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EDUCATION LABOUR
RELATIONS COUNCIL

POLICY HANDBOOK FOR EDUCATORS

commissioned by

**THE EDUCATION
LABOUR RELATIONS COUNCIL
(ELRC)**

edited by

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**NATIONAL EDUCATION POLICY ACT
27 of 1996**

[ASSENTED TO 16 APRIL, 1996]

[AFRIKAANS TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 24 APRIL, 1996]

as amended by

Education Laws Amendment Act, No. 100 of 1997

Education Laws Amendment Act, No. 48 of 1999

ACT

To provide for the determination of national policy for education; to amend the National Policy for General Education Affairs Act, 1984, so as to substitute certain definitions; to provide afresh for the determination of policy on salaries and conditions of employment of educators; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

1. Definitions
2. Objectives of Act
3. Determination of national education policy by Minister
4. Directive principles of national education policy
5. Consultation on national education policy
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8. Monitoring and evaluation of education
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12. Allowances and remuneration of members of sub-committees and consultative bodies
13. Administrative functions of Council, Committee, and consultative bodies
14. Amendment of Act 76 of 1984
15. Short title

Preamble

WHEREAS it is necessary to adopt legislation to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights;

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

Definitions

1. In this Act, unless the context indicates otherwise –

“**Committee**” means the Heads of Education Departments Committee established by section 10;

“**consultative body**” means a consultative body contemplated in section 11;

“**Council**” means the Council of Education Ministers established by section 9;

“**Department**” means the Department of Education;

“**Director-General**” means the Director-General: Education;

“**education**” means any education and training provided by an education institution, other than training as defined in section 1 of the Manpower Training Act, 1981 (Act No. 56 of 1981);

“**education department**” means the Department and a department of any provincial government which is responsible for education;

“**education institution**” means any institution providing education, whether early childhood education, primary, secondary, further or higher education, other than a university or technikon, and also an institution providing specialised, vocational, adult, distance or community education;

“**educator**” means any person who teaches, educates or trains other persons at an education institution or assists in rendering education services or education auxiliary or support services provided by or in an education department, but does not include any officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“**Minister**” means the Minister of Education;

“**organised teaching profession**” means an organisation or union which is a member of the Education Labour Relations Council established by section 6 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and is recognised by the Minister for the purposes of this Act;

“**policy instrument**” means the policy instrument referred to in section 7;

“**provincial political head of education**” means the member of an Executive Council responsible for education in a province;

“**school**” means a pre-primary, primary or secondary school;

“**stakeholder**” means an organisation or body with a direct and continuing interest in the education institution, programme, phase or sector in question;

“**student**” means any person enrolled in an education institution;

“**sub-committee**” means a sub-committee of the Committee.

Objectives of Act

2. The objectives of the Act are to provide for –
- (a) the determination of national education policy by the Minister in accordance with certain principles;
 - (b) the consultations to be undertaken prior to the determination of policy, and the establishment of certain bodies for the purpose of consultation;
 - (c) the publication and implementation of national education policy;
 - (d) the monitoring and evaluation of education.

Determination of national education policy by Minister

3. (1) The Minister shall determine national education policy in accordance with the provisions of the Constitution and this Act.
- (2) In determining national policy for education at education institutions, the Minister shall take into account the competence of the provincial legislatures in terms of section 146 of the Constitution, and the relevant provisions of any provincial law relating to education.
[Sub-s. (2) substituted by s. 11(a) of Act No. 100 of 1997.]
- (3) Subject to the Constitution, national policy shall prevail over the whole or a part of any provincial policy on education if there is a conflict between the national and provincial policies.
[Sub-s. (3) substituted by s. 4 of Act No. 48 of 1999.]
- (4) Subject to the provisions of subsections (1) to (3), the Minister shall determine national policy for the planning, provision, financing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine national policy for –
- (a) education management information systems, including the provision of data in accordance with the international obligations of the government;
 - (b) the organisation, management and governance of the national education system;
 - (c) facilities, finance and development plans for education, including advice to the Financial and Fiscal Commission;
 - (d) innovation, research and development in education;
 - (e) the ratio between educators and students;
 - (f) the professional education and accreditation of educators;

- (g) the organisation, management, governance, funding, establishment and registration of education institutions;
- (h) compulsory school education;
- (i) the admission of students to education institutions, which shall include the determination of the age of admission to schools;
- (j) the minimum number of hours per day and days per year during which education shall be provided for different phases of education in education institutions;
- (k) co-ordination of the dates of school terms among provinces;
- (l) curriculum frameworks, core syllabuses and education programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or accrediting body;
- (m) language in education;
- (n) control and discipline of students at education institutions: Provided that no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any education institution;
- (o) education support services, including health, welfare, career and vocational development, counselling and guidance for education institutions, within the functional responsibility of a department of education;
- (p) co-operation between the Department and –
 - (i) other state departments;
 - (ii) provincial education departments;
 - (iii) local government; and
 - (iv) non-government organisations,with a view to advancing the national education policy contemplated in this section and the Reconstruction and Development Programme;
- (q) international relations in the field of education;
- (r) executive functions required to implement national education policy determined in terms of this Act, including the implementation of measures to address past discriminatory practices.

[Sub-s. (4) amended by s. 11(b) of Act No. 100 of 1997.]

