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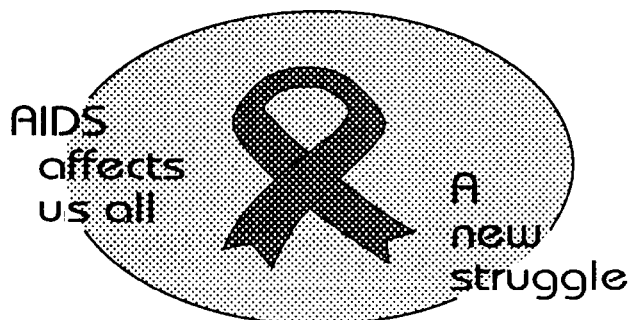
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DEPARTMENT OF HEALTH

G E N E R A L N O T I C E S

NOTICE 1444 OF 2000

DEPARTMENT OF EDUCATION

The Minister of Education hereby publishes the following draft Bills for comment:

- (A) Adult General Education and Training Bill, 2000;
- (B) Education Laws Amendment Bill, 2000;
- (C) General And Further Education And Training Quality Assurance Bill, 2000; and
- (D) Higher Education Amendment Bill, 2000

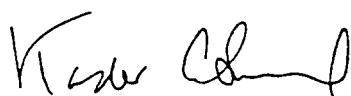
All interested persons and organisations are invited to comment in writing on the draft Bills and to direct the comments to:

The Director-General, Department of Education, Private Bag X895, Pretoria, 0001 for attention Ms M Locke. Fax No.: (012) 326 9128 or e-mail: locke.m@educ.gov.za, telephone number (012) 312 5356.

Kindly provide the name, address, telephone number, fax number and e-mail address of the person or organisation submitting the comments.

The comments should reach the Department not later than 23 April 2000.

Copies of the draft Bills and explanatory memoranda can be obtained from the Department of Education at the above address and the Government Printer in Pretoria.



PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

DATE:

28/3/2000

NOTICE 1447 OF 2000

EDUCATION LAWS AMENDMENT BILL, 2000**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.

ACT

To amend the South African Qualifications Authority Act, 1995, by increasing the representation of organised labour on the Authority; to amend the South African Schools Act, 1996, so as to make further provision **for public schools on private property; to provide** for the governance of a new public school until a governing body is constituted; to provide for representivity of governing bodies; and to provide for safety measures at public schools; to amend the Employment of Educators Act, 1998, so as to substitute a definition; to make provision for the appointment of educators to new public schools, public further education and training institutions and public adult learning centres; to amend the provisions dealing with incapacity, misconduct **and appeals; to make provision** for an incapacity code and procedure and a disciplinary code and procedure; and to provide for matters related thereto.

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

Amendment of section 4 of Act 58 of 1995

1. Section 4 of the South African Qualifications Authority Act, 1995, is hereby amended by the substitution in subsection 3 for paragraph (e) of the following paragraph:

“(e) ~~[two]~~ three members nominated by the national organisations representing organised labour;”.

Amendment of section 14 of Act 84 of 1996 as amended by section 5 of Act 100 of 1997

2. Section 14 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the Constitution and [this Act] an expropriation in terms of section 58 of a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.”.

Amendment of section 16 of Act 84 of 1996 as amended by section 9 of Act 48 of 1999

3. Section 16 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

“(7) If a new public school is provided in terms of section 12, the governance of that school vests in the Head of Department until a governing body has been constituted in terms of this Act.”.

Amendment of section 23 of Act 84 of 1996 as amended by section 11 of Act 48 of 1999

4. Section 23 of the South African Schools Act, 1996, is hereby amended-

(a) by the substitution for subsection (8) of the following subsection:

“(8) Subject to [subsection] subsections 10 and 13, co-opted members do not have voting rights on the governing body.”; and

(b) by the addition of the following subsection:

“(13) If the membership of a governing body is not representative of the racial composition of the learners of the school, the governing body must

co-opt two parent members with voting rights from that part of the learner community that is not represented.”.

Amendment of section 61 of Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the substitution for section 61 of the following section:

“Regulations

61. The Minister may make regulations to provide for safety measures at public schools and on any matter which must or may be prescribed by regulation under this Act and any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.”.

Amendment of section 1 of Act 76 of 1998

6. Section 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution for the definition of “this Act” of the following definition:

“this Act” includes a regulation and any Schedule attached to the Act;”.

