

A critical analysis of legislation on the financial management of public schools: A South African perspective

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OPSOMMING

'n Kritiese Ontleding van Wetgewing oor die Finansiële Bestuur van Openbare Skole: 'n Suid-Afrikaanse Perspektief

Die oogmerk van hierdie ondersoek is om die implementering van wetgewing wat handel oor openbare skole se finansiële bestuur te verstaan, verduidelik en te kritiseer. Die artikel fokus op die weersprekings en geskille wat ontstaan het rondom die bestuur van skool-finansies sedert 1994. Twee ooglopende finansiëlebestuursake word ondersoek: Wie is werkelik aanspreeklik vir die skool se finansies: Die beheerliggaam of die skoolhoof? Wetgewing soos die Suid-Afrikaanse Skolewet 84 van 1996 en die Indiensnemingswet vir Opvoeders 76 van 1998 omskryf die regte en verantwoordelikhede van skoolhoofde en beheerliggame. Die tweede saak wat aangespreek word is: Spreek dit werkelik sosiale regverdigheid en billikheid aan deur die implementering van die Nasionale Norme en Standaarde vir Skool-befondsing se Beleid op Openbare Skole? Dit is noodsaaklik dat skoolbeheerliggame wat daarna streef om skool-finansies behoorlik en doeltreffend te bestuur, 'n duidelike begrip van die wetgewing relevant tot skool finansiële bestuur te hê.

1 Introduction

The government's educational reforms, since 1994, have focused on redressing historical imbalances and achieving equity in attempts to restructure South African education. The aim of this article is to understand, explain and critique the design and implementation of policies relating to financial management in South African public schools. Investigating and understating this central problem required the researcher to understand its implementation from the perspectives of the Department of Education (DoE) officials, governing bodies, principals, parents and the communities at large.

This article makes the argument that, despite substantial government revisions of the education system, there is still widespread misconception as to who is accountable for public schools' finances, and whether social justice and equity have been adequately served by the implementation of the National Norms and Standards for School Funding (NNSF). This article is for this reason divided into two sections. In the first section, the question raised is: Who is accountable for the schools' finances? To answer this question, The South African Schools

Act¹ (SASA), Public Finance Management Act² (PFMA), The Employment of Educators Act³ (EEA) and the Education Laws Amendment Act⁴ will be examined to resolve whether the principal and/or School Governing Body (SGB) is accountable for the management of school finances. In the second section of the paper, the implementation of the Amended NNSF will be examined to establish whether the State has in fact addressed the issue of social justice and equity in ensuring that resources are equitably distributed to all public schools and learners in the provision of quality education.⁵

2 The Accountability of School Finances

SASA was the first attempt to involve communities in governance, and to set guidelines for self-managing and governing schools. Self-managing schools, a process that is also referred to as decentralisation, means that the State delegates authority to schools with a shared decision-making model engaging various stakeholders.⁶ SASA gives unprecedented responsibilities to SGBs of public schools, placing them in a position of trust towards schools, and making them primarily responsible for the education of learners through democratically elected structures.⁷ An SGB is a statutory body of parents, principals, teachers, non-teaching staff and learners of secondary schools only.⁸ One of the primary functions of the SGB is to determine school policies, which must be implemented by principals and teachers.

Although decentralisation allows stakeholders to participate at a level in which they can have direct impact on matters that concern them, it allows different capacities and inequalities of power and influence, at governance level, to be expressed more strongly.⁹ The role of principals and SGBs in managing a school's finances is complex: the functions of principals and SGBs appear to overlap, and this usually gives rise to conflicts among them. In order to lessen, or eliminate conflicts among various stakeholders of schools, provincial departments of education regularly send out circulars, or memoranda, to them explaining or clarifying the interpretation and implementation of legislation.¹⁰ It is, therefore, imperative if SGBs are to be effective that they have knowledge of legislation.

