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THE PRESIDENCY

No. 1256

31 December 2007

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

No. 31 of 2007: Education Laws Amendment Act, 2007.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 21 December 2007.)*

ACT

To amend the National Education Policy Act, 1996, so as to substitute the provision relating to consultation on the national education policy; and to amend the provision for the establishment of consultative bodies; to amend the South African Schools Act, 1996, so as to insert certain definitions; to provide for minimum norms and standards for infrastructure and capacity in public schools; to provide for random search and seizure and drug testing at schools; to provide for the functions and responsibilities of a principal; to substitute a reference to obsolete legislation; and to regulate the identification of underperforming schools; to amend the National Student Financial Aid Scheme Act, 1999, so as to effect certain technical adjustments; and to extend the functions of the board to cover eligible students at public further education and training colleges; to amend the South African Council of Educators Act, 2000, the Adult Basic Education and Training Act, 2000, and the General and Further Education and Training Quality Assurance Act, 2001, so as to effect certain technical adjustments; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 5 of Act 27 of 1996, as amended by section 5 of Act 48 of 1999

1. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Policy contemplated in section 3 shall be determined by the Minister after consultation with such appropriate consultative bodies as have been established for that purpose in terms of section 11 or any other applicable law, and with the Council.”.

Amendment of section 6 of Act 27 of 1996 10

2. Section 6 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) all the parties in the Education Labour Relations Council established by [section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993)] section 40 of the Labour Relations Act, 1995 (Act No. 66 of 1995), in 15 respect of any matter falling within the objectives of that Act.”.

Amendment of section 11 of Act 27 of 1996

3. Section 11 of the National Education Policy Act, 1996, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) The Minister may by regulation establish a body to be known as the National Education and Training Council (NETC) and other bodies to advise him or her on any matter contemplated in section 3 or any matter identified by the Minister.”; and

(b) the substitution for subsection (2) of the following subsection:

“(2) The composition, qualifications for membership, duties, powers and functions of a body established in terms of subsection (1), and the term of office of its members, shall be as prescribed by regulation[: **Provided that the bodies referred to in section 5(1)(c), shall be invited to nominate representatives to any such consultative body within their respective spheres of interest.**”.

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999, section 1 of Act 50 of 2002 and section 1 of Act 24 of 2005

4. Section 1 of the South African Schools Act, 1996, is hereby amended by—

(a) the insertion after the definition of “**Council of Education Ministers**” of the following definition:

“**‘dangerous object’** means—

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that the *Minister* may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;”;

(b) the insertion after the definition of “**Head of Department**” of the following definition:

“**‘illegal drug’** means—

- (a) any unlawful substance that has a psychological or physiological effect; or
- (b) any substance having such effect that is possessed unlawfully;”;

and

(c) the insertion after the definition of “**school**” of the following definition:

“**‘school activity’** means any official educational, cultural, recreational or social activity of the *school* within or outside the *school* premises;”.

Insertion of section 5A in Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the insertion after section 5 of the following section:

“Norms and standards for basic infrastructure and capacity in public schools

5A. (1) The *Minister* may, after consultation with the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for—

- (a) *school* infrastructure;
- (b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and
- (c) the provision of learning and teaching support material.

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

- (a) In respect of *school* infrastructure, the availability of—
- (i) classrooms;
 - (ii) electricity;
 - (iii) water;
 - (iv) sanitation;
 - (v) a library;
 - (vi) laboratories for science, technology, mathematics and life sciences;
 - (vii) sport and recreational facilities;
 - (viii) electronic connectivity at a *school*; and
 - (ix) perimeter security;
- (b) in respect of the capacity of a *school*—
- (i) the number of teachers and the class size;
 - (ii) quality of performance of a *school*;
 - (iii) curriculum and extra-curricular choices;
 - (iv) classroom size; and
 - (v) utilisation of available classrooms of a *school*;
- (c) in respect of provision of learning and teaching support material, the availability of—
- (i) stationery and supplies;
 - (ii) learning material;
 - (iii) teaching material and equipment;
 - (iv) science, technology, mathematics and life sciences apparatus;
 - (v) electronic equipment; and
 - (vi) *school* furniture and other *school* equipment.
- (3) When determining policy in terms of sections 5(5) and 6(2) a *governing body* must comply with the norms and standards contemplated in subsection (1).
- (4) A *governing body* must, within a period of 12 months after the *Minister* has prescribed the norms and standards contemplated in subsection (1), review any policy that it has determined in terms of sections 5(5) and 6(2) to ensure that such policy complies with the norms and standards.”

Amendment of section 8 of Act 84 of 1996 as amended by section 4 of Act No. 50 of 2002

6. Section 8 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) A code of conduct must contain provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counselling a *learner* involved in disciplinary proceedings.”

Insertion of section 8A in Act 84 of 1996

7. The South African Schools Act, 1996, is hereby amended by the insertion after section 8 of the following section:

“Random search and seizure and drug testing at schools

8A. (1) Unless authorised by the *principal* for legitimate educational purposes, no person may bring a *dangerous object* or *illegal drug* onto *school* premises or have such object or drug in his or her possession on *school* premises or during any *school* activity.

(2) Subject to subsection (3), the *principal* or his or her delegate may, at random, search any group of *learners*, or the property of a group of *learners*, for any *dangerous object* or *illegal drug*, if a fair and reasonable suspicion has been established—

(a) that a *dangerous object* or an *illegal drug* may be found on *school* premises or during a *school* activity; or

- (b) that one or more *learners* on *school* premises or during a *school activity* are in possession of *dangerous objects* or *illegal drugs*.
- (3) (a) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including —
- (i) the best interest of the *learners* in question or of any other *learner* at the *school*;
 - (ii) the safety and health of the *learners* in question or of any other *learner* at the *school*;
 - (iii) reasonable evidence of illegal activity; and
 - (iv) all relevant evidence received.
- (b) When conducting a search contemplated in subsection (2), the *principal* or his or her delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.
- (4) Where a search contemplated in subsection (2) entails a body search of the *learners* in question, such search may only—
- (a) be conducted by—
 - (i) the *principal*, if he or she is of the same gender as the *learner*; or
 - (ii) by the *principal's* delegate, who must be of the same gender as the *learner*;
 - (b) be done in a private area, and not in view of another *learner*;
 - (c) be done if one adult witness, of the same gender as the *learner*, is present; and
 - (d) be done if it does not extend to a search of a body cavity of the *learner*.
- (5) Any *dangerous object* or *illegal drug* that has been seized must be—
- (a) clearly and correctly labelled with full particulars, including—
 - (i) the name of *learner* in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of person who searched the *learner*;
 - (v) the name of the witness; and
 - (vi) any other details that may be necessary to identify the item and incident;
 - (b) recorded in the school record book; and
 - (c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (6) If the police cannot collect the *dangerous object* or *illegal drug* from the *school* immediately, the *principal* or his or her delegate must—
- (a) take the *dangerous object* or *illegal drug* to the nearest police station; and
 - (b) hand the *dangerous object* or *illegal drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (7) The police officer who receives the *dangerous object* or *illegal drug* must issue an official receipt for it to the *principal* or to his or her delegate.
- (8) The *principal* or his or her delegate may at *random* administer a urine or other non-invasive test to any group of *learners* that is on fair and reasonable grounds suspected of using *illegal drugs*, after taking into account all relevant factors contemplated in subsection (3).
- (9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for *illegal drugs* only if—
- (a) the test is conducted by a person of the same gender;
 - (b) it is done in a private area and not in view of another *learner*;