Amendment of section 6 of Act 76 of 1998, as amended by section 15 of Act 48 of 1999

7. Section 6 of the Employment of Educators Act, 1998, is hereby amended by the addition to subsection (3) of the following paragraph:

“(e) The initial appointment, Promotion or transfer to any post on the educator establishment of-

- (i) a new public school established in terms of the South African Schools Act, 1996 (Act No. 84 of 1996) and any applicable provincial law;
- (ii) a new further education and training institution established in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998) and any applicable provincial law; or

- (iii) a new public adult learning centre established in terms of the Adult General Education and Training Act, 2000, or any applicable provincial law,

shall be made by the Head of Department without the recommendation of a governing body of the public school, council of the public further education and training institution or governing body of the public adult learning centre, as contemplated in paragraph (a). ”

Deletion of section 12 of Act 76 of 1998

8. The Employment of Educators Act, 1998, is hereby amended by the deletion of section 12.

Substitution of section 16 of Act 76 of 1998

9. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 16 of the following section:

“Incapable educators

16. If it is alleged that an educator is unfit for the duties attached to the educator’s post or incapable of carrying out those duties efficiently, the employer must assess the capacity of the educator and may take action against the educator in accordance with the incapacity code and procedures for poor work performance provided in Schedule 1.“.

Substitution of section 17 of Act 76 of 1998

10. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 17 of the following section:

“Dismissible misconduct

17. (1) An educator commits dismissible misconduct and shall be dismissed if the educator-

- (a) steals, bribes or commits fraud or an act of corruption in regard to examinations or promotional reports;

- (b) commits an act of sexual assault on a learner, student or other employee;
- (c) enters into a sexual relationship with a learner of the school where he or she is employed;
- (d) seriously assaults with the intention to cause grievous bodily harm to a learner, student or other employee; or
- (e) causes a learner or student to perform any of the acts contemplated in paragraphs (a) to (d).

(2) If it is alleged that an educator committed dismissible misconduct as contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures in Schedule 2.”.

Substitution of sections 18 to 24 of Act 76 of 1998

11. The Employment of Educators Act, 1998, is hereby amended by the substitution for sections 18 to 24 of the following section:

“Misconduct

18. (1)An educator commits misconduct if the educator-

- (a) fails to comply with, or contravenes an Act of Parliament, regulation or legal obligation;
- (b) wilfully or negligently mismanages the finances of the State, a school, further education and training institution or adult learning centre;
- (c) without permission possesses or wrongfully uses the property of the State, a school, further education and training institution or adult learning centre, another employee or a visitor;
- (d) wilfully, intentionally or negligently damages or causes loss of state, school, further education and training institution or adult learning centre property;
- (e) endangers the lives of him or herself or others by disregarding safety rules or regulations;

- (9) prejudices the administration, discipline or efficiency of a department, office of the State or school, further education and training institution or adult learning centre;**
- (g) misuses his or her position in the Department, school, further education and training institution or adult learning centre to promote or to prejudice the interests of any person;**
- (h) accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the employer;**
- (i) fails to carry out a lawful order or routine instruction without just or reasonable cause;**
- (j) absents him or herself from work without a valid reason or permission;**
- (k) unfairly discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution;**
- (l) performs poorly or inadequately for reasons other than incapacity;**
- (m) without written approval from the employer, performs work for compensation for another person or organisation either during or outside working hours;**
- (n) without prior permission of the employer accepts or demands in respect of the carrying out of or the failure to carry out the educator's duties, any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;**
- (o) without authorisation, sleeps on duty;**
- (p) while on duty, is under the influence of an intoxicating, illegal, unauthorised, or stupefying drug, including alcohol;**
- (q) while on duty, conducts herself or himself in an improper, disgraceful or unacceptable manner;**
- (r) contravenes any prescribed Code of Conduct for educators;**