The rights and responsibilities of SGBs are clearly defined in legislation. The Bill of Rights as enshrined in the Constitution protects the

1 Act 84 of 1996.

2 Act 1 of 1999.

3 Act 76 of 1998.

4 Act 31 of 2007.

5 NNSF General Notice 29179; Notice 869.

6 Mestry & Bisschoff 11.

7 Mestry & Bisschhoff 16.

8 S 16(1) SASA.

9 Chisholm, Motala & Vally 2003 246.

10 Gauteng Department of Education *Circular 13 of 2000; Circular 9 of 2003*.

principal and other school governors as persons having human rights, such as their right to freedom of speech, their right to privacy and human dignity, and their right to just administrative action.¹¹ SASA and the EEA define the rights and responsibilities of principals in their official capacity as employees of the provincial departments of education. SASA underpins school governance, while the EEA emphasises the professional duties of the principal in management. Although the PFMA has no direct bearing on schools *per se*, the Department of Education applies certain sections of the PFMA to prescribe how schools should manage the allocated funds from the National Treasury. This implies that principals are accountable to their respective Heads of Departments (HoDs) for subsidies received from the State.

The PFMA will be examined to determine how this Act applies to school finances.

2 1 Public Finance Management Act

As mentioned in the previous section, the PFMA has no direct bearing on schools *per se*. However, the HoDs, as accounting officers for the provincial departments of education, usually prescribe through circulars to principals and SGBs how the State's resource allocation for schools should be spent. The schools are obligated to spend State funds for resources, services and repairs and maintenance of schools. The spending of these funds is ring-fenced. For example, 50 % of the budget should be allocated to learning and teaching support materials, and 50 % for services rendered, repairs and maintenance of schools. Principals are advised not to deviate from this notice. Based on section 16A of SASA, the principal is placed in an enviable position to adhere to the Department's directives. In actual fact, the Department has no right to prescribe how State funding in respect of resource allocation should be expended. Once the Department determines the budget for schools, and accordingly releases the funds to these schools, the SGBs should take responsibility for the said funds. In the case of schools granted section 21 functions in terms of SASA, the funds will be deposited directly into the schools' banking accounts. Where schools have not applied for these additional functions, the Department will spend the money on behalf of these schools. It should be emphasised that in this instance the schools receive a paper budget from the provincial department of education and the funds essentially belong to the schools. The Department is merely the custodian of the funds but has no claim whatsoever over these funds.

2 2 The South African Schools Act and Employment of Educators Act

SASA states that the governance of the school vests in the SGB of the school and the professional management of a school must be undertaken

11 General Notice 17678.

by the principal.¹² The Act provides that the Department's management function is limited to the professional management of the school through the principal, as the employee of the Department.

Financial management, a crucial function of school governance, can be defined as the performance of financial management actions of schools with the main aim of achieving effective education. The preamble to SASA emphasises a partnership between the parents and the government, and aims ultimately to devolve maximum decision-making and power from education departments to SGBs. SASA gives meaningful functions to SGBs, and also underpins the management of public schools' finances.¹³ In the discussion that follows, the roles and responsibilities of SGBs and principals in school financial management are examined.

SASA gives the responsibility of financial management to SGBs and not solely to principals. SGBs have mandatory financial functions in terms of section 20. They are responsible for establishing a school fund, preparing a budget annually, collecting and administering school fees, keeping financial records, appointing an auditor and supplementing the school's resources. Their responsibilities also include administering and controlling the school's property, buildings and grounds, adopting a constitution, permitting the reasonable use of the facilities of the school by the school community for social purposes, and fund raising. The Schools Act makes provision for SGBs to apply for additional functions in terms of section 21, namely, maintaining and improving school property, determining the extra-mural curriculum, the purchasing of textbooks, educational materials or equipment, and the payment for services to the school.¹⁴ Hence, the full control of funds in schools has become the responsibility of the SGB, while provincial departments of education have very little influence on a school's finances.

The core duties and responsibilities as set out in the Personnel Administration Measures (PAM) determined in terms of the EEA require that, amongst others, principals should be held responsible for the professional management of the school: they should give proper instructions and guidelines for timetabling, admission and placement of learners, see to the day-to-day administration and learning at the school, perform departmental responsibilities prescribed by law, and organise all the activities that support teaching and learning.¹⁵ The principal should have various kinds of school accounts and records kept properly to make the best use of funds for the benefit of learners in consultation with the appropriate structures. In the more recent Education Laws Amendment Act,¹⁶ additional roles and responsibilities of the principal have been clearly defined. According to section 16A of SASA principals may not act

12 S 16(1), (3) SASA.

13 S 4 SASA contains the financial duties of the Governing Body such as maintaining a school fund, opening and maintaining a bank account.

