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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Circuit Managers, Principals of public schools and Chairpersons of governing bodies

Short summary: *Applications for exemption from the payment of school fees by custodial parents who cannot give particulars of the total annual gross income of the other parent of the learner concerned*

Subject: Conditional exemptions from the payment of school fees

1. On 13 December 2017 the Supreme Court of Appeal delivered its judgment and order in *Head of Department Western Cape Education Department and Others vs. Saffer* (1209/2016) [2017] ZASCA 187.
2. Paragraphs 4 and 5 of the order of the Supreme Court of Appeal read as follows:
“4. It is declared that the Applicant [i.e. Ms Saffer] was entitled to have her applications for a fee-exemption and the related appeals dealt with in the manner set out hereafter with reference to the Regulations relating to the Exemption of Parents from Payment of School Fees in Public Schools (Government Notice R.1052 in Government Gazette 29311 of 18 October 2006) as amended (“the Regulations”). All public schools, governing bodies and education Departments must comply therewith in relation to the Applicant and all other parents who are in the same or similar situation as the Applicant:
(a) The governing body of a public school shall grant a conditional exemption from payment of school fees, referred to in Regulation 1 of the Regulations, to a parent who:

- (i) *in his or her application for exemption:*
 - (aa) *gives particulars for his or her total annual gross income; and*
 - (bb) *does not give particulars of the total annual gross income of the other parent of the learner concerned because the other parent has refused or failed to provide such particulars to the parent applying for the exemption; and*
 - (ii) *having regard solely to his or her total annual gross income, would qualify for a total or partial exemption in terms of the Regulations if he or she were the only parent of the learner concerned.*
- (b) *A conditional exemption shall be the total exemption or the partial exemption to which the applicant would have been entitled if he or she were the only parent of the learner concerned.*
- (c) *When granting such a conditional exemption the governing body shall impose conditions to the effect that the applicant for the exemption:*
- (i) *must report to the school forthwith any increase in his or her gross annual income during the school year in question which, had it been his or her income at the time of making the application for exemption, would have disentitled him or her from receiving the total exemption granted to him or her or from receiving any partial exemption granted to him or her;*
 - (ii) *must, on demand from the governing body, pay on reasonable terms to be determined by the governing body after giving him or her the opportunity to make representations, the school fees or the portion of the school fees for which he or she would have been liable in terms of the Regulations based on his or her increased gross annual income;*
 - (iii) *shall not be liable to make any such payment unless, during the school year in question, his or her gross annual income increases to such an extent that, had it been his or her income at the time of making the application for exemption, he or she would have been disentitled from receiving the total exemption granted to him or her or from receiving any partial exemption or he or she would have been entitled only to a lesser partial exemption than the one granted to him or her.*

5. It is declared that the granting of such a conditional exemption shall not preclude the public school from taking legal steps to enforce payment, by the other parent of the learner concerned, of the school fees or the balance of the school fees, as the case may be, in terms of section 41(1) of the Act [i.e. the South African Schools Act 84 of 1996].”

3. This circular set outs the Western Cape Education Department's (WCED) understanding of the meaning and practical implementation of the order.

4. What paragraphs 4(a) and (b) of the order mean, is:
 - 4.1 if a learner at a fee-paying public school has two living parents;
 - 4.2 if one of them applies to the school for a partial or total exemption from the obligation to pay school fees;
 - 4.3 if in that application the parent applying gives particulars of his or her total annual gross income;
 - 4.4 if in that application the parent applying does not give particulars of the total annual gross income of the other parent because the other parent has refused or failed to provide the particulars to the parent applying; and
 - 4.5 if, having regard solely to total annual gross income of the parent applying, he or she would qualify for a total or partial exemption in terms of the Regulations if he or she were the only parent of the learner,

then the school is obliged to grant to the applying parent a conditional exemption from the payment of the school fees equal to the total exemption or the partial exemption to which the applying parent would have been entitled if he or she were the only parent of the learner.
5. In practical terms, therefore, what paragraphs 4(a) and (b) of the order do is to compel all fee paying public schools to grant conditional exemptions to parents if, but only if, all five of the criteria summarised in paragraphs 4.1 to 4.5 above are met.
6. Although all of those criteria are self-explanatory, the WCED emphasises the following in relation to the fourth criterion (summarised in paragraph 4.4 above):
 - 6.1 The fourth criterion contains two factual elements, both of which must be met, namely:
 - 6.1.1 the parent applying must not give particulars of the total annual gross income of the other parent in his or her application for a fee exemption; and
 - 6.1.2 the failure of the parent applying to do so must be due to ("because") the other parent has refused or failed to provide those particulars to the parent applying.
7. The fourth criterion means that, before granting a conditional exemption to a parent whose application, on the face of things, complies with all five criteria, a school is entitled to verify that the reason the parent applying has not given particulars of the total annual gross income of the other parent is because the other parent has indeed refused or failed to provide those particulars. In other words, the school is not obliged to accept the applying parent's say-so as to the reason why he or she has not given those particulars.