- (s) **assaults, or attempts or threatens to assault, another employee or person;**
- (t) **incites other personnel to unprocedural and unlawful conduct;**
- (u) **displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;**
- (v) **intimidates or victimises fellow employees, learners or students;**
- (w) **prevents other employees from belonging to any trade union or body;**
- (x) **operates any money lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution of office where he or she is employed;**
- (y) **carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer;**
- (z) **refuses to obey security regulations;**
- (aa) **gives false statements or evidence in the execution of his or her duties;**
- (bb) **falsifies records or any other documentation;**
- (cc) **participates in unprocedural, unprotected or unlawful industrial action;**
- (old) **fails or refuses to-**
 - (i) **follow a formal programme of counseling as contemplated in item 2.4 of Schedule 1;**
 - (ii) **subject himself or herself to a medical examination as contemplated in item 3.7 of Schedule 1; or**
 - (iii) **attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3.9 of Schedule 1.**
- (ee) **commits a common law or statutory offence; or**
- (ff) **commits any other act prescribed by the Minister as misconduct.**

(2) If it is alleged that an educator committed misconduct as contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures in Schedule 2.”.

(3) If, after having followed the procedures contemplated in subsection (2), a finding is made that the educator committed misconduct, the employer may, in accordance with the disciplinary code and procedures, contained in Schedule 2, impose a sanction of-

- (a) counseling;
- (b) a verbal warning;
- (c) a written warning;
- (d) a final written warning;
- (e) suspension without pay for a period not exceeding three months;
- (f) a fine not exceeding one month's salary;
- (g) demotion;
- (h) a combination of the sanctions referred to in paragraphs (a) to (f); or
- (i) dismissal.

4. Any sanction contemplated in subsection (3)(e), (f) or (g) may be suspended for a specified period on conditions determined by the Employer.

Substitution of section 25 of Act 76 of 1998

12. The Employment of Educators Act, 1998, is hereby amended by the substitution for section 25 of the following section:

“Appeals

25. (1) An educator may appeal to the Minister or the Member of the Executive Council, as the case may be, against a decision to demote, transfer or terminate the services of the educator on the grounds of incapacity contemplated in section 16.

(2) An educator shall have the right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing that the educator has committed misconduct, as contemplated in section 17 or 18 and against the sanction imposed in terms of section 18.

(3) The procedure to be followed by the educator in such an appeal must be in accordance with the procedures provided in Schedule 2.

Amendment of section 35 of Act 76 of 1998

13. Section 35 of the Employment of Educators Act, 1998, is hereby amended-

- (a) by the numbering of the existing section as subsection (1);
- (b) by the addition to the existing section of the following paragraph:
“(d) the conduct to educators during strike actions;”; and
- (c) by the renumbering of the existing paragraphs (d) and (e) as (e) and (f) respectively;”.

Amendment of section 36 of Act 76 of 1998

14. Section 36 of the Employment of Educators Act, 1998, is hereby amended-

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) delegate to the Director-General or any other person in the service of the Department of Education any power conferred upon the Minister by or under this Act, other than the power referred to in section [16(10),] 25[(3)] or 35, on such conditions as the Minister may determine; or”; and
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
“(a) delegate to the Head of Department or any other person in the service of the provincial department of education any power conferred upon the Member of the Executive Council by or under this Act, other than the power referred to in section [16(10) or]

**25[(3)], on such conditions as the Member of the Executive Council
my determine; or”.**

Addition of Schedules to Act 76 of 1998

15. The Employment of Educators Act, 1998, is hereby amended by the addition after section 39 of the following Schedules:

‘SCHEDULE 1

INCAPACITY CODE AND PROCEDURES FOR POOR WORK PERFORMANCE

1. Codes, rules and standards

1.1 The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995, insofar as it relates to incapacity, constitutes part of this Code and Procedures, in respect of poor work performance.

1.2 In applying this Code and Procedures, the relevant employer must assess the incapacity of an educator by considering-

- (a) the extent to which the incapacity impacts on the work of the Department of Education or provincial department of education, the public school, public further education and training institution or public adult learning centre;**
- (b) the extent to which the educator fails to meet the required performance standards established by the employer;**
- (c) the extent to which the educator lacks the necessary skills to perform in accordance with the educator’s job description; and**
- (d) the nature of the educator’s work and responsibilities, and the circumstances of the educator.**

2. Procedure in respect of poor performance

2.1 If the employer is of the view that an educator, whether on probation or a permanent staff member, is not performing in accordance with the job that the educator has been employed to do the employer must-

- (a) give written reasons to the educator why it is necessary to initiate this procedure; and**
- (b) after serving the written reasons referred to in subitem (a), meet with the educator, and if the educator so chooses with the educator's trade union representative or a fellow employee.**