14 Naidoo *et al* 166; Davies 64.

15 Bisschoff & Mestry *Financial School Management explained* (2009) 59.

16 Act 31 of 2007.

in conflict with any instructions of legislation, policies or any provision of the EEA in their obligations towards the HoD or MEC. It can be argued that there are contradictions in determining the responsibilities of principals and SGBs in both SASA and the EEA.

The following discussion further defines the rights and responsibilities of the principal and the SGB.

2.2.1 Professional Management and Governance

As previously mentioned, SASA stipulates that the principal is responsible for the professional management of the school under the direction of the HoD whereas the overall governance of the school is vested in the SGB, whose role is described as fiduciary. The principal, on the other hand, has the role of supporting and providing assistance to the SGB. This mutual relationship is reinforced in the Education Laws Amendment Act.¹⁷ Although the principal has no executive role in relation to the SGB with regards to financial and property matters, the amendments to the Act prescribe that the principal is responsible for the management of the use of learning support material, and other equipment, as well as the safekeeping of all school records. In no way can it be assumed that the principal is solely responsible for the school's financial management. According to the judge in *Schoonbee v MEC for Education Mpumalanga*,¹⁸ the principal has the duty of facilitating and assisting the SGB in the execution of its statutory functions relating to the financial management of the school.¹⁹ The SGB can delegate some of these functions to the principal and hold them accountable. It is also the SGB that could hold

17 Act 31 of 2007.

18 2009 3 SA 422 (SCA).

19 The MEC alleged that the principal of *Hoërskool* Ermelo had misappropriated and mismanaged the school funds. A forensic audit found that the principal (with the knowledge of the SGB) had in fact used school funds to pay for his domestic, entertainment expenses and overseas travel. The MEC based the argument that the principal was the accounting officer of the school and was therefore accountable to the Department of Education. The following were some deliberations in this case:

The employer is not entitled to hold the principal liable for the SGB's obligations. As mentioned previously, the principal is responsible for the professional management of the school, and governance is vested in the SGB. The judge indicated that the principal could not be accused of financial irregularities, because the responsibility for the school's financial management rests with the SGB: "The principal is an educator who manages the school professionally ... Managing the finances is something that you cannot expect from him (the principal). The contention that the principal should be held accountable for the finances is an absurd proposition".

(a)It was established that there are confusing roles played by the principal in his capacity as SGB member and as employee in terms of the Employment of Educators Act (Ch A s 4 PAM). The employer is entitled to hold the employee liable and accountable for the professional development of the school, but is not entitled to prescribe to employees, and hold them liable for statutory functions vested in the SGB relating to assets, liabilities, property and the financial management of the school.

the principal accountable for financial and property matters, which are not specifically entrusted to the principal by SASA.

2.3 The Education Laws Amendment Act

The Education Laws Amendment Act²⁰ amends section 16 of SASA to clearly define the additional functions and responsibilities of principals in public schools. These include, amongst others, that the principal represents the HoD in the SGB when acting in an official capacity.²¹ The principal must assist the Governing Body in the performance of its functions and responsibilities, but such assistance, or participation, may not be in conflict with any instruction of the HoD, legislation or policy, obligation that he/she has towards the HoD, the Member of the Executive Council (MEC) or the Minister or provision of the EEM and the PAM.²²

The Education Laws Amendment Act²³ stipulates further that the principal should:

- (a) Prepare and submit to the HoD an annual report in respect of:
 - (i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister of Education; and
 - (ii) the effective use of available resources.
- (b) undertake the professional management of a public school and carry out the following duties, which include the implementation of all educational programmes and curriculum activities, the management of the use of learning support material and other equipment, the safekeeping of all school records, the implementation of policy and legislation, and the performance of functions delegated to him/her by the HoD. In addition, the principal should attend and participate in all SGB meetings, inform the SGB about policy and legislation, and provide accurate information to the HoD when requested to do so.
- (c) assist the SGB in the performance of its functions and responsibilities, but that such assistance must not be in conflict with instructions of the HoD, legislation or policy, an obligation towards the HoD or the MEC, or a provision of the EEA, and the PAM.

