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THE PRESIDENCY

No. 1284 5 December 2001

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

No. 57 of 2001: Education Laws Amendment Act, 2001



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 29 November 2001.)

ACT

To amend the South African Schools Act, 1996, so as to provide for the representative council of learners to be the only recognised learner body at a school; to make further provisions regarding the failure of a governing body to perform its functions; to prohibit public schools from raising money by means of loans or overdrafts without the approval of the Member of the Executive Council; to prohibit public schools from paying moneys into a trust; to effect textual corrections; to amend the Employment of Educators Act, 1998, so as to effect textual corrections to existing provisions; to amend the Further Education and Training Act, 1998, so as to make further provisions regarding loans and overdrafts; to effect textual corrections to existing provisions; and to provide for matters connected therewith.

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

Amendment of section 11 of Act 84 of 1996, as amended by section 3 of Act 100 of 1997

1. Section 11 of the South African Schools Act, 1996 (hereinafter referred to as the principal Act), is amended by—

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

“(1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth grade or higher, and such council is the only recognised and legitimate representative learner body at the *school*.”; and

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

“(2) [A] Subject to policy made in terms of section 3(4)(g) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Member of the Executive Council [may] must, by notice in the Provincial Gazette, determine [guidelines] the functions and the procedures for the establishment[,], and election [and functions] of representative councils of *learners*.”.

Substitution of section 16 of Act 84 of 1996

2. Section 16 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to this Act, the governance of every public school is vested in its governing body and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.”.

Amendment of section 20 of Act 84 of 1996

3. Section 20 of the principal Act is amended by the substitution for paragraph (i) of subsection (1) of the following paragraph:

“(i) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the [**Educators Employment Act, 1994 (Proclamation No. 138 of 1994)**] *Employment of Educators Act, 1998 (Act No. 76 of 1998)*, and the *Labour Relations Act, 1995 (Act No. 66 of 1995)*.”. 10

Amendment of section 25 of Act 84 of 1996

4. Section 25 of the principal Act is amended by—

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

“(1) If the *Head of Department* determines on reasonable grounds that a *governing body* has ceased to perform [its] functions allocated to it in terms of *this Act* or has failed to perform one or more of such functions, [**the Head of Department**] he or she must appoint sufficient persons to perform [those] all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.”; 15

(b) the substitution for subsection (3) of the following subsection: 20

“(3) [**The**] If a *governing body* has ceased to perform its functions, the *Head of Department* must ensure that a *governing body* is elected in terms of *this Act* within a year after the appointment of persons contemplated in subsection (1).”; and

(c) the addition of the following subsection: 25

“(4) If a *governing body* fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the *governing body* performs its functions.”. 30

Amendment of section 36 of Act 84 of 1996 30

5. Section 36 of the principal Act is amended by the numbering of the existing section as subsection (1) and by the addition of the following subsections:

“(2) Despite subsection (1), a *governing body* may not enter into any loan or overdraft agreement so as to supplement the *school* fund, without the written approval of the *Member of the Executive Council*. 35

(3) If a person lends money or grants an overdraft to a *public school* without the written approval of the *Member of the Executive Council*, the State and the *public school* will not be bound by the contract of lending money or an overdraft agreement.”. 40

Amendment of section 37 of Act 84 of 1996 40

6. Section 37 of the principal Act is amended by—

(a) the substitution for subsection (3) of the following subsection:

“(3) The *governing body* of a *public school* must open and maintain [a] one banking account, but a *governing body* of a *public school* may, with the approval of the *Member of the Executive Council*, invest surplus money in another account.”; 45

(b) the insertion after subsection (6) of the following subsection:

“(7) (a) Money from the *school* fund of a *public school* may not be paid into a trust or be used to establish a trust. 50

(b) If a trust was established from a *school* fund of a *public school* or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the *school* fund.

(c) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use such money or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.” 5

Amendment of section 38 of Act 84 of 1996

7. Section 38 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) A governing body of a public school must prepare a budget each year [,] 10 according to **[guidelines]** prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.”

Amendment of item 2 of Schedule 2 to Act 76 of 1998

8. Item 2 of Schedule 2 to the Employment of Educators Act, 1998 (hereinafter 15 referred to as the Educators Act), is amended by the substitution for subparagraph (iv) of paragraph (d) of the following subparagraph:

“(iv) have the right to appeal against **[any decision]** a finding or sanction contemplated in section 25(2);”.