2.2 In the meeting referred to item 2.1(b), the employer must-

- (a) explain the requirements, grade, skills and nature of the job;**
- (b) evaluate the educator's performance in relation to the job;**
- (c) indicate the perceived poor performance; and**
- (d) hear the educator Or the educator's representative on-**
 - (ii) whether the educator has performed in accordance with the requirements of the job; or**
 - (ii) reasons why the educator has not performed in accordance with the requirements of the job if the educator agrees.**

2.3 After hearing the educator or his or her representative, the employer must if necessary, develop and initiate a formal programme of counseling and training to enable the educator to reach the required standard of performance, which must include-

- (a) assessing the time that it would take for the educator to overcome the poor work performance;**
- (b) on the basis of the assessment referred to in subitem (a), the establishment of realistic time frames within which the employer will expect the educator to meet the required performance standards; and**
- (c) if necessary, the identification and provision of appropriate training.**

- 2.4 (a) If the educator fails or refuses to follow a formal programme of counseling and training as contemplated in item 2.3, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.**
- (b) If the educator, after being subjected to a formal programme of counseling and training as contemplated in item 2.3, fails to meet the required performance standard for the post after having been made aware of such standard, the employer may after consulting the educator, terminate the employment of the educator or transfer or demote the educator or provide further training or counseling to the educator.**
- 2.5 The person appointed by the employer to conduct the procedures in items 2.1 to 2.3, must be an employee on a higher post level than the educator concerned, and should be as far as practically possible his or her direct supervisor or the immediate superior of such supervisor.**

INCAPACITY CODE AND PROCEDURES IN RESPECT OF ILL HEALTH OR INJURY

3. Procedures in respect of ill health or injury

- 3.1 If the employer is of the view that an educator is not performing in accordance with the post requirements that the educator has been employed to perform, as a result of poor health or injury, or if an educator applies for a discharge from service on account of continuous ill health or injury, the employer must investigate the extent of the ill health or injury.**
- 3.2 In conducting this investigation the employer must give the educator, or the educator's trade union representative or fellow employee, the opportunity to state the educator's case and to be heard on all the issues that the employer investigates and considers.**
- 3.3 (a) The employer must appoint at least one registered medical practitioner to examine the educator at the State's expense and to report on the educator's state of health.**

- (b) An educator is entitled to nominate any other registered medical practitioner of his or her choice at the educator's own expense to report on the educator's state of health.
- (c) The record of any medical examination performed in terms of this Act must be kept confidential and maybe made available only-
- (i) in accordance with the ethics of medical practice;
 - (ii) if required by law or court order; or
 - (iii) if required by the employer to determine the extent to which the educator is able to perform in accordance with the job requirements.
- (d) The medical practitioner contemplated in paragraph (a) must, on completion of the medical examination, provide the employer with a report on the nature and extent of the educator's ill-health or injury and whether it is temporary or permanent, and the expected period of the educator's incapacity.
- 3.4 Based on the medical reports the employer must determine whether the nature of the educator's ill health or injury is of a temporary or permanent nature and the period of time that the educator is likely to be absent from work.
- 3.5 If the educator's ill health or injury is of a permanent nature the employer must investigate the possibility of-
- (a) securing alternative employment for the educator;
 - (b) adapting the duties or work circumstances of the educator to accommodate the educator's ill health or injury; or
 - (c) consider the termination of the educator's service with effect from a date determined by the employer.
- 3.6 After the investigation the employer must provide the educator with a written report setting out the results of the investigation.
- 3.7 If an educator refuses or fails to be subjected to an examination contemplated in item 3.3 when requested to do so by the employer, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

- 3.8 If the educator's ill health is as a result of alcohol or drug abuse, the employer may-**
- (a) counsel the educator;**
 - (b) encourage the educator to attend rehabilitation;**
 - (c) recommend a formal rehabilitation program which the educator will be expected to follow at the cost of the employee; or**
 - (d) terminate the employment of the educator, if the behaviour is repetitive.**
- 3.9 If the educator fails to follow the formal program, to attend rehabilitation or to address the problem of alcohol or drug abuse, the employer must give the educator or the educator's representative a written report and consult again with the educator. After consulting with the educator the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.**

SCHEDULE 2

DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

A. PURPOSE AND SCOPE

- 1. The purpose of this Code and Procedures is:**
- (a) to support constructive labour relations in education;**
 - (b) to promote mutual respect among educators and between educators and the employer;**
 - (c) to ensure that employers and educators share a common understanding of misconduct and discipline;**
 - (d) to promote acceptable conduct;**
 - (e) to provide educators and the employer with a quick and easy reference for the application of disciplinary measures;**
 - (f) to avert and correct unacceptable conduct; and**

- (9) to prevent arbitrary or discriminatory actions by employers toward educators.