Directive principles of national education policy

4. The policy contemplated in section 3 shall be directed toward –

- (a) the advancement and protection of the fundamental rights of every person guaranteed in terms of Chapter 2 of the Constitution, and in terms of international conventions ratified by Parliament, and in particular the right –
 - (i) of every person to be protected against unfair discrimination within or by an education department or education institution on any ground whatsoever;
 - (ii) of every person to basic education and equal access to education institutions;
 - (iii) of a parent or guardian in respect of the education of his or her child or ward;
 - (iv) of every child in respect of his or her education;
 - (v) of every student to be instructed in the language of his or her choice where this is reasonably practicable;
 - (vi) of every person to the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;
 - (vii) of every person to establish, where practicable, education institutions based on a common language, culture or religion, as long as there is no discrimination on the ground of race;
 - (viii) of every person to use the language and participate in the cultural life of his or her choice within an education institution;

[Para. (a) amended by s. 12 of Act No. 100 of 1997.]
- (b) enabling the education system to contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large, including the advancement of democracy, human rights and the peaceful resolution of disputes;
- (c) achieving equitable education opportunities and the redress of past inequality in education provision, including the promotion of gender equality and the advancement of the status of women;
- (d) endeavouring to ensure that no person is denied the opportunity to receive an education to the maximum of his or her ability as a result of physical disability;
- (e) providing opportunities for and encouraging life-long learning;

- (f) achieving an integrated approach to education and training within a national qualifications framework;
- (g) cultivating skills, disciplines and capacities necessary for reconstruction and development;
- (h) recognising the aptitudes, abilities, interests, prior knowledge and experience of students;
- (i) encouraging independent and critical thought;
- (j) promoting a culture of respect for teaching and learning in education institutions;
- (k) promoting enquiry, research and the advancement of knowledge;
- (l) enhancing the quality of education and educational innovation through systematic research and development on education, monitoring and evaluating education provision and performance, and training educators and education managers;
- (m) ensuring broad public participation in the development of education policy and the representation of stakeholders in the governance of all aspects of the education system;
- (n) achieving the cost-effective use of education resources and sustainable implementation of education services;
- (o) achieving close co-operation between the national and provincial governments on matters relating to education, including the development of capacity in the departments of education, and the effective management of the national education system.

Consultation on national education policy

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 applicable law, and with –
- (a) the Council;
 - (b) such national organisations representing principals of institutions providing further education and training as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), as the Minister may recognise for this purpose;
[Para. (b) substituted by s. 5 of Act No. 48 of 1999.]
 - (c) the trade unions represented in the Education Labour Relations Council referred to in section 37(3)(b) of the Labour Relations Act, 1995 (Act No. 66 of 1995), read with paragraph 3(2) of Schedule 1 to that Act;
[Para. (c) substituted by s. 5 of Act No. 48 of 1999.]
 - (d) such national organisations representing governing bodies of schools as the Minister may recognise for this purpose;
[Para. (d) substituted by s. 5 of Act No. 48 of 1999.]
 - (e) such national organisations representing students as the Minister may recognise for this purpose;
 - (f) such other national stakeholder bodies as the Minister may recognise for this purpose.
- (2) The policy contemplated in section 3 shall be determined by the Minister with the concurrence of the Minister of Finance in so far as it involves expenditure from the State Revenue Fund.
- (3) Nothing in this section shall limit the discretion of the Minister to consult whomsoever he or she wishes for advice on the determination of national education policy.

Consultation on legislation

6. Legislation on a matter referred to in section 3 shall be introduced in Parliament or, in the case of regulations, be published in the *Gazette* only after consultation between the Minister and –
- (a) the Council, in respect of education at education institutions; and
 - (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), in respect of any matter falling within the objectives of that Act.

Publication of national education policy

7. The Minister shall within 21 days after determining policy in terms of section 3–
- (a) give notice of such determination in the *Gazette* and indicate in such notice where the policy instrument issued with regard thereto may be obtained;
 - (b) table the policy instrument referred to in paragraph (a) in Parliament within 21 days after the notice has appeared in the *Gazette*, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament.

Monitoring and evaluation of education

8. (1) The Minister shall direct that the standards of education provision, delivery and performance throughout the Republic be monitored and evaluated by the Department annually or at other specified intervals, with the

object of assessing progress in complying with the provisions of the Constitution and with national education policy, particularly as determined in terms of section 3(3).

- (2) Each directive issued in terms of subsection (1) shall comply with the provisions of any law establishing a national qualifications framework, and shall be formulated after consultation with the bodies referred to in section 5(1).
- (3) The Department shall undertake the monitoring and evaluation contemplated in subsection (1) by analysis of data gathered by means of education management information systems, or by other suitable means, in co-operation with provincial departments of education.
- (4) The Department shall fulfill its responsibilities in terms of subsections (1) to (3) in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.
- (5) The Department shall prepare and publish a report on the results of each investigation undertaken in terms of subsection (3) after providing an opportunity for the competent authority concerned to comment, which comment shall be published with the report.
- (6) If a report prepared in terms of subsection (5) indicates that the standards of education provision, delivery and performance in a province do not comply with the Constitution or with the policy determined in terms of section 3(3), the Minister shall inform the provincial political head of education concerned and require the submission within 90 days of a plan to remedy the situation.
- (7) A plan required by the Minister in terms of subsection (6) shall be prepared by the provincial education department concerned in consultation with the Department, and the Minister shall table the plan in Parliament with his or her comments within 21 days of receipt, if Parliament is then in ordinary session, or, if Parliament is not in ordinary session, within 21 days after the commencement of the first ensuing ordinary session of Parliament.

Council of Education Ministers

9. (1) There is hereby established a council, called the Council of Education Ministers, consisting of –
- (a) the Minister, who shall be the chairperson;
 - (b) the Deputy Minister of Education, if such Deputy Minister is appointed, who in the absence of the Minister shall be designated by the Minister as chairperson; and
 - (c) every provincial political head of education.
- (2) The Director-General shall attend meetings of the Council in order to report on the proceedings of the Committee, and to advise on any other matter relating to the responsibilities of the Department.
- (3) The chairpersons of the Portfolio Committee on Education in the National Assembly and the Select Committee on Education in the Senate may attend meetings of the Council.
- (4) The functions of the Council shall be to –
- (a) promote a national education policy which takes full account of the policies of the government, the principles contained in section 4, the education interests and needs of the provinces, and the respective competence of Parliament and the provincial legislatures in terms of section 146 of the Constitution;
- [Para. (a) substituted by s. 13 of Act No. 100 of 1997.]
- (b) share information and views on all aspects of education in the Republic; and
 - (c) co-ordinate action on matters of mutual interest to the national and provincial governments.
- (5) The Council may draw up such rules regarding the convening of its meetings, the frequency of its meetings, the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers.
- (6) The proceedings of the Council shall not be invalid merely by virtue of the fact that there is a vacancy in the Council.