Amendment of item 4 of Schedule 2 to Act 76 of 1998 20

9. Item 4 of Schedule 2 to the Educators Act is amended by—

(a) the substitution for paragraph (f) of subitem (4) of the following paragraph:

“(f) If[,] during the six-month period[,] the educator is subject to disciplinary action, the written warning and the written objection or additional information contemplated in paragraph (g), may be taken into 25 account in deciding on an appropriate sanction;”;

(b) the substitution for paragraph (f) of subitem (5) of the following paragraph:

“(f) If[,] during the six-month period[,] the educator is subject to disciplinary action, the final written warning and the written objection or additional information contemplated in paragraph (g), may be taken into 30 account in deciding on an appropriate sanction;”.

Amendment of item 5 of Schedule 2 to Act 76 of 1998

10. Item 5 of Schedule 2 to the Educators Act is amended by the substitution for paragraph (e) of subitem (2) of the following paragraph:

“(e) information on the rights of the educator to representation by a legal 35 representative, if the **[employer]** presiding officer so directs; and”.

Substitution of Forms A, B, C and D of Schedule 2 to Act 76 of 1998

11. Schedule 2 to the Educators Act is amended by:

(a) the substitution for Form A of the following Form:

“Form A

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.] 5

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in 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. 10

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

The nature of the misconduct is: 15

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE 20

SIGNATURE OF WITNESS (if applicable)

DATE”;

(b) the substitution for Form B of the following Form:

“Form B

FINAL WRITTEN WARNING 25

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE] 30

This is a final written warning in terms of the disciplinary procedure. Should you engage in further **[transgressions]** misconduct 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. 35

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. 40

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

DATE 45

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE”;

50

(c) the substitution for Form C of the following Form:

“Form C

NOTICE OF DISCIPLINARY MEETING

[DATE]
[NAME OF EMPLOYEE] 5
[PERSAL NO.]
[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of item 6 of the Disciplinary Code. 10

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

[A DETAILED DESCRIPTION OF THE ALLEGED MISCONDUCT MAY BE ATTACHED.] 15

The hearing will be held at [PLACE] on [DATE] at [TIME]. If you do not attend and cannot provide reasonable grounds for failing to attend, the hearing will be held in your absence. 20

A fellow employee or a representative of a recognised union may represent you at the hearing. You may also be represented by a legal representative if the presiding officer so directs.

You may give evidence at the hearing and adduce evidence in the form of documents or through witnesses. You are entitled to question any witness called by the employer. 25

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. 30

SIGNATURE OF REPRESENTATIVE OF EMPLOYER
DATE 35

ACKNOWLEDGMENT OF RECEIPT BY EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE”; and 40

(d) the substitution for Form D of the following Form:

“Form D

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:
TO: 45
(Name and residential address of person summoned)

You are hereby summoned to appear personally on the day of..... 20 at (time) at (place) before the presiding officer of a disciplinary hearing in terms of Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), 50 for the purpose of giving evidence regarding the following misconduct:

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

(specify the book, document or object)

.....
SIGNATURE OF REPRESENTATIVE [OR] OF EMPLOYER”.

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Amendment of section 8 of Act 98 of 1998

12. Section 8 of the Further Education and Training Act, 1998 (hereinafter referred to as the Training Act), is amended by the deletion of subsection (5).

Amendment of section 20 of Act 98 of 1998

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13. Section 20 of the Further Education and Training Act, is amended by the numbering of the existing section as subsection (1) and by the addition of the following subsection:

“(2) If a person lends money or grants an overdraft to a public further education and training institution without the approval of the Member of the Executive Council, the State and the institution is not bound by the contract of lending money or an overdraft agreement.”.

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Amendment of section 49 of Act 98 of 1998

14. Section 49 of the Training Act is amended by the addition of the following subsections:

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“(4) Institutions contemplated in subsection (1) may not raise money by means of loans or overdrafts without the approval of the Member of the Executive Council.

(5) If a person lends money or grants an overdraft to an institution contemplated in subsection (1), without the approval of the Member of the Executive Council, the State and the institution is not bound by the contract of lending money or an overdraft agreement.”.

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Short title

15. This Act is called the Education Laws Amendment Act, 2001.