B. PRINCIPLES

- 2. The principles underlying the Code and Procedures and any decision to discipline an educator are that-

- (a) discipline is a corrective measure and not a punitive one;
- (b) discipline must be applied in a prompt, fair, consistent and progressive manner;
- (c) discipline is an employer function and the decision regarding the procedural approach to be taken by the employer, is final and cannot be disputed;
- (d) a disciplinary code is necessary for the efficient delivery of service and the fair treatment of educators, and ensures that educators-
 - (i) have a fair hearing in a formal or informal setting;
 - (ii) are timeously informed of allegations of misconduct made against them;
 - (iii) receive written reasons for any decision taken; and
 - (iv) have the right to appeal against any decision;
- (e) as far as possible, disciplinary procedures shall take place in the place of work and be understandable to all educators;
- (9) if an educator commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings;
- (9) disciplinary proceedings do not replace or seek to imitate court proceedings; and
- (h) disciplinary proceedings must be concluded in the shortest possible time frame.

c. CODE OF GOOD PRACTICE

3. The Code of Good Practice contained in **Schedule 8 of the Labour Relations Act, 1995**, insofar as it relates to discipline, constitutes part of this Code and Procedure.
4. Educator conduct that may warrant a disciplinary action is listed in section 17 and 18. This list is not exhaustive. The Minister may prescribe other conduct which constitutes misconduct.
5. In dealing with misconduct contemplated in section 18 the employer must assess the seriousness of the alleged misconduct by considering-
 - (a) the extent to which the misconduct impacts on the work of the Department of Education or provincial department of education, the public school, public further education and training institution or public adult learning centre;
 - (b) the nature of the educator's work and responsibilities: and
 - (c) the circumstances in which the alleged misconduct took place.
6. The form of disciplinary procedure to be followed in any case shall be determined by the employer.

D. SANCTIONS AND DISCIPLINARY PROCEDURES PERTAINING TO LESS SERIOUS MISCONDUCT CONTEMPLATED IN SECTION 18(1) OF THE ACT

7. The employer shall delegate the function to deal with misconduct in terms of these procedures, to the head of the institution or office where the educator is employed, or the immediate superior of the educator where the educator concerned is the head of the institution or office.
8. **Corrective counseling.** in cases where the seriousness of the misconduct warrants counseling, the employer of the educator must-

- (a) **bring the misconduct to the educator's attention;**
- (b) **determine the nature of the misconduct and give the educator an opportunity to respond to the allegations;**
- (c) **after consultation with the educator decide on a method to remedy the conduct; and**
- (d) **take steps to implement the decision.**

9. **Verbal warnings.** In cases where the seriousness of the misconduct warrants it, the employer of the educator may give a verbal warning. The employer must inform the educator that further misconduct may result in more serious disciplinary action, and record the warning.

10. **Written warnings.** In cases where the seriousness of the misconduct warrants it, the employer may give the educator a written warning. The following provisions apply to written warnings:

- (a) **the written warning must be in accordance with Form A attached to the Schedule;**
- (b) **the employer must give a copy of the written warning to the educator, who must sign receipt of it;**
- (c) **if the educator refuses to sign receipt, the employer must hand the warning to the educator in the presence of another educator, who shall sign in confirmation that the written warning was conveyed to the educator;**
- (d) **the written warning must be filed in the educator's personal file;**
- (e) **a written warning remains valid for six months;**
- (f) **if during the six-month period, the educator is subject to disciplinary action, the written warning may be taken into account in deciding on an appropriate sanction; and**
- (g) **if the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction, which must be filed with the written warning.**