These amendments essentially imply that the principal is accountable to the HoD for ensuring the effective use of available resources, managing the use of teaching and learning support materials, safekeeping of all school records, informing the SGB on policy and legislation and implementing it accordingly, providing accurate information when requested by the HoD and assisting the SGB in the performance of its functions and responsibilities.

To ensure that school finances are managed effectively and efficiently, the principal and SGB should ensure the existence, and the effective execution, of a sound, water tight financial policy and also management

20 Act 31 of 2007.

21 The Education Laws Amendment Act 31 of 2007 inserted s 16A (1)(a) SASA.

22 S 16(3) SASA.

23 Act 31 of 2007.

procedures.²⁴ Regular checks and counter-checks are necessary to avoid the mismanagement of funds by any person or groups of persons. In practice, most SGB parent members have had problems in fulfilling their obligations of governance, which include their personal interest, time devoted to their own work/business commitments, or they simply have very little expertise in fulfilling the financial functions of the school. In this instance, the principal performs a consultative role and will be called upon to advise the SGB on financial matters.

One can conclude that the SGB takes full responsibility for the management of school finances. The principal who plays a dual role, one as a member of the SGB and the other, as an employee of the provincial department of education, cannot be solely held accountable for the efficient and effective management of school funds. However, it should be noted that the department places the principal in a difficult position, because, in terms of new legislation, the principal is expected to obey two authorities: the department and the SGB.²⁵ The principal will either give effect to the department's wishes out of fear for a disciplinary hearing should he/she not obey the department, which goes against his/her obligation in terms of section 16(2), or the principal will choose to act in accordance with section 16(2) and place the interests of the school before the interests of the department, and disregard his/her duty as a departmental employee.²⁶ This is likely to impact on the relationship between the principal and the employer, and/or the principal and the SGB, causing an infringement of the principal's rights in terms of section 23(1) of the Constitution.

In the next section the implementation of the NNSF will be examined to determine whether the State and schools have in fact achieved social justice and equity.

3 The National Norms and Standards for School Funding

Since 1996 the government's educational reforms have focused on access, equity, redress, quality, efficiency and democracy. The State has undoubtedly made great strides in addressing equity and past imbalances in education and this is demonstrated in many education policies, such as the post-provisioning norms, rationalisation and redeployment of teachers and non-teaching staff, management of school

24 Mestry "Financial accountability: the principal or the school governing body?" 2004 *SA J of Ed* 130.

25 S 16A SASA.

26 Van der Merwe "The Constitutionality of section 16A of the South African Schools Act" Paper delivered at the SAELA Conference in Durban Sept 2011.

fees, the functioning of SGBs and the NNSF, as well as acceptable interventions.²⁷

Sections 34 and 35 of SASA mandate the State to redress historical imbalances and achieve equity in attempts to restructure the South African education landscape. In fact, equity and redressing the past imbalances accelerates the realisation of social justice in education.²⁸ Section 34 of SASA prescribes that the State should 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. Section 35 of SASA stipulates how the State should carry out the responsibility described in section 34.²⁹

Two salient points with reference to sections 34 and 35 of SASA require further analysis:³⁰

(1) Section 35(2)(b) provides for the creation of quintiles for individual learners. To date, this section has not been achieved. Instead the NNSF provides that the national quintile for learners is always the same as the national quintile for the public school in which the learner is enrolled.

(2) The criteria used to allocate schools to a given quintile are filled with inconsistencies in a sense that income, wealth and level of education are privileged information. Also, in many schools learners do not live in the immediate vicinity of the school but commute daily to school from outside the feeder area. There are many cases where schools have been allocated to the wrong quintile and learners have consequently been disadvantaged because the incorrect funding formula was used to calculate their state subsidy.

27 Mestry & Dzvimbo "Contestations of educational transformation: A critical analysis of how the norms and standards for funding are intended to achieve social justice and equity" 2011 *J of Ed Studies*.

28 Motala & Pampallis "Educational Law and Policy in Post-apartheid South Africa" 78 in *The State, Education and Equity in Post-Apartheid South Africa: The Impact of state policies* (eds Motala & Pampallis).

29 S 35 SASA:
(1) Subject to the Constitution and this Act, the Minister must determine national quintiles for public schools and national norms and standards for school funding after consultation with the Council of Education Ministers and the Minister of Finance.