Heads of Education Departments Committee

10. (1) There is hereby established a committee called the Heads of Education Departments Committee consisting of –
- (a) the Director-General, who shall be the chairperson;
 - (b) the Deputy Directors-General of the Department; and
 - (c) the heads of the provincial education departments.
- (2) The functions of the Committee shall be to –
- (a) facilitate the development of a national education system in accordance with the objectives and principles provided for in this Act;
 - (b) share information and views on national education;

- (c) co-ordinate administrative action on matters of mutual interest to the education departments; and
 - (d) advise the Department on any matter contemplated in sections 3, 4, 5, 6, 7, 8 and 11 in respect of education, or on any other matter relating to the proper functioning of the national education system.
- (3) The Committee may establish sub-committees to assist it in the performance of its functions, and –
- (a) may appoint persons who are not members of the Committee to be members of a sub-committee: Provided that the organised teaching profession shall be invited to nominate representatives as members of each sub-committee;
 - (b) designate the chairperson of a sub-committee or direct that the chairperson be appointed by the sub-committee from among its members.
- (4) (a) Meetings of the Committee shall be held at such times and places as the chairperson of the Committee may determine.
- (b) The proceedings of the Committee shall not be invalid merely by virtue of the fact that there is a vacancy in the Committee.
- (c) If the chairperson of the Committee is absent from a meeting of the Committee, one of the Deputy Directors-General designated for this purpose by the chairperson shall take the chair at that meeting.
- (5) The Committee may draw up rules regarding the procedure at its meetings, including the quorum for its meetings, and any other matter it may deem necessary or expedient for the proper performance of its functions or the exercise of its powers: Provided that not less than four meetings per year shall be held.

Consultative bodies

11. (1) The Minister may, subject to any applicable law, by regulation establish such bodies as may be necessary to advise him or her on matters contemplated in section 3: Provided that the Minister shall establish –
- (a) a body to be known as the National Education and Training Council, whose membership shall reflect the main national stake-holders in the national education system, to advise on broad policy and strategy for the development of the national education system and the advancement of an integrated approach to education and training;
 - (b) such other bodies as may be necessary to represent the interests of particular sectors of the education system.
- (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.
- (3) Different regulations may be made in respect of different bodies established under subsection (1).

Allowances and remuneration of members of sub-committees and consultative bodies

12. A member of a sub-committee or a consultative body, who is not in the full-time employment of the State may, in respect of the services rendered by that member in connection with the affairs of the sub-committee or consultative body, from money appropriated for that purpose by Parliament, be paid such travelling and subsistence and other allowances, as the Minister, with the concurrence of the Minister of Finance, may determine.

Administrative functions of Council, Committee, and consultative bodies

13. (1) The administrative functions of the Council, Committee and each consultative body shall be performed by officials of the Department who are designated by the Director-General for that purpose.
- (2) The Director-General shall in respect of the Council, Committee and each consultative body designate a Secretary under whose direction the other officials shall perform their functions.

Amendment of Act 76 of 1984

14. (1) Subject to the provisions of subsection (2), the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984), is hereby amended to the extent set out in the Schedule.
- (2) Anything done under a provision of the National Policy for General Education Affairs Act, 1984, prior to the amendment thereof by subsection (1), shall remain in force as if such amendment had not been made.

Short title

15. This Act shall be called the National Education Policy Act, 1996.

Schedule

<i>Number and year of law</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 76 of 1984	National Policy for General Education Affairs Act	<p>1. The substitution for section 1 of the following section:</p> <p>“Definitions</p> <p>1. In this Act, unless the context indicates otherwise –</p> <p> ‘department of education’ means the departments of the national and provincial governments which are responsible for education;</p> <p> ‘educator’ means any person who teaches, educates or trains other persons at any school, technical college or teachers’ training college, or assists in rendering professional services or educational auxiliary services provided by or in a department of education, but does not include any officer or employee, as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);</p> <p> ‘Minister’ means the Minister of Education”.</p> <p>2. The substitution for section 2 of the following section:</p> <p>“Determination of policy on salaries and conditions of employment of educators</p> <p>2. (1) Subject to the provisions of this section and the provisions of any law regarding the financing of education, the Minister may determine the national policy to be applied in respect of the salaries and conditions of employment of educators.</p> <p> (2) The policy contemplated in subsection (1) shall be determined by the Minister in accordance with the provisions of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), and, if it involves expenditure from the State Revenue Fund, with the concurrence of the Minister of Finance.”.</p> <p>3. The repeal of sections 3, 4, 5, 6, 7, 8, 9 and 10.</p> <p>4. The substitution for section 11 of the following section:</p> <p>“Short title</p> <p>11. This Act shall be called the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984.”.</p> <p>5. The substitution for the long title of the following long title:</p> <p>“To provide for the determination of national policy in respect of salaries and conditions of employment of educators; and for matters connected therewith.”.</p>

ADMISSION POLICY FOR ORDINARY PUBLIC SCHOOLS

G.N. 2432 of 1998 published in *Government Gazette* No. 19377 dated 19 October 1998

ADMISSION POLICY FOR ORDINARY PUBLIC SCHOOLS

The Minister of Education, after consultation with each Member of the Council of Education Ministers, hereby give notice in terms of section 3(4)(i) of the National Education Policy Act, 1996 (No. 27 of 1996) of the admission policy for learners to ordinary public schools, as set out in the Schedule.