11. **Final written warnings.** In cases where the seriousness or extent of the misconduct warrants it, the employer must give the educator a final written warning. The following provisions apply to a final written warning:
- (a) a final written warning must be on the prescribed form B attached hereto;
 - (b) the employer must give a copy of the final written warning to the educator, who must sign receipt of it;
 - (c) if the educator refuses to sign receipt, the employer must hand the warning to the educator in the presence of another educator, who must **sign** in confirmation that the final written warning was conveyed to the educator;
 - (d) the final written warning must **be filed in the educator's personal file**;
 - (e) a final written warning remains valid for six months;
 - (g) if during the six-month period, the educator is subject to disciplinary action, the final written warning may be taken into account in deciding on an appropriate sanction; and
 - (9) if the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction, which must be filed with the written warning.
12. (a) If the seriousness or extent of the misconduct warrants it, no formal enquiry shall be held and the procedures in subitems (b), (c) and (d) shall be followed.
- (b) The employer must convene a meeting where-
- (i) the educator and, if he or she so chooses, the educator's trade union representative who is based at the institution, are present;
 - (ii) reasons are given to the educator as to why it is necessary to initiate this procedure; and
 - (iii) the educator or the educator's representative is heard on the misconduct and reasons therefore.
- (c) After hearing the educator or his or her representative, the employer must-
- (i) counsel the educator;
 - (ii) issue a verbal warning;
 - (iii) issue a written warning;

- (iv) issue a final written warning;
 - (v) impose a combination of any of the above; or
 - (vi) take no further action.
 - (d) An educator cannot appeal against any of the above sanctions but may lodge an objection, in writing, against the sanction imposed, or provide additional written information. The objection or additional information must be filed together with a record of the sanction in the educator's personal file.
13. For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator shall be taken into account.
- E. DISCIPLINARY PROCEDURES PERTAINING TO SERIOUS MISCONDUCT AS CONTEMPLATED IN SECTIONS 17(1) AND 18(1) OF THE ACT**
14. In the case of dismissible misconduct in terms of section 17(1), or if the seriousness or extent of the alleged misconduct in terms of section 18(1) justifies it, the employer must initiate a disciplinary enquiry.
15. Notice of enquiry
- (a) The educator must be given written notice at least five working days before the date of the hearing,
 - (b) The written notice of the disciplinary hearing must be given in accordance with Form C attached to this Schedule and must contain-
 - (i) a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - (ii) details of the time, place and venue of the hearing; and
 - (iii) when delivered by registered post, the date on which the letter was posted; and
 - (iv) information on the rights of the educator to representation by a fellow educator or a trade union representative, and to call witnesses at the hearing.

- (c) The educator **must sign receipt of** the notice and if the **educator refuses to sign receipt of the notice, it must be** given to the educator in the presence of a fellow educator who shall sign in confirmation that **the notice was conveyed to the educator.**

16. Suspension

- (a) In the case of dismissible misconduct, the employer may suspend the educator on full pay for a maximum period of three months.
- (b) In the case of serious misconduct in terms of section 18, the employer may suspend an educator in accordance with the procedure contemplated in subitem (a), or transfer the educator to another post if the employer believes that the presence of the educator may jeopardise any investigation into the alleged misconduct, or endanger the well-being or safety of any person at the workplace.
- (c) If an educator is suspended or transferred, the employer must do everything possible to conclude a disciplinary' hearing within one month of the suspension or transfer. The presiding officer may decide on any further postponement. Such a postponement shall not exceed 90 days from the date of suspension. If the proceedings are not concluded within 90 days, the employer must enquire from the preceding officer what the reasons for the delay are and give directions for the speedy conclusion of the proceedings. At the time of such enquiry the employer may after giving the educator an opportunity to make representations direct that the further suspension will be without pay.

17. Conducting the disciplinary hearing

- (a) The disciplinary hearing must be held within ten working days after the notice referred to in item 14 is delivered to the educator.
- (b) The presiding officer at the hearing must be appointed by the employer.
- (c) If the educator so chooses, she or he may be represented at the hearing by a fellow educator or a representative of a trade union.