(2) The norms and standards for school funding contemplated in subsection (1) must –

(a) Set out criteria for the distribution of state funding to all public schools in a fair and equitable manner;

(b) Provide for a system in terms of which learners at all public schools can be placed in quintiles, referred to as national quintiles for learners according to financial means;

(c) Provide for a system in terms of which all public schools in the Republic can be placed into quintiles referred to as national quintiles for public schools, according to the distribution of learners in the national quintiles for learners; and

(d) Determine the procedure in terms of which the Member of the Executive Council can apply the criteria contemplated in paragraph (a).

30 Van Rooyen 36.

It can further be argued that inequalities in resource allocation from the State have been removed, but inequalities still persist for a number of reasons, including the inability of parents to pay school fees, poor learners' inaccessibility to schools in affluent areas, high dropout rates, the unavailability of qualified teachers in some schools, and the unfavourable learner-teacher ratios especially in Black schools and public schools, in general.³¹ Curriculum changes such as the Outcome-based Education, Revised National Curriculum Statement and the National Curriculum Statement has also been a major stumbling block to educational reform in the system. Despite substantial government interventions to the education system, social justice and equity have not been served adequately by the implementation of the NNSF, because inequalities based on race, class and gender persist not only in the education system, but in South African society as a whole.³²

It is ironic, given the emphasis on addressing the past and equity by the government, that the funding provisions of SASA appeared to have worked thus far to the advantage of public schools, under the patronage of the middle-class and wealthy parents of all racial groups.³³ Vigorous fund-raising by parental bodies, including commercial sponsorship and fee income, have enabled many such schools to add to their facilities, equipment and learning resources, and expand their range of extra-mural activities. Poor parents, on the other hand, especially in the former homeland areas, have contributed a disproportionate share of their incomes over many decades to the building, upkeep and improvement of schools, through school fees and other contributions, including physical labour.³⁴ A number of schools in poor rural and urban working-class communities suffer the legacy of large classes, deplorable physical conditions and the absence of learning resources, despite a major Reconstruction and Development Programme (RDP), National School Building Programme, and many other projects paid directly from provincial budgets.³⁵

To adequately address the problem under investigation, I will document key policy changes over the last five years, so as to provide a historical policy context for the problem under investigation. It is important to tender an explanation of how issues of social justice and equity are implicated in the contestations and reproductions of inequalities in South Africa, which are now based on class and race.

31 Motala "Education resourcing in post-apartheid South Africa: The impact of finance equity reforms in public schooling" 2006 *Perspectives in Ed* 80.

32 See note 24.

33 Chisholm 22.

34 Mestry 130.

35 Chisholm 22.

3.1 The Implementation of the NNSSF in Public Schools: Contestations and Contradictions

As discussed above, the pro-poor funding policy in provincial education is embedded in the NNSSF. These norms and standards provide a statutory basis for school funding in that schools are now classified into wealth quintiles and subsidised accordingly (that is, schools serving poorer communities must receive more funding than schools serving better-off communities). Current policy determines that a ratio of 7:1 must apply to resource allocation funds paid to schools in the two outer quintiles, where quintile 1 represents poor schools and quintile 5, affluent schools.

While both the NNSSF for non-personnel expenditure and the post-provisioning model contain aspects of socio-economic targeting, actual non-personnel expenditure constitutes only 8–10% of school budgets. This means that only a small portion of basic education of resource allocation by the State is allocated to addressing the past. Except for the 2% pro-poor weighting, the balance of State spending on schools directed towards the payment of personnel continues to favour historically-advantaged schools for two reasons: The application of the post-provisioning norm and restrictions placed on SGs to spend State subsidies.³⁶ The teacher/learner ratio favours historically advantaged schools, where different technical subjects are taught and the weighting for these subjects are much higher than that of basic subjects taught in mainly historically disadvantaged schools. Secondly, the State's resource allocation can only be utilised for purchasing learning and teaching support materials, paying for services and school maintenance as prescribed by the Provincial Department of Education. Schools that have a dire need for additional resources (such as employing more teachers) are unable to access funds for such purposes. However, schools deriving additional income from school fees have the autonomy to spend additional funds solicited through fundraising projects and school fees on their needs and this includes hiring additional teachers to those allocated by the provincial department of education. Such a critique is essential to our understanding of the subjective and objective forces of social and cultural reproduction in our education system.

