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GOVERNMENT NOTICE

DEPARTMENT OF EDUCATION

No. 708

27 May 2003

FURTHER EDUCATION AND TRAINING ACT, 1998 (ACT NO. 98 OF 1998)

CALL FOR COMMENT ON THE DRAFT REGULATIONS TO PROHIBIT INITIATION PRACTICES IN FURTHER EDUCATION AND TRAINING INSTITUTIONS

The Minister of Education, after consultation with the Council of Education Ministers, hereby publishes the draft regulations to prohibit initiation practices in further education and training institutions in terms of section 47(d) of the Further Education and Training Act, 1998, as set out in the Schedule.

Comments from interested parties are invited, and should reach the Department not later than 25 June 2003.

Comments should be directed to the Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke. Comments may also be faxed to (012) 326-9128 or sent by E-mail to Locke.M@doe.gov.za.

The name, address, telephone number and fax number of the person, governing body or organisation responsible for submitting comments must also be provided.

PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

SCHEDULE

Scope of application

1. These regulations apply to all public and private further education and training institutions.

Definitions

2. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context indicates otherwise –

“assault” means the unlawful and intentional-

- (a) application of force, directly or indirectly, to another person, or
- (b) threatening another with immediate personal violence in circumstances which lead the threatened person to believe that the other intends or has the power to carry out the threat;

“*crimen iniuria*” means the unlawful and intentional violation of the dignity or privacy of another, in circumstances where such violation is not of a trifling nature;

“degradation” means any behaviour towards humiliating another, causing loss of respect or standing in the further education and training community;

“harassment” means behaviour which is hostile or offensive to a reasonable person and which unreasonably interferes with an individual’s work,

academic performance or social life and any behaviour that creates an undermining of the integrity or dignity of an individual. Such behaviour can make a reasonable person feel uncomfortable, unsafe, frightened, embarrassed, and may be physical, verbal or non-verbal.

“humiliation” means any word or act which causes another to lose self-respect or the respect of others;

“initiation practice” means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of a further education and training institution, a group, intramural or extramural activities, inter-institution sports teams, or organisation-

- (a) endangers the mental or physical health or safety of a person;
- (b) seeks to undermine the intrinsic worth of human beings by treating some as inferior to others;
- (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
- (d) undermines the fundamental rights and values that underpin the Constitution;
- (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or
- (f) destroys public or private property.

“intimidation” means any act by a person with the intent to compel or induce a particular person to do or to abstain from doing any act or to assume or to abandon a particular standpoint by means of-

- (a) assault, injury or causing damage to that person or any other person; or

- (b) threats to kill, assault, injure or cause damage to that person or any other person.

“peer pressure” means the influencing factor –

- (a) whereby a student feels pressured by any student to act or not to act and to participate or not to participate in an activity in order not to be ostracized;
- (b) whereby a student would not come forward after being initiated for fear of victimisation.

Induction process

- 3. Further education and training institutions are encouraged to engage in positive orientation which involves a process of induction that seeks to introduce learners to their new academic environment in a manner where dignity is enhanced as students are advised, guided and mentored. This process focuses on self-discipline, self-motivation and self-respect together with academic and sporting achievements.

Prohibited initiation practices

- 4. No principal, educator, employee or student may allow or participate in any of the following acts or practices:
 - (a) assault;
 - (b) *crimen iniuria*;

- (c) degradation;
- (d) harassment;
- (e) humiliation;
- (f) destruction of public or private property;
- (g) intimidation;
- (h) peer pressure; or
- (i) any other activity which has a similar effect and object other than (a) to (h) above, whether it takes place at a further education and training institution, a hostel or during any further education and training activities away from the further education and training premises.

Responsibilities of the principal of a public or private further education and training institution regarding the prohibition of initiation practices

5.1 The principal must encourage students, educators and other employees of the institution to report any perpetrators of initiation practices contemplated in regulation 4 to him or her.

5.2 If any initiation practice contemplated in regulation 4 is reported to the principal, he or she must report, in the case of-

- (a) students of a public further education and training institution, to the Council established in terms of section 8(1) of the Act;
- (b) students of a private further education and training institution, to the body responsible for governance;

- (c) educators employed in posts contemplated in section 14(1) of the Act, to the head of department responsible for education in a province;
- (d) non-educators and educators employed in posts created by the Council in terms of sections 14(2) and (3) of the Act, to the Council of the public further education and training institution; or
- (e) any staff employed by a private further education and training institution, to the body responsible for governance.

5.3 Disciplinary measures must be taken in terms of applicable law or disciplinary instruments against the perpetrators.

Short title

6. These regulations are called the *Regulations to Prohibit Initiation Practices in Public and Private Further Education and Training Institutions*.

EXPLANATORY MEMORANDUM ON THE REGULATIONS TO PROHIBIT INITIATION PRACTICES IN FURTHER EDUCATION AND TRAINING INSTITUTIONS [FETI]

1. BACKGROUND

- 1.1 The Human Rights Commission recently investigated initiation practices in education institutions and subsequently recommended that the only way of prohibiting such practices is by means of Regulations.
- 1.2 Since the Further Education and Training Act, 1998 (Act No. 98 of 1998) (the Act), did not authorize the drafting of such regulations, it was necessary to amend the Act to that effect. Section 47 of the Act was amended by section 26 of the Education Laws Amendment Act, 2002 (Act No. 50 of 2002), so as to make it legally possible to draft the regulations.
- 1.3 The regulations on the prohibition of initiation practices in FETIs are modelled on the regulations to prohibit initiation practices in both public and independent schools. The latter regulations were published in *Government Gazette* No. 24165 and came into force on 13 December 2002.
- 1.4 It is clearly stated in the regulations that they are not aimed at prohibiting the induction process whereby learners are introduced to their new academic environment in a manner where dignity is enhanced, as students are advised, guided and mentored. In fact, FETIs are encouraged to engage in positive orientation, but there must be no humiliation, such as wearing notices around students' necks.

2. DISCUSSION

- 2.1 The regulations have been drafted by the Directorate: Legislation and Legal Services.
- 2.2 The prohibited practices are listed as follows:
 - (a) Assault;
 - (b) *crimen iniuria*;
 - (c) degradation;
 - (d) harassment;
 - (e) humiliation;
 - (f) destruction of personal property;
 - (g) intimidation;
 - (h) peer pressure; and
 - (i) any other activity which has a similar effect and object other than those listed in (a) to (h), where it takes place at a further education and training institution, hostel or during any further education and training activities held away from the further education and training premises.

- 2.3 The above-mentioned prohibited practices are defined in the definition section of the regulations, so as to ensure clarity and certainty.

3. FINANCIAL IMPLICATIONS

None.

4. **CONSULTATION**

The regulations shall be published for comment by role players.

5. **PROCEDURE**

The final version of the regulations will be published immediately after comments have been incorporated on merit and the Minister has approved them. The regulations will commend on the date of publication.