- (d) If the presiding officer deems it necessary, an interpreter shall assist at the hearing.
- (e) In a disciplinary hearing, neither the employer nor the educator may be represented by a legal practitioner or a labour consultant. For the purposes of this Act, a legal practitioner is defined as a person who is admitted to practise as an advocate or an attorney in South Africa.
- (f) If the educator fails to attend the hearing and the presiding officer concludes that the educator does not have a valid reason, the hearing may continue in the educator's absence.
- (g) The presiding officer must keep a record of the notice of the disciplinary hearing and the proceedings thereof.
- (h) The presiding officer must read the notice for the record and start the hearing.
- (i) The representative of the employer will lead evidence on the conduct giving rise to the hearing. The educator or the educator's representative may question any witness called by the representative of the employer.
- (j) For purposes of the investigation and hearing, the representative of the employer may summon any person who may be able to give information of material importance concerning the subject of the investigation or hearing, or has in his or her possession, custody or control, any book, document or object which may have a bearing on the matter, or any person requested by the educator to be summoned to appear at the hearing.
- (k) The summons to appear at a disciplinary hearing, shall be in accordance with Form D attached to this Schedule and served on the person by way of delivery-
 - (i) by hand;
 - (ii) telefax; or
 - (iii) registered post.
- (l) The date on which the summons is served will be-
 - (i) when delivering by hand, the date of delivery;
 - (ii) when delivering by telefax, the date reflected on the telefax; or
 - (iii) when delivering by registered post, the date on which the letter was posted.

- (m) **The educator or his or her representative will be given an opportunity to lead evidence. The representative of the employer may question the witnesses**
 - (n) **The presiding officer may ask any witness questions** for clarification.
 - (o) **The presiding officer shall** find whether or not the educator has committed misconduct, and must inform the educator **Of** the finding and the reasons therefor.
 - (p) Before deciding on a sanction, the presiding officer must give the educator an opportunity to present relevant circumstances in mitigation. **The representative of the employer may also present aggravating circumstances.**
 - (q) **The presiding officer must communicate the final outcome of the hearing to the employer and the educator within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the educator's personal file.**
18. (a) **If the presiding officer finds that an educator has committed misconduct, the presiding officer must on behalf of the employer impose a sanction, as contemplated in section 18(3) of the Act, taking into account the nature of the case and the seriousness and extent of the misconduct, the educator's previous record and any mitigating or aggravating circumstances.**
- (b) **With the agreement of the educator, the presiding officer may impose the sanction of suspension without pay or demotion as "an alternative to dismissal.**
- (c) **If an educator is demoted, after a year she or he may apply for promotion without prejudice.**
- (d) **The employer shall not implement the sanction during an appeal by the educator.**
19. **If an educator is found guilty of an offence in a court of law, and such offence constitutes misconduct in terms of the Act, the educator shall be deemed to have committed that misconduct, and the employer may determine an appropriate sanction.**

F. APPEALS

- 20.** (a) An educator may appeal against a finding or sanction by making an application in accordance with Form E attached hereto.
- (b) The educator must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be.
- (c) On receipt of the application referred to in paragraph (a), the Member of the Executive Council or the Minister, as the case may be, must request the employer to provide him or her with a copy of the record of the proceedings and any other relevant documentation.
- (d) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator or his or her representative, she or he shall notify the educator of the date, time and place where such representation shall be made.
- (e) The Member of the Executive Council or the Minister, as the case may be, shall consider the appeal, and may-
- (i) uphold the appeal;
 - (ii) amend the sanction; or
 - (iii) dismiss the appeal.
- (g) The employer shall immediately implement the decision of the Member of the Executive Council or the Minister, as the case may be.”.

FORM A
WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you commit further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or addition which will be filed together with this warning.

The nature of the 'misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM B
FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF EMPLOYER

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM C
NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code.

The alleged misconduct and the available evidence is based on the following evidence:

[A DETAILED DESCRIPTION OF MISCONDUCT MAYBE ATTACHED].

The hearing will be held at _____ **[PLACE]** on _____ **[DATE]** at _____ **[TIME]**. If you do not attend and cannot give reasonable grounds for failing to attend, the hearing will be held in your absence.

A fellow employee or a representative of a recognised union may represent you at the hearing.

You may give evidence at the hearing in the form of documents or through witnesses. You will be entitled to question any witness called by the employer.

If the **presiding** officer finds that you are guilty of misconduct, you may present any relevant circumstances which you wish to be taken into account by the presiding officer in **determining the sanction**.