Up until 2006, the national school funding policy did not set out a minimum per learner funding levels. With varying provincial financial capacity, it was certain that the funding of poor learners across provinces would not be the same.³⁷ The contradiction became obvious when it was found that learners who were classified as non-poor in one province were receiving a per learner allocation greater than the poorest learners in another province.³⁸ This constraint restricted the ability of most provincial education departments to effect a meaningful distribution of

36 Porteus in (ed Veriava) 4.

37 Wildeman 4.

38 *Ibid.*

redress funds to the majority of poor learners. The average per learner expenditure distributed by the NNSF mechanism was R184 in Gauteng and R275 in the Northern Cape, while in KwaZulu-Natal the amount was only R35.³⁹ Poverty targeting takes as its point of departure the assumption that certain groups of learners need more resources than others, as a result of economic advantage. Based on these statistics, poor schools and learners are persistently disadvantaged, and will take much longer to overcome the barriers of the past, thus prolonging the cycle of poor quality education.⁴⁰

It has also been established that many poor and rural schools are still found at the lowest end of resource provisioning in spite of positive changes made in State funding. Although each provincial department of education was provided a monetary allocation from National Treasury, most of these departments had severely underspent the allocated funds, and this had serious implications for quality education provision as reflected in the poor Senior Certificate Examination results. One of the reasons cited for this phenomenon could be due to the complicated practice of the tender procedures set out by the State.⁴¹

In my view, funding policies that are intended to redress past inequalities actually end up being sources of a serious process of reproducing inequalities that is based on class, race and the physical location of learners. Because of the contestations in the process of developing these inequalities, the process of social reproduction engendered by funding policies becomes “a unity of social contradictions, unity of change and stability, unity of continuity and discontinuity”.⁴² As such, social justice and equity in education becomes a farce as inequalities engendered by funding policies continue.

It is one thing to rank schools according to quintiles and allocate funds equitably; it is another thing entirely to ensure that the money is spent on educational matters. Schools and SGBs have an unequal capacity to spend money, and, even where additional funds are allocated to poor schools, many SGBs and principals are unable to use them efficiently.⁴³ Moreover, a poverty ranking system might itself exacerbate inequality, as the government has clearly recognised that 60% of the population of a province is poor, which means that distinctions between levels of poverty in the bottom three quintiles are bound to be unjust.⁴⁴ It should

39 Schindler “Education in South Africa: A statistical overview” 1997 *Education Africa Forum*; Bot “A statistical overview of education in South Africa” 2000 *Education Africa Forum*; Maile “Equal access to education: Who can afford?” 2004 *Ed as Change* 57; Wildeman *Redistribution of school funding: Budget Brief no. 48* (2000) 3.

40 Wildeman *School funding norms 2001: Are more learners benefitting?* (2001) 10; Wildeman *Reviewing eight years of the implementation of the School Funding Norms, 2000-2008* (2008) 4.

41 Mestry & Bisschoff 49.

42 Morrow & Torres 8.

43 Department of Education 2003.

44 National Treasury 2003 in OECD 2008 103.

also be noted that there are schools that perform satisfactorily despite the fact that they suffer deplorable physical conditions, that learners come from poor households, and that teachers have average qualifications.⁴⁵

The NNSF added another dimension to the problem of addressing the past imbalances. By targeting only the poorest schools, those schools that are located in the middle of the resource targeting table, the so-called “middle schools”, became neglected and impoverished. The implementation of the funding policy meant that, “these schools qualified for less State funding and in the absence of strong socio-economic parent communities, they faced the danger of real financial deterioration”.⁴⁶ These “middle schools”, as schools that do not exist in abject poverty, but which nevertheless lack stable income from school fees, became financially vulnerable because of insufficient funds, and were as a result unable to maintain themselves and provide adequate services to learners. In spite of the real increases in the NNSF allocations, and the fact that more poor learners benefited from redistribution, the problem of middle schools persists.⁴⁷ Thus one can see the subtle process in which, as Bourdieu and Passeron⁴⁸ note, that an educational system has specific structures that correspond to both their “essential function” of inclusion, and their “external function” with respect to the reproduction of inequalities based on the socio-economic status of schools, districts and eventually learners.