Minister of Education

October 1998

SCHEDULE

ADMISSION POLICY FOR ORDINARY PUBLIC SCHOOLS

Interpretation

1. In this policy any expression to which a meaning has been assigned in the National Education Policy Act, 1996 (Act No. 27 of 1996) and the South African Schools Act, 1996 (Act No. 84 of 1996), has that meaning.

Scope

2. This policy, read with the age requirement for admission to ordinary public schools, published in the same government notice, applies uniformly in all provincial departments of education and ordinary public schools.
3. The admission policy of an ordinary public school must be consistent with this policy.

Purpose

4. The purpose of this policy is to provide a framework to all provincial departments of education and governing bodies of public schools for developing the admission policy of the school.

Administration of admissions

5. The Head of Department must determine a process of registration for admission to public schools in order to enable the admission of learners to take place in a timely and an efficient manner. The Head of Department and the school governing bodies should encourage parents¹ to apply for the admission of their children before the end of the preceding school year.
6. The Head of Department is responsible for the administration of the admission of learners to a public school. The Head of Department may delegate the responsibility for the admission of learners to a school to officials of the Department.
7. The admission policy of a public school is determined by the governing body of the school in terms of section 5(5) of the South African Schools Act, 1996 (No. 84 of 1996). The policy must be consistent with the Constitution of the Republic of South Africa, 1996 (No. 108 of 1996), the South African Schools Act, 1996 and applicable provincial law. The governing body of a public school must make a copy of the school's admission policy available to the Head of Department.
8. The Head of Department must co-ordinate the provision of schools and the administration of admissions of learners to ordinary public schools with governing bodies to ensure that all eligible learners are suitably accommodated in terms of the South African Schools Act, 1996. Subject to this policy, it is particularly important that all eligible learners of compulsory school going age are accommodated in public schools.
9. The admission policy of a public school and the administration of admissions by an education department must not unfairly discriminate in any way against an applicant for admission.

¹ "Parent" means –

- (a) the parent or guardian of a learner,
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school.

10. A learner is admitted to the total school programme and may not be suspended from classes, denied access to cultural, sporting or social activities of the school, denied a school report or transfer certificates, or otherwise victimised on the grounds that his or her parent –
 - (a) is unable to pay or has not paid the required school fees;
 - (b) does not subscribe to the mission statement and code of conduct of the school; or
 - (c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.
11. The governing body of a public school may not administer any test relating to the admission of a learner to a public school, or direct or authorise the principal of the school or any person to administer such a test. Where placement in a specific course or programme, eg technical field of study, dance or music, is required and where it would be in the educational interest of a learner, he or she may be requested by the Head of Department to undertake a suitable test to assist a placement decision.
12. The name of a learner must be removed from a school's admission register when the learner –
 - (a) leaves the school after grade 12 or after completing the compulsory school attendance period, or is granted exemption from compulsory attendance according to section (4) of the South African Schools Act;
 - (b) applies for a transfer to another school and the transfer is effected;
 - (c) is expelled from school; or
 - (d) dies.
13. If a learner of compulsory school going age fails to attend school, the Head of Department may act in terms of section 3(5) and (6) of the South African Schools Act, 1996.

Documents required for admission of a learner

14. A parent must complete an application form for admission, which should be made available to him or her by the principal of the school together with the admission policy and the code of conduct for learners of the school. The principal must ensure that parents are given whatever assistance they may require to complete the form.
15. When a parent applies for admission of a learner to an ordinary public school, the parent must present an official birth certificate of the learner to the principal of the public school. If the parent is unable to submit the birth certificate, the learner may be admitted conditionally until a copy of the birth certificate is obtained from the regional office of the Department of Home Affairs. The principal must advise parents that it is an offence to make a false statement about the age of a child. (See Births and Deaths Registration Act, 1992 (No. 51 of 1992).) The parent must ensure that the admission of the learner is finalised within three months of conditional admission.
16. On application for admission, a parent must show proof that the learner has been immunised against the following communicable diseases: polio, measles, tuberculosis, diphtheria, tetanus and hepatitis B. If a parent is unable to show proof of immunisation, the principal must advise the parent on having the learner immunised as part of the free primary health care programme.
17. When a learner transfers from one public school to another, the principal must complete a transfer card and hand it to the parent, or forward it to the principal of the receiving school. The learner's transfer card must be attached to the application form for admission to the receiving school.
18. If the transfer card is not available the principal of the receiving school may admit the learner and place the learner in a grade on the basis of the following documentation:
 - (a) the last report card issued by the previous school;
 - (b) other equivalent documentation from the previous school; or
 - (c) a written affidavit of the parent stating the reason for not having the transfer card and the grade the learner attended at the previous school.

Admission of non-citizens

19. The South African Schools Act, 1996 and this policy apply equally to learners who are not citizens of the Republic of South Africa and whose parents are in possession of a permit for temporary or permanent residence issued by the Department of Home Affairs.
20. A learner who entered the country on a study permit must present the study permit on admission to the public school.
21. Persons classified as illegal aliens must, when they apply for admission for their children or for themselves, show evidence that they have applied to the Department of Home Affairs to legalise their stay in the country in terms of the Aliens Control Act, 1991 (No. 96 of 1991).

Learners with special education needs

22. The rights and wishes of learners with special education needs, must be taken into account at the admission of the learners to an ordinary public school. The South African Schools Act, 1996 requires ordinary public schools to admit learners with special education needs, where this is reasonably practical. Schools are encouraged to make the necessary arrangements, as far as practically possible, to make their facilities accessible to such learners.