SIGNATURE OF EMPLOYER

DATE

ACKNOWLEDGEMENT OF RECEIPT BY EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

FORM D

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:

TO:

(Name and residential address of person summoned)

day

You are hereby summoned to appear personally at _____ (time) at _____
of _____ 20____ at _____ hearing in terms of Schedule 2 to the
(place) before the presiding officer of a disciplinary hearing, for the purpose of giving
Employment of Educators Act, 1998 (Act No. 76 of 1998)
evidence regarding the following misconduct:

_____ document or object in your possession, custody or
and to submit the following book,
control, which may have a bearing on the matter;

(specify the book, document or object)

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

FORM E
NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I, _____, [NAME OF EMPLOYEE] am hereby appealing against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on _____ [DATE] at _____ [PLACE].

I attach a copy of the final outcome of the disciplinary enquiry and the record of the hearing. [THE APPEAL REQUEST IS NOT VALID UNLESS THESE DOCUMENTS ARE ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceeding.

SIGNATURE OF EMPLOYEE

DATE

[PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators may only appeal against the finding and resultant sanction of:

1. Suspension without pay for a period not exceeding three months;
2. Demotion;
3. A Fine
4. A combination of the above sanction or together with warnings; or
5. Dismissal.

Short Title

16. This Act is the Education Laws Amendment Act, 2000.

EXPLANATORY MEMORANDUM TO THE EDUCATION LAWS AMENDMENT BILL, 2000

1. INTRODUCTION

This Bill provides **for the amendment of the following Acts:**

- 1.1 The South African Qualifications Authority Act, 1995;
- 1.2 The South African Schools Act, 1996; and
- 1.3 The Employment of Educators Act, 1998.

2. BACKGROUND

After extensive consultations with role players, the Department of Education decided that legislation should be drafted to amend the above-mentioned Acts.

The following most important matters received attention:

- 2.1 Increasing the representation of organised labour on the Authority.
- 2.2 **The making of further provision for public schools on private property.**
- 2.3 **Providing for the governance of a new public school until a governing body is constituted.**
- 2.4 **Providing for representivity of governing bodies.**
- 2.5 **Provisions to provide for safety measures at public schools.**
- 2.6 **Provisions dealing with incapacity, misconduct and incapacity code and procedure and a disciplinary code and procedure.**

3. REASONS FOR AND SUBSTANCE OF BILL

3.1 The South African Quality Authority Act, 1995

The Act is amended so as to increase the number of members representing organised labour on the Authority from two to three. The reason for this is that the voice of organised labour is of crucial importance

in that the quality of training is one of the most important requirements for employment opportunities.

3.2 The South African Schools Act, 1996

This Act was amended to address the following concerns:

The Member of the Executive Council is now authorised to expropriate private property on which a public school is situated in terms of section 58 of the Schools Act, instead of invoking the provisions of the Expropriation Act, which involves time-consuming and complicated procedures. The authority to expropriate the private property will only be exercised when the private owner of the property is not willing to enter into an agreement contemplated in section 14 of the Schools Act

When a new public school is provided, there is no governing body to perform the governing functions of the school. The Head of Department is therefore authorised to perform such functions until a governing body has been constituted in terms of the provisions of the Schools Act.

In accordance with the government policy of representivity, the governing body of a public school, which is not representative of the racial composition of the learners of the school, must co-opt two parent members with voting rights from that part of the learner community that is not represented.

It is a known fact that schools are currently not safe for learners, educators and parents. The Minister is therefore authorised by the Bill to make regulations to provide for safety measures at public schools

3.3 The Employment of Educators Act, 1998

The Head of Department may appoint an educator only after the recommendation of the school governing body. A new public school, adult learning centre or further education and training institution has no

governing body or council, whatever the case may be. To fill this vacuum, the Head of Department is empowered to **make the initial appointment, promotion or transfer of an educator to a new public school or public further education and training institution.**

The Bill streamlines the procedures dealing with incapable educators and educators who are guilty of misconduct so as to bring the Act in line with the provisions of the Labour Relations Act. 1995.

4. **DISCUSSION**

A Bill has been drafted that incorporates the above-mentioned concerns

5. **THE BILL AND THE EDUCATION SYSTEM**

The Bill is intended to close the above-mentioned loopholes in the aforesaid Acts in order to create a watertight education system.

6. **PARLIAMENTARY PROCEDURE**

The Department and the Chief State Law Adviser are of the opinion that this Bill must be dealt with in terms of sections 73 and 76 of the "Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).