3 2 School Fee Exemptions

In pursuit of equity and easy access to public schooling a system of exempting parents from paying school (user) fees has been instituted. In order to redress past imbalances in education, the Minister of Education amended school fee regulations.⁴⁹ The Education Laws Amendment Act,⁵⁰ the new NNSF, and the new regulations relating to the Exemption of Parents from Payment of School Fees have been amended to give poor parents relief in the cost of their children’s education.⁵¹ However, many historically advantaged schools have not implemented these regulations and poor parents still bear the brunt of paying exorbitant school fees. Roithmayr⁵² explains how the school exemption policy hinders access to education. Many families who are eligible to apply do not do so because the process is time-consuming, while it is also likely that the cost of dignity in terms of how parents and learners may be treated at school is regarded as too high. The policy fails to address other costs, such as

45 Department of Education 2003 64.

46 Wildeman 8.

47 See note 23.

48 Bourdieu & Passeron.

49 Reid “Critics say school fees in South Africa widen inequalities” *Education Week* 2002-11-06.

50 24 of 2005.

51 General Notice 28426.

52 Roithmayr “Access, Adequacy and Equality: The Constitutionality of School Fee Financing in Public Education” 2003 *SAJHR* 400.

transport, uniforms and textbooks, and this cost burden can force poor parents to keep their children at home. Proponents of a school fee policy, while agreeing that school fees act as a major barrier to education, do concede that fees coupled with other access costs can have serious implications for learners' access to education.

The in-built principle in the State's funding policy has been that the higher the fees set by a school, the greater the number of parents who will be exempted – thus deterring schools from increasing their fees.⁵³ Based on an investigation of school fee exemption patterns, only 2,5% of families with children in primary schools and 4,1% of families with children in former White schools receive fee exemptions. At secondary school level, only 3,7% of families and 5,7% at former White schools receive exemptions in all provinces.⁵⁴ The Plan of Action states that affluent public schools (quintile 5) will be compensated if they enrol, and grant exemptions to, poor learners.⁵⁵ The purpose of the school allocations flowing to quintile 5 (the wealthier public schools) is to make it possible and fair for these schools to enrol learners to a level where 25% of them would be granted full exemptions from school fees. This has not been followed through in any fundamental way in the Education Laws Amendment Bill and it appears to be the primary reason for the non-enforcement of the policy on the part of many schools.⁵⁶ Also, there are no formal requirements that schools determine their budgets for the year by taking into account the number of exemptions likely to be granted, consequently inequalities exist.

3.3 No Fee Schools

In 2006 a milestone was reached when the state exempted parents in many poor schools from paying school fees. Following the publication of the Plan of Action, an important immediate step was the promulgation of the Education Laws Amendment Act.⁵⁷ This legislation provided the legal mandate for the Minister of Education to determine quintile norms and minimum standards for the funding of public schools. Quintile 1 and 2 schools (representing 40% of schools in the country) will not be allowed to charge school fees. In almost all provinces, the no-fee school concept has been extended to quintile 3 schools. According to these regulations, the Department of Education is obliged to annually publish a target table, which reflects the target per learner allocation for each of the five quintiles. No-fee schools receive a per learner allocation that is greater than or equal to the no fee threshold for that year in question, and they also receive compensatory funding in areas such as school safety, nutrition, classroom construction and Grade R expansion.⁵⁸ The criterion

53 See note 36.

54 Fiske & Ladd in (2004) (ed Chisholm) 72-74.

55 See note 36.

56 Veriava 10.

57 See note 40.

58 Wildeman 6.

is aimed at ensuring that a critical level of public funding is reached before private funding in the form of school fees is removed.⁵⁹

The introduction of no fee schools posed serious challenges for some of the poorer schools. It would appear that the criteria used by provincial departments of education to rank schools into quintiles are not fairly and consistently applied. For example, schools within a kilometre from each other and having similar physical resources are ranked differently. Furthermore, the provincial departments of education deposit the resource allocation and the day-to-day operating costs into the schools' banking accounts quite late in the year thus leaving the schools with serious liquidity problems. In terms of executing the budget, the schools are forced to fend for themselves during the first term.