23. Where the necessary support which would facilitate the integration of a learner in a particular educational context, cannot be provided, the principal of the school must refer the application for admission to the Head of Department to have the learner admitted to a suitable public school in that province or to a school in another province.
24. Before the Head of Department refers a learner as contemplated in paragraph 23, the Head of Department must arrange for consultation with parents, educators and other support personnel concerned. These consultations must form part of the assessment of the learner before the learner is referred to another public school. This process should be handled as a matter of urgency to facilitate the admission of a learner as soon as possible to ensure that the learner is not prejudiced in receiving appropriate education.
25. Assessment and consultation relating to a change of placement must be carried out by a team based at the school in consultation with parents, educators and other relevant support personnel. The Head of Department of the province concerned must approve the placement.

Age requirements for the admission of a learner to an ordinary public school or different grades of a school

26. Learners are to be admitted to public schools and placed in different grades in the school according to the age requirements published in the same notice.
27. If a learner has been admitted to a public school at an age above the age norm for a grade, such learner must, as far as possible, be placed in a fast track facility, or with his or her peer group, unless it is not in the educational interest of the learner. In the latter case the learner must be placed in a suitable lower grade, and an accelerated programme must be worked out for the learner to enable him or her to catch up with the peer group as soon as possible.
28. The age-grade norm does not apply to a learner who is already enrolled at a public school on 1 January 2000, except that paragraph 27 may apply if it is deemed to be in the best interests of the learner.
29. A learner who is 16 years of age or older and who has never attended school and who is seeking admission for the first time or did not make sufficient progress with his or her peer group, must be advised to enroll at an Adult Basic Education and Training (ABET) centre.

Repetition

30. A learner who has repeated one or more years at school in terms of this policy is exempt from the age grade norm, except that, if a learner is three years older than the norm age per grade, the Head of Department must determine whether the learner will be admitted to that grade.
31. In principle, learners should progress with their age cohort. Repetition of grades seldom results in significant increases in learning attainment and frequently has the opposite result. The norm for repetition is one year per school phase where necessary. Multiple repetition in one grade is not permissible.
32. The norm is not to be construed as promoting the practice of automatic promotion. A learner's needs must be attended to through the efforts of the learner, and his or her teachers, with support from the learner's family and peers.

School zoning

33. A Head of Department, after consultation with representatives of governing bodies, may determine feeder zones for ordinary public schools, in order to control the learner numbers of schools and co-ordinate parental preferences. Such feeder zones need not be geographically adjacent to the school or each other.
34. If a feeder zone is created –
 - (a) preference must be given to a learner who lives in the feeder zone of a school or who resides with his or her parents at an employer's home in the feeder zone;
 - (b) a learner who lives outside the feeder zone is not precluded from seeking admission at whichever school he or she chooses. However, access to a chosen school cannot be guaranteed;
 - (c) a learner who lives within the feeder zone of a school A must be referred to the neighbouring school B, if school A is oversubscribed. If school B is oversubscribed, an alternative school within a reasonable distance must be found by the Head of Department. If that is not possible, school A must admit the learner;
 - (d) the preference order of admission is:–
 - (i) learners whose parents live in the feeder zone, in their own domicile or their employer's domicile;
 - (ii) learners whose parent's work address is in the feeder area; or
 - (iii) other learners: first come first served.
35. A school with a specific field of study, eg a technical school, must have much larger feeder zones to accommodate learners with specific aptitudes, interests or needs.

Register of admission

36. The principal of a public school must keep a register of admission to the school. All admissions of learners to the school must be recorded in the register of admission. The register must contain the name, date of birth, age,

identity number, if applicable, and address of the learner as well as the names of the learner's parents² as defined in the South African Schools Act, 1996 and their addresses and telephone numbers, where applicable.

37. Entries in the register of admission must be verified against the birth certificate or identity document of the learner concerned.
38. Officials of the provincial education department must have access to the register of admission.

Rights and obligations of parents

39. The governing body of a school must inform all parents of learners admitted to a school of their rights and obligations in terms of the South African Schools Act, 1996, any applicable provincial law. Parents must specifically be informed about their rights and obligations in respect to the governance and affairs of the school, including the process of deciding the school budget, any decision of a parent meeting relating to school fees, and the Code of Conduct for Learners.
40. Parents have an obligation to support their children to attend school regularly.

Home education

41. A parent who wishes to provide home education for his or her child must apply to the Head of Department for registration.
42. The Head of Department will register such a learner if he or she is satisfied that the conditions stipulated in section 51 of the South African Schools Act, 1966, are complied with.

Right of appeal

43. Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council in terms of section 5(9) of the South African Schools Act, 1996.
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² "Parent" means –

- (a) the parent or guardian of a learner,
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school.

NATIONAL POLICY ON HIV/AIDS, FOR LEARNERS AND EDUCATORS IN PUBLIC SCHOOLS, AND STUDENTS AND EDUCATORS IN FURTHER EDUCATION AND TRAINING INSTITUTIONS

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NATIONAL POLICY ON HIV/AIDS, FOR LEARNERS AND EDUCATORS IN PUBLIC SCHOOLS, AND STUDENTS AND EDUCATORS IN FURTHER EDUCATION AND TRAINING INSTITUTIONS

I, Kader Asmal, Minister of Education, after consultation with the Council of Education Ministers, hereby publish the national policy on HIV/AIDS for learners in public schools, and students and educators in further education and training institutions, in terms of section 3(4) of the National Education Policy Act, 1996 (No. 27 of 1996), as set out in the Schedule.

Professor Kader Asmal
Minister of Education
August 1999

SCHEDULE

NATIONAL POLICY ON HIV/AIDS, FOR LEARNERS AND EDUCATORS IN PUBLIC SCHOOLS AND STUDENTS AND EDUCATORS IN FURTHER EDUCATION AND TRAINING INSTITUTIONS

Preamble

Acquired Immune Deficiency Syndrome (AIDS) is a communicable disease that is caused by the Human Immunodeficiency Virus (HIV).

