

10 January 2011

EQUAL EDUCATION SUBMISSION TO PORTFOLIO COMMITTEE ON BASIC EDUCATION: RE BASIC EDUCATION LAWS AMENDMENT BILL 2010

1. INTRODUCTION

Below are comments by Equal Education (EE) on the *Basic Education Laws Amendment Bill* as published in the *Government Gazette No. 33666 of 22 October 2010* (hereafter referred to as 'the Bill'), and is submitted in response to a call for submissions by the Portfolio Committee on Basic Education.

Equal Education is a movement of learners, parents, teachers and community members working towards quality and equality in education through research, analysis and activism. Our Head Office is in Khayelitsha, Western Cape, but we also have active members in Gauteng, Limpopo, and the Eastern Cape.

Our interest in the Bill arises primarily as a representative of our members. We, under the banner of Equal Education, are united around a common interest in addressing the perpetual lack of quality service and inequality that plagues our education system. It is our view that these issues can be addressed only through a committed, informed and organised

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struggle, in which citizens become active participants in democratic processes that affect their lives. It is in light of this understanding that we hereby submit our comments on the Bill.

Further, this will not be our first submission relating to the Bill. On 9 February 2010, EE made a written submission containing comments and recommendations on the *Basic Education Laws Amendment Bill* in response to *Notice 1611 of 2009 in the Government Gazette*. EE made eight specific recommendations. Since then, the Bill has been amended; the most recent version (to which we are currently responding) has incorporated seven of those recommendations made by EE.

Thus, the comments and recommendations below relate to one specific clause as contained in the most recent Bill, namely the amendment of s5A of the South African Schools Act.

Though we are satisfied that the other recommendations submitted by us have been sufficiently incorporated into the most recent version of the Bill, the recommendation which has not been incorporated is of the most important regarding amendments to the South African Schools Act and, in our view needs serious consideration by the Portfolio Committee.

We will welcome an opportunity to make oral representations to the Portfolio Committee on Basic Education regarding our comments below – which will deal only with the amendment to s5A of the South African Schools Act. Our previous submission has been annexed hereto should you wish to refer to it.

1. AMENDMENT OF SECTION 5A OF THE SOUTH AFRICAN SCHOOLS ACT

The Bill provides that:

“Section 5A of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:



“The *Minister* may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-”.¹

Equal Education Comment:

EE is in agreement with the view that the Minister of Finance must be consulted before minimum uniform norms and standards are prescribed by the Minister of Basic Education and thus supports the proposed amendment to s5A of the South African Schools Act. Such minimum norms and standards for school infrastructure, if promulgated by the Minister of Basic Education would inevitably have financial and fiscal implications. However, with regard to s5A there lies a deeper problem. Any amendment to s5A must be considered within the broader context of the urgent need for these minimum norms and standards for school infrastructure.

S5A(1) provides that the Minister may, by regulation prescribe minimum uniform norms and standards for school infrastructure; capacity of a school in respect of the number of learners a school can admit; and the provision of learning and teaching support material. S5A(2) provides a list that the minimum norms and standards must provide for – with respect to school infrastructure this list includes classrooms, electricity, water, sanitation, libraries, laboratories and computers.

S5A is, in the first instance, couched in permissive language, but imposes an obligation on the Minister to include specific essential resources in such minimum norms and standards *should* she/he promulgate them. Thus the legal obligation only arises *if* the Minister in fact elects to pass such minimum norms and standards. It is here that the provisions of section 5A of the South African Schools Act (in its current form) and the proposed amendments to this section introduced by the Bill both fall short. As will be shown below, it is insufficient that permissive language is used in this instance. Instead, given the crisis of inequality in

¹ *Basic Education Laws Amendment Bill, Government Gazette No. 33666 of 22 October 2010, pg 4.*



access to basic resources at our schools it is necessary that this section creates a clear legal obligation for the Minister to pass minimum uniform norms and standards.

S5A was inserted into the South African Schools Act in 2007, yet to date these minimum uniform norms and standards have not been passed. This is despite the glaring need for these minimum norms and standards – where there exists a major lack of resources particularly in rural and township schools. The most recent government statistics relating to school infrastructure show that: over 4000 schools have no (or unreliable) access to electricity; almost 1000 schools are without ablution facilities and nearly 2000 schools have no water or sanitation facilities; less than 8% of schools have functioning school libraries (to name a few of the harsh realities faced by our schools).² Furthermore, in 2011 there are still 400 ‘mud schools’ where learners (many of them in primary school) attend school under extremely unsafe and unhealthy conditions.

The Minister of Basic Education and her Department have acknowledged the link between school infrastructure and learner performance and have also noted the critical shortages in access to basic resources and services that affects a large portion of our public schools. Most recently, the Department of Basic Education adopted the *National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment*³ (hereafter referred to as the ‘NPEP’) which was gazetted on 11 June 2010. The policy notes that “[a] current average school in South Africa does not provide a physical environment that facilitates effective teaching and learning, effective curricula delivery, effective implementation of key sector policies and programmes, or promotes adequate learner health and safety.”⁴ Further, the Department of Basic Education clearly recognizes the fundamental importance of norms and standards at a policy level, when it notes in the NPEP that “the development of norms and standards as well as the Basic Minimum Package

² *National Education Infrastructure Management System Report (NEIMS), 2009.*

³ *Government Gazette, No. 33283.*

⁴ *National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment*, pg 20.



(BMP) for the provision of school infrastructure [is] a first priority policy issue.”⁵ There can be no doubt, as is acknowledged in the NPEP, that national minimum uniform norms and standards are fundamental to addressing the infrastructure backlogs faced by public schools in South Africa. Despite this, the South African Schools Act, while recognising this importance does not go far enough and instead leaves the adoption of norms and standards up to the Minister’s discretion. This omission in effect undermines the very importance of s5A.

The failure of s5A to impose a specific obligation on the Minister of Basic Education to adopt minimum norms and standards for school infrastructure is even more surprising if considered in the context of other provisions of the Bill, which relate to other norms and standards. For example, the Bill seeks to amend section 12 of the South African Schools Act by inserting the following subsection (inter alia):

“(b) Subject to the relevant provisions of this Act, the Minister must determine norms and standards for funding and norms and standards for governance and educator provisioning for public schools contemplated in paragraph (a)(iii).” (underlining ours).

The inclusion of the word “must” in this section appropriately provides for the need for these norms and standards and creates a legal obligation on the Minister in this regard. The question this immediately raises with regard to s5A is why it does not also include the word “must” instead of the word “may” – as it currently does. There can be no legitimate reason as to distinguish between s5A (couched in permissive language) and s12 (which imposes an obligation on the Minister to adopt norms and standards).

It is imperative that the South African Schools Act is amended so as to include a specific obligation, and not merely the authority to choose, to develop and adopt national minimum norms and standards for school infrastructure. Only this would be in line with the Minister and the Department of Education’s, as well as the South African Schools Act’s acknowledgement of the fundamental importance of such regulations.

⁵ Ibid. pg 20.



Equal Education Recommendation:

It is recommended that s5A of the South African Schools Act be amended so as to prescribe that the Minister of Basic Education must determine minimum uniform norms and standards *within a reasonable period*.

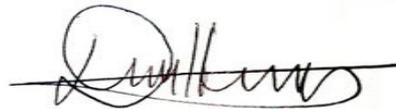
Conclusion

Equal Education would like to request an opportunity to make oral presentations to the Portfolio Committee on Basic Education regarding the issues raised above. This is particularly given the need to address the continuing lack of access to basic resources and services required to provide our learners with a quality and equitable education.

Sincerely



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