Furthermore, public schools are scarce and face severe overcrowding in certain areas. Parents not residing in the feeder areas where no fee schools are located will conveniently send their children to no fee schools to avoid paying user fees. By declaring only certain schools free, many poor parents are placed in a situation where they cannot access these free schools and are forced to enrol their children at middle-of-the-range schools where they are required to pay user fees. The financial implication is that provinces in close proximity might have to deal with migration of poor learners from a poor province to a relatively rich province. The provincial departments may not necessarily have factored such movement into budgetary allocations, which are based on the number of learners in that province.⁶⁰

On a more positive note, the no-fee school policy has improved drop-out rates of public schooling nationally.⁶¹

3 4 The Migration of Learners and School Choice

The migration of learners from schools in the townships and suburbs is complex. There is a tendency for learners to migrate from schools in the townships to schools situated in suburbs and inner city, which is motivated by the perceived poor quality education provided by township schools. The consequences of learners travelling daily from townships to attend schools in other areas have serious cost implications for parents. In addition to compensating for steep travelling costs, parents are subjected to paying exorbitant school fees. The same argument applies for learners migrating from suburbs to private schools where fees are sky high or moving to historically White schools that inhibit poorer children from gaining access to these schools based on the school's admission policy and/or language policy.⁶² Many township schools have been

59 See note 40.

60 Wildeman 6.

61 Pandor "Significant school dropout rate after grade nine" 2008.

62 *Governing Body of the Rivonia Primary School v MEC for Education: Gauteng Province* [2011] ZAGPJHC 182 (2011-12-07); *Hoërskool Ermelo v The Head of Department of Education, Mpumalanga* [2009] ZASCA 22 (2009-03-27).

forced to shut down, or to combine with other schools, in order to deal with low learner enrolment and teacher redeployment. So it would appear that parents paying school fees is not the real problem for learner migration from public schools to private schools or from township schools to suburb or inner city schools.

The complexities of the freedom to exercise school choice, or the liberty principle in education finance, have serious implications for parents who are subjected to high school fee structures and are discouraged from applying for a fee exemption. Parents who want their children to receive "quality" education have no option but to abide by the school's fee payments, otherwise their children will not be allowed to continue with their schooling in the more affluent schools. To maintain a good educational standard, these schools have to raise their school fees because their State subsidies are minimal. However, parents have, in theory, the freedom of choice within the constraints of private resources and school-level policies; in fact, government policies create markets for education within which choice behaviour is exercised.⁶³ In the process, inequalities based on class are perpetuated as wealthier parents buy a better education for their children. Consequently, though remarkable positive changes have been made, many poor and rural schools still find themselves at the lowest end of infrastructure provisioning with a continuation of gross inequalities in educational outcomes.⁶⁴

4 Conclusion

With reference to legislation such as SASA, the EEA, Education Laws Amendment Act⁶⁵ and the PFMA, and an important court case, *Schoonbee v MEC for Education* one can conclude that the principal has legal rights in managing school finances.⁶⁶ The new Education Laws Amendment Act⁶⁷ gives a new dimension to the principal's accountability in financial management.⁶⁸ The principal is required to submit an annual report to the HoD, which includes, amongst others, the efficient management of learning support materials and other resources. The principal is accountable to the HoD for the professional management of the school, and also to the SGB for specific delegated financial functions. The principal has rights accrued from the Bill of Rights, such as the right to dignity, privacy and just administrative action. However, in the final analysis, the SGB (including the principal) is accountable for the effective and efficient management of the school's finances.

63 Woolman & Fleisch "South Africa's education legislation, quasi markets and *de facto* school choice" (2006).

64 Mistry & Dzvimbo "Contestations of educational transformation: A critical analysis of how the norms and standards for funding are intended to achieve social justice and equity" *J of Ed Studies* 2011.

65 15 of 2011.

66 Unreported case No. 33750/01(T).

67 15 of 2011.

68 See note 4.

Although the South African government has taken significant strides in tackling equity, redress and social justice in education, challenges in the implementation of policies that have affected the process of bringing about fundamental changes and transformation in education still exist. It is evident that inequalities based on race, gender, class, and the socio-economic status of parents in particular, continues to be reproduced in a system that is only nominally egalitarian and democratic. Although progress has been made towards a fair distribution of public funds through the NNSF significant disparities persist, which is attributed largely to the social legacy of apartheid, lack of SGBs' financial management knowledge and skills, and limited State funding.