In South Africa, HIV is spread mainly through sexual contact between men and women. In addition, around one third of babies born to HIV-infected women will be infected at birth or through breast-feeding. The risk of transmission of the virus from mother to baby is reduced by antiretroviral drugs.

Infection through contact with HIV-infected blood, intravenous drug use and homosexual sex does occur in South Africa, but constitutes a very small proportion of all infections. Blood transfusions are thoroughly screened and the chances of infection from transfusion are extremely low.

People do not develop AIDS as soon as they are infected with HIV. Most experience a long period of around 5–8 years during which they feel well and remain productive members of families and workforces. In this asymptomatic period, they can pass their infection on to other people without realising that they are HIV infected.

During the asymptomatic period, the virus gradually weakens the infected person's immune system, making it increasingly difficult to fight off other infections. Symptoms start to occur and people develop conditions such as skin rashes, chronic diarrhoea, weight loss, fevers, swollen lymph glands and certain cancers. Many of these problems can be prevented or treated effectively. Although these infections can be treated, the underlying HIV infection cannot be cured.

Once HIV-infected people have a severe infection or cancer (a condition known as symptomatic AIDS) they usually die within 1 to 2 years. The estimated average time from HIV infection to death in South Africa is 6 to 10 years. Many HIV infected people progress to AIDS and death in much shorter periods. Some live for 10 years or more with minimal health problems, but virtually all will eventually die of AIDS.

HIV-infected babies generally survive for shorter periods than HIV-infected adults. Many die within two years of birth, and most will die before they turn five. However, a significant number may survive even into their teenage years before developing AIDS.

No cure for HIV infection is available at present. Any cure which is discovered may well be unaffordable for most South Africans.

HIV/AIDS is one of the major challenges to all South Africans. The findings of the 1998 HIV survey among pregnant women attending public antenatal clinics of the Department of Health, show that the HIV/AIDS epidemic in South Africa is among the most severe in the world and it continues to increase at an alarming pace. The rate of increase is estimated at 33.8%. Using these figures, it is estimated that one in eight of the country's sexually active population – those over the age of 14 years – is now infected. In the antenatal survey, the prevalence of HIV/AIDS among pregnant women under the age of 20 years has risen by a frightening 65.4% from 1997 to 1998.

According to the 1998 United Nations Report on HIV/AIDS Human Development in South Africa, it is estimated that almost 25% of the general population will be HIV positive by the year 2010. The achievements of recent decades, particularly in relation to life expectancy and educational attainment, will inevitably be slowed down by the impact of current high rates of HIV prevalence and the rise in AIDS-related illnesses and deaths. This will place increased pressures on learners, students and educators.

Because the Ministry of Education acknowledges the seriousness of the HIV/AIDS epidemic, and international and local evidence suggests that there is a great deal that can be done to influence the course of the epidemic, the Ministry is committed to minimise the social, economic and developmental consequences of HIV/AIDS to the education system, all learners, students and educators, and to provide leadership to implement an HIV/AIDS policy. This policy seeks to contribute towards promoting effective prevention and care within the context of the public education system.

In keeping with international standards and in accordance with education law and the constitutional guarantees of the right to a basic education, the right not to be unfairly discriminated against, the right to life and bodily integrity, the right to privacy, the right to freedom of access to information, the right to freedom of conscience, religion, thought, belief and opinion, the right to freedom of association, the right to a safe environment, and the best interests of the child, the following shall constitute national policy.

1. Definitions

In this policy any expression to which a meaning has been assigned in the South African Schools Act, 1996 (Act No. 84 of 1996), the Further Education and Training Act, 1998 (Act No. 98 of 1998) and the Employment of Educators Act, 1998 (Act No. 76 of 1998), shall have that meaning and, unless the context otherwise indicates –

“**AIDS**” means the acquired immune deficiency syndrome, that is the final phase of HIV infection;

“**HIV**” means the human immunodeficiency virus;

“**institution**” means an institution for further education and training, including an institution contemplated in section 38 of the Further Education and Training Act, 1998 (Act No. 98 of 1998);

“**sexual abuse**” means abuse of a person targeting their sexual organs, eg rape, touching their private parts, or inserting objects into their private parts;

“**unfair discrimination**” means direct or indirect unfair discrimination against anyone on one or more grounds in terms of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996);

“**universal precautions**” refers to the concept used worldwide in the context of HIV/AIDS to indicate standard infection control procedures or precautionary measures aimed at the prevention of HIV transmission from one person to another and includes procedures concerning basic hygiene and the wearing of protective clothing such as latex or rubber gloves or plastic bags when there is a risk of exposure to blood, blood-borne pathogens or blood-stained body fluids;

“**violence**” means violent conduct or treatment that harms the person of the victim, for example assault and rape;

“**window period**” means the period of up to three months before HIV antibodies appear in the blood following HIV infection. During this period HIV tests cannot determine whether a person is infected with HIV or not.

2. Premises

2.1 Although there are no known cases of the transmission of HIV in schools or institutions, there are learners with HIV/AIDS in schools. More and more children who acquire HIV prenatally will, with adequate medical care, reach school-going age and attend school. Consequently a large proportion of the learner and student population and educators are at risk of contracting HIV/AIDS.

2.2 HIV cannot be transmitted through day-to-day social contact. The virus is transmitted only through blood, semen, vaginal and cervical fluids and breast milk. Although the virus has been identified in other body fluids such as saliva and urine, no scientific evidence exists to show that these fluids can cause transmission of HIV.

