then the HOD may impose a suitable sanction on the learner or refer the matter back to the governing body for an alternative sanction; and, that the SGB must implement the sanction determined by the HOD.

#### *Comment*

These clauses are welcomed. They endeavour to provide greater guidance on the procedure to be followed and the time periods in which this procedure must occur. This will provide certainty for all parties involved. It will guard against matters being drawn out thereby ensuring that the matter is dealt with swiftly.

### **CLAUSE 4 – Prohibition on charging of ‘other fees’**

The proposed amendments in the Bill put an end to the charging of registration, administration or other fees. The only fees that a school may charge are school fees. This will bring an end to practices of levying additional fees and thereby excluding learners whose parents are unable to afford these amounts. In some instances, these types of other fees are used as a tool to discriminate against learners who come from poor socio-economic backgrounds.

These clauses are welcomed.

### **Access to Information**

Clause 4(b) (section 39(7)) provides for the publication in the Government Gazette by the Minister of the quintile of schools that may not levy compulsory school fees. Clause 4(b) (section 39(9)) provides that the MEC must publish in the Provincial Gazette a list of schools that fall within the quintiles determined by the Minister.

Very few citizens have access to the Government Gazette and the Provincial Gazette. It is particularly important the schools identified by the MEC as being “no fee paying” are made known to the public; especially to those persons who cannot afford to pay compulsory school fees.

It is suggested that the legislation provide that the list of schools identified by the MEC be published in daily newspapers in the province and that the provincial departments advertise on radio a toll free number which parents may call to establish if a particular school is exempted from paying fees.

### **CLAUSE 5 – Enforcement of payment of school fees (section 41 SASA)**

The South African Schools Act 84/96 (SASA) provides that no public school may unfairly discriminate against a learner and that no learner may be refused admission to a public school on the basis that school fees have not been paid (Section 5(3)(a) of SASA).

Sections 39 – 41 of SASA sets out the powers of parents to determine school fees and the duty to establish an exemption policy.

Section 41 of SASA provides that the governing body of a public school may legally enforce the payment of school fees by parents who are liable in terms of section 40 (Parent’s liability for payment of school fees).

Clause 5 of the Bill adds a number of sub-clauses to section 41. It seeks to clarify the circumstances in which the governing body may resort to legal processes and sets out various preliminary processes that must be followed. The new sub clauses also prohibits the parent’s residence being attached in lieu of school fees; and sets out the right of learners not to be victimized when his or her parents have not paid school fees.

These provisions are generally accepted.

#### *Comments on the amended sections*

*Section 41(3) The exemption from payment of compulsory school fees in terms of the Bill is calculated retrospectively from the beginning of the year, if the parent qualifies for the exemption. (Section 3 of the Exemption Regulations sets out how exemptions are to be determined).*

#### *Concern*

Does this clause necessarily deal with all situations adequately? What happens if the sole breadwinner in a family dies, and leaves the family without an income? From that date forth the surviving parent would be unable to pay school fees. In terms of the formula set out in the regulations it is possible that the surviving parent would still be obliged to pay fees if she only qualifies for a partial exemption. Another scenario could be that the surviving parent would be exempted for the entire year from paying school fees. Does the school then have to reimburse the surviving parent for the amounts that had been paid? It is thus not clear that the provision deals with the

scenario where parents commit to paying school fees, pay the school fees but during the course of the school year due to an intervening factor (death, serious illness, unemployment) become totally incapable of paying any further fees.

It is suggested that the section needs to provide further, that the current financial situation of the parents must be taken into account. Both the regulations and the Act focus on the annual financial position of the parents and provide little relief to a situation where there is a sudden change in the financial situation of the parents.

*Section 41(6) A public school may not attach the dwelling in which a parent resides.*

#### *Concern*

The SAHRC previously in its comments on the Departments Draft Bill raised concerns in relation to this amendment.

It is noted that some of the Commissions' previous concerns about this clause have been taken note of and the necessary amendments affected. In previous versions it stated that the parents dwelling could only be attached if alternative accommodation was available. This gave rise to a number of legal considerations about the feasibility of such a clause. References to alternative accommodation have been removed from the current version of the Bill.

However, there is still one outstanding concern with the current formulation of this clause.

- Is it the intention of the legislator to provide that the parent's residence or the residence where the child resides not be attached?
- Is the legislator aiming to protect the child's right to adequate shelter – section 28(1)(c) of the constitution or is it the parent's right to adequate housing – section 26(1); or both?

The current formulation of the clause would allow for the following situation:

- The parent with the legal obligation to pay school fees does not reside with the learner
- This parent fails to pay school fees
- It would reasonable to execute the debt against the immovable property of the defaulting parent
- The school is barred from taking such legal action due to the current provisions of the Bill.

It is suggested that the clause state that the residence of the child may not be attached. An alternative rewording would be as follows:

“A public school may not attach the dwelling in which a learner resides with a parent.”

*Section 41(6) A learner has the right to participate in the total school programme of a public school despite the non-payment of compulsory school fees by his or her parent and may not be victimised in any manner, including but not limited to:*

- a) *Suspension from classes;*
- b) *Verbal or non-verbal abuse;*
- c) *Denial of access to*
  - i. *cultural, sporting or social activities of the school; or*
  - ii. *the nutrition programme of the school for those learners who qualify in terms of the applicable policy; or*

*d) Denial of a school report or transfer certificate.*

*Comment*

The SAHRC particularly welcomes this clause. The Commission routinely deals with complaints of discrimination against learners whose parents are unable to pay school fees. In particular, the commission has dealt with many cases in which school reports and transfer certificate are refused.

Perhaps by ensuring that children may not be discriminated against if their parents do not pay school fees and ensuring that the exemption policy is adequately implemented, school governing bodies will be more cautious and realistic when setting school fees and will ensure that the fees charged at a school are affordable to all of the parents.

**Further Comments**

**Legislation and Regulations need to address the achievement of diversity and equality in schools in terms of learner composition.**

The current system whereby SGB's determine school fees can lead to children from poor backgrounds being prejudiced against from attending certain schools as it favours children from similar socio economic backgrounds attending similar schools. There have been many complaints of how schools exclude children from poorer backgrounds (often these children are of a different racial background) in order that parents can set high school fees and provide additional resources and teachers. As race and socio economic background are so closely intertwined in this country, racially exclusive schools are maintained through the charging of schools fees. It thus remains a challenge to the Department of Education to create a school system in which the composition of each school reflects the diverse background of the country in which we live.

**Legislation needs to adequately recognise child headed households**

The Bill fails to recognize the existence of child headed households by referring to parents as the people who fail to pay school fees. The ordinary dictionary definition of parent reflects that parents are the biological or legally assigned mother or father of a child. The common usage of the word does not incorporate the child, who is the head of a child headed household, as a parent. This is a particularly vulnerable group of persons. It is also a group of persons that this legislation should seek to protect, as they will potentially be the beneficiaries of the protections that these amendments seek to afford to persons.

The Children's Bill (the section 76 Bill that is still to be debated in Parliament) recognizes child headed households. This legal recognition of child headed households will lead to a trickle down effect in many areas of law; particularly, areas of personal law and laws that deal with social and economic rights. Child headed households need to be recognized within the growing recognition of this particular family unit. They need to be catered for within legislation in order that they do not remain outside of the system. Failure to recognize child headed households, could potentially give rise to discrimination between parents and child headed households.

It is suggested that it may be wise at this juncture for Education Laws to begin to take into consideration how the system will interact with child headed households and whether special measures ought to be legislated.