8. On the contrary, the school may make enquiries of its own so as to ascertain, as best it can, whether it is true that the other parent has refused or failed to provide particulars of his or her gross annual income. Those enquiries may, and in most cases should, entail attempting to contact the other parent to ascertain whether he or she has indeed refused or failed to provide particulars of his or her gross annual income to the parent applying.
9. If the school manages to contact the other parent, and if the other parent confirms that he or she has indeed refused or failed to provide particulars of his or her gross annual income to the parent applying, the school should use the opportunity to:
 - 9.1 encourage the other parent to provide particulars of his or her gross annual income, either there and then, or to the school in the near future (in order that it may assist the parent applying to complete the form, as envisaged by Regulation 9(4) of the Regulations) or to the parent applying in the near future (in order that the parent applying may properly complete paragraph 3.1 of the form in Annexure B to the Regulations); and
 - 9.2 inform the other parent that if he or she does not so provide particulars of his or her annual income, the school will take legal steps against him or her to enforce payment of the full amount of the school fees in terms of section 41(1) of the South African Schools Act (SASA), 1996 (Act 84 of 1996).
10. If the school does not manage to contact the other parent after making reasonable attempts to do so, then, unless there is something in the factual matrix or surrounding circumstances that suggests the school must take further steps (e.g. appoint a tracing agent or engage an attorney to try and contact the other parent), the school must accept as correct the statement by the parent applying that the other parent has refused or failed to provide particulars of his or her gross income.
11. Turning to paragraph 4(c) of the order, it requires a school, when granting a conditional exemption in terms of paragraphs 4(a) and (b) thereof, to do so subject to three conditions, which must be specified in the letter granting the exemption.
12. The first condition is that, during the school year in question, the parent to whom the conditional exemption was granted must report to the school forthwith any increase in his or her gross annual income which, had it been his or her income at the time of making the application for exemption, would have disentitled him or her from receiving the whole or any part of the exemption. As many such parents will not know whether a particular increase in their gross income would have had such an effect, the simplest course is to frame this condition in a manner which requires the parent to report to the school forthwith any increase in his or her gross annual income during the school year in question.

13. If the school receives such a report, it must consider the increase in the parent's gross annual income and, with reference to the formula and table in Regulation 6 of the Regulations, determine whether the increase has any effect on the amount of the exemption granted to the parent.
14. If the increase in the parent's gross annual income does indeed have such an effect, the school must inform the parent of the reduction in the exemption and consequently the additional amount payable to the school by the parent, and request the parent to make representations as to the payment terms, if any, which the parent considers reasonable.
15. The need for an opportunity to make those representations and the ultimate (potential) liability to pay increased school fees, arises from the second of the conditions that paragraph 4(c) of the order requires the school to impose when granting a conditional exemption. More specifically, as mentioned earlier, the second condition is that a parent who is granted a conditional partial or total exemption must, on demand from the governing body, pay on reasonable terms to be determined by the governing body after giving him or her the opportunity to make representations, the school fees or the portion of the school fees for which he or she would have been liable in terms of the Regulations based on his or her increased gross annual income.
16. The WCED emphasizes that it is implicit in the first and second of the conditions that paragraph 4(c) of the order requires the school to impose when granting a conditional exemption, that:
 - 17.1 if, during the school year in question, the annual gross income of the parent to whom the conditional exemption was granted increases to a level which, had it been his or her income at the time of making the application for exemption, would have disentitled him or her from receiving the whole or any part of the exemption;
 - 17.2 if the parent does not inform the school of the increase forthwith; and
 - 17.3 if the school comes to learn of the increase,

then the school is entitled to calculate the relevant reduction in the exemption (and, consequently, the increase in the school fees payable by the parent) and, after giving the parent a reasonable opportunity to make representations as to the payment terms, if any, the parent considers reasonable, the school is further entitled to claim the increased school fees from the parent.
18. The third of the conditions that paragraph 4(c) of the order requires the school to impose when granting a conditional exemption is one which, in effect, will extinguish the parent's liability to pay the school fees (in the case of a conditional total exemption) or a part of the school fees (in the case of a conditional partial exemption) in all cases where the year in respect of which the exemption was

granted passes without the gross annual income of the parent in question increasing to an extent that requires an adjustment to the exemption. This condition provides, in effect, that the parent to whom a conditional exemption is granted shall not be liable to pay the school fees or any portion of the school fees if, during the school year in question, his or her gross annual income does not increase to such an extent that, had it been his or her income at the time of making the application for exemption, he or she would have been disentitled from receiving the total exemption granted to him or her or from receiving any partial exemption or he or she would have been entitled only to a lesser partial exemption than the one granted to him or her.

19. A final issue concerns the school's right to proceed against the other parent, i.e. the one who refused or failed to provide particulars of his or her income to the parent applying for the exemption. This is regulated by paragraph 5 of the order, which provides that the granting of a conditional exemption to the parent applying shall not preclude the public school from taking legal steps to enforce payment, by the other parent of the learner concerned, of the school fees or the balance of the school fees, as the case may be, in terms of section 41(1) of SASA.
20. When this paragraph is read with section 41 of SASA, as it must be, what it means is that:
 - 20.1 the school may institute legal proceedings against the other parent after waiting for the period of three months required by section 41(5)(b) after giving him or her the notification required by section 41(5)(a) and during that period he or she does not pay the whole or a part of the school fees and does not duly apply for an exemption (whether for the whole of the school fees or the unpaid part); or
 - 20.2 if the other parent duly applies for a total or partial exemption by properly completing the prescribed form (i.e. the form in Annexure B to the Regulations) as required by section 41(4)(c) of SASA, including by giving the gross annual income of both parents, and if thereafter the school ascertains that he or she does not qualify for an exemption, the school may institute legal proceedings against him.
21. As to the amounts which the school may claim from the other parent in those legal proceedings, they are the following:
 - 21.1 in cases where the parent applying has been granted a total exemption, the school may claim the whole of the school fees from the other parent unless he or she has duly applied for an exemption and his or her exemption application shows he or she is entitled to an exemption (in which case the school shall not claim the amount of the exemption to which the other parent is entitled); and
 - 21.2 in cases where the parent applying has been granted a partial exemption, the school may claim the balance of the school fees from the other parent.

22. Please bring the contents of this circular to the attention of all staff and governing body members.

SIGNED: A LEWIS

ACTING HEAD: EDUCATION

DATE: 2018-03-14