2.3 Because of the increase in infection rates, learners, students and educators with HIV/AIDS will increasingly form part of the population of schools and institutions. Since many young people are sexually active, increasing numbers of learners attending primary and secondary schools, and students attending institutions might be infected. Moreover, there is a risk of HIV transmission as a result of sexual abuse of children in our country. Intravenous drug abuse is also a source of HIV transmission among learners and students. Although the possibility is remote, recipients of infected blood products during blood transfusions (for instance haemophiliacs), may also be present at schools and institutions. Because of the increasing prevalence of HIV/AIDS in schools, it is imperative that each school must have a planned strategy to cope with the epidemic.

2.4 Because of the nature of HIV antibody testing and the “window period” or “apparently well period” between infection and the onset of clearly identifiable symptoms, it is impossible to know with absolute certainty who has HIV/AIDS and who does not. Although the Department of Health conducts tests among women attending ante-natal clinics in public health facilities in South Africa as a mechanism of monitoring the progression of the HIV epidemic in South Africa, testing for HIV/AIDS for employment or attendance at schools is prohibited.

- 2.5 Compulsory disclosure of a learner's, student's or educator's HIV/AIDS status to school or institution authorities is not advocated as this would serve no meaningful purpose. In case of disclosure, educators should be prepared to handle such disclosures and be given support to handle confidentiality issues.
- 2.6 Learners and students with HIV/AIDS should lead as full a life as possible and should not be denied the opportunity to receive an education to the maximum of their ability. Likewise, educators with HIV/AIDS should lead as full a professional life as possible, with the same rights and opportunities as other educators and with no unfair discrimination being practised against them. Infection control measures and adaptations must be universally applied and carried out regardless of the known or unknown HIV status of individuals concerned.
 - 2.6.1 The risk of transmission of HIV in the day-to-day school or institution environment in the context of physical injuries, can be effectively eliminated by following standard infection-control procedures or precautionary measures (also known as universal precautions) and good hygiene practices under all circumstances. This would imply that in situations of potential exposure, such as in dealing with accidental or other physical injuries, or medical intervention on school or institution premises in case of illness, all persons should be considered as potentially infected and their blood and body fluids treated as such.
 - 2.6.2 Strict adherence to universal precautions under all circumstances in the school or institution is advised.
 - 2.6.3 Current scientific evidence suggests that the risk of HIV transmission during teaching, sport and play activities is insignificant. There is no risk of transmission from saliva, sweat, tears, urine, respiratory droplets, handshaking, swimming-pool water, communal bath water, toilets, food or drinking water. The statement about the insignificant risk of transmission during teaching, sport and play activities, however, holds true only if universal precautions are adhered to. Adequate wound management has to take place in the classroom and laboratory or on the sports field or playground when a learner or student sustains an open bleeding wound. Contact sports such as boxing and rugby could probably be regarded as sports representing a higher risk of HIV transmission than other sports, although the inherent risk of transmission during any such sport is very low.
 - 2.6.4 Public funds should be made available to ensure the application of universal precautions and the supply of adequate information and education on HIV transmission. The State's duty to take all reasonable steps to ensure safe school and institution environments, is regarded as a sound investment in the future of South Africa.
 - 2.6.5 Within the context of sexual relations, the risk of contracting HIV is significant. There are high levels of sexually active persons within the learner population group in schools. This increases the risk of HIV transmission in schools and institutions for further education and training considerably. Besides sexuality education, morality and life skills education being provided by educators, parents should be encouraged to provide their children with healthy morals, sexuality education and guidance regarding sexual abstinence until marriage and faithfulness to their partners. Sexually active persons should be advised to practise safe sex and to use condoms. Learners and students should be educated about their rights concerning their own bodies, to protect themselves against rape, violence, inappropriate sexual behaviour and contracting HIV.
- 2.7 The constitutional rights of all learners, students and educators must be protected on an equal basis. If a suitably qualified person ascertains that a learner, student or educator poses a medically recognised significant health risk to others, appropriate measures should be taken. A medically recognised significant health risk in the context of HIV/AIDS could include the presence of untreatable contagious (highly communicable) diseases, uncontrollable bleeding, unmanageable wounds, or sexual or physically aggressive behaviour, which may create the risk of HIV transmission.
- 2.8 Furthermore, learners and students with infectious illnesses such as measles, German measles, chicken pox, whooping cough and mumps should be kept away from the school or institution to protect all other members of the school or institution, especially those whose immune systems may be impaired by HIV/AIDS.
- 2.9 Schools and institutions should inform parents of vaccination/inoculation programmes and of their possible significance for the wellbeing of learners and students with HIV/AIDS. Local health clinics could be approached to assist with immunisation.
- 2.10 Learners and students must receive education about HIV/AIDS and abstinence in the context of life-skills education on an ongoing basis. Life-skills and HIV/AIDS education should not be presented as isolated learning content, but should be integrated in the whole curriculum. It should be presented in a scientific but understandable way. Appropriate course content should be available for the pre-service and in-service training of educators to cope with HIV/AIDS in schools. Enough educators to educate learners about the epidemic should also be provided.
 - 2.10.1 The purpose of education about HIV/AIDS is to prevent the spread of HIV infection, to allay excessive fears of the epidemic, to reduce the stigma attached to it and to instill non-discriminatory attitudes towards persons with HIV/AIDS. Education should ensure that learners and students acquire age- and context-appropriate knowledge and skills in order that they may adopt and maintain behaviour that will protect them from HIV infection.

- 2.10.2 In the primary grades, the regular educator should provide education about HIV/AIDS, while in secondary grades the guidance counsellor would ideally be the appropriate educator. Because of the sensitive nature of the learning content, the educators selected to offer this education should be specifically trained and supported by the support staff responsible for life-skills and HIV/AIDS education in the school and province. The educators should feel at ease with the content and should be a rolemodel with whom learners and students can easily identify. Educators should also be informed by the principal and educator unions of courses for educators to improve their knowledge of, and skills to deal with, HIV/AIDS.
- 2.10.3 All educators should be trained to give guidance on HIV/AIDS. Educators should respect their position of trust and the constitutional rights of all learners and students in the context of HIV/AIDS.
- 2.11 In order to meet the demands of the wide variety of circumstances posed by the South African community and to acknowledge the importance of governing bodies, councils and parents in the education partnership, this national policy is intended as broad principles only. It is envisaged that the governing body of a school, acting within its functions under the South African Schools Act, 1996, and the Council of a Further Education and Training Institution, acting within its functions under the Further Education and Training Act, 1998, or any provincial law, should preferably give operational effect to the national policy by developing and adopting an HIV/AIDS implementation plan that would reflect the needs, ethos and values of a specific school or institution and its community within the framework of the national policy.
- 3. Non-discrimination and equality with regard to learners, students and educators with HIV/AIDS**
- 3.1 No learner, student or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly. Educators should be alert to unfair accusations against any person suspected to have HIV/AIDS.
- 3.2 Learners, students, educators and other staff with HIV/AIDS should be treated in a just, humane and life-affirming way.
- 3.3 Any special measures in respect of a learner, student or educator with HIV should be fair and justifiable in the light of medical facts; established legal rules and principles; ethical guidelines; the best interest of the learner, student and educator with HIV/AIDS; school or institution conditions; and the best interest of other learners, students and educators.
- 3.4 To prevent discrimination, all learners, students and educators should be educated about fundamental human rights as contained in the Constitution of the Republic of South Africa, 1996.
- 4. HIV/AIDS testing and the admission of learners to a school and students to an institution, or the appointment of educators**
- 4.1 No learner or student may be denied admission to or continued attendance at a school or an institution on account of his or her HIV/AIDS status or perceived HIV/AIDS status.
- 4.2 No educator may be denied the right to be appointed in a post, to teach or to be promoted on account of his or her HIV/AIDS status or perceived HIV/AIDS status. HIV/AIDS status may not be a reason for dismissal of an educator, nor for refusing to conclude, or continue, or renew an educator's employment contract, nor to treat him or her in any unfair discriminatory manner.
- 4.3 There is no medical justification for routine testing of learners, students or educators for evidence of HIV infection. The testing of learners or students for HIV/AIDS as a prerequisite for admission to, or continued attendance at school or institution, to determine the incidence of HIV/AIDS at schools or institutions, is prohibited. The testing of educators for HIV/AIDS as a prerequisite for appointment or continued service is prohibited.
- 5. Attendance at schools and institutions by learners or students with HIV/AIDS**
- 5.1 Learners and students with HIV have the right to attend any school or institution. The needs of learners and students with HIV/AIDS with regard to their right to basic education should as far as is reasonably practicable be accommodated in the school or institution.
- 5.2 Learners and students with HIV/AIDS are expected to attend classes in accordance with statutory requirements for as long as they are able to do so effectively.
- 5.3 Learners of compulsory school-going age with HIV/AIDS, who are unable to benefit from attendance at school or home education, may be granted exemption from attendance in terms of section 4(1) of the South African Schools Act, 1996, by the Head of Department, after consultation with the principal, the parents and the medical practitioner where possible.
- 5.4 If and when learners and students with HIV/AIDS become incapacitated through illness, the school or institution should make work available to them for study at home and should support continued learning where possible. Parents should, where practically possible, be allowed to educate their children at home in accordance with the policy for home education in terms of section 51 of the South African Schools Act, 1996, or provide older learners with distance education.
- 5.5 Learners and students who cannot be accommodated in this way or who develop HIV/AIDS-related behavioural problems or neurological damage, should be accommodated, as far as is practically possible, within the education system in special schools or specialised residential institutions for learners with

special education needs. Educators in these institutions must be empowered to take care of and support HIV-positive learners. However, placement in special schools should not be used as an excuse to remove HIV-positive learners from mainstream schools.

6. Disclosure of HIV/AIDS-related information and confidentiality

- 6.1 No learner or student (or parent on behalf of a learner or student), or educator, is compelled to disclose his or her HIV/AIDS status to the school or institution or employer. (In cases where the medical condition diagnosed is the HIV/AIDS disease, the Regulations relating to communicable diseases and the notification of notifiable medical conditions [Health Act, 1977] only require the person performing the diagnosis to inform the immediate family members and the persons giving care to the person and, in cases of HIV/AIDS-related death, the persons responsible for the preparation of the body of the deceased.)
- 6.2 Voluntary disclosure of a learner's, student's or educator's HIV/AIDS status to the appropriate authority should be welcomed and an enabling environment should be cultivated in which the confidentiality of such information is ensured and in which unfair discrimination is not tolerated. In terms of section 39 of the Child Care Act, 1983 (Act No. 74 of 1983), any learner or student above the age of 14 years with HIV/AIDS, or if the learner is younger than 14 years, his or her parent, is free to disclose such information voluntarily.
- 6.3 A holistic programme for life-skills and HIV/AIDS education should encourage disclosure. In the event of voluntary disclosure, it may be in the best interests of a learner or student with HIV/AIDS if a member of the staff of the school or institution directly involved with the care of the learner or student, is informed of his or her HIV/AIDS status. An educator may disclose his or her HIV/AIDS status to the principal of the school or institution.
- 6.4 Any person to whom any information about the medical condition of a learner, student or educator with HIV/AIDS has been divulged, must keep this information confidential.
- 6.5 Unauthorised disclosure of HIV/AIDS-related information could give rise to legal liability.
- 6.6 No employer can require an applicant for a job to undergo an HIV test before he/she is considered for employment. An employee cannot be dismissed, retrenched or refused a job simply because he or she is HIV positive.

7. A safe school and institution environment

- 7.1 The MEC should make provision for all schools and institutions to implement universal precautions to eliminate the risk of transmission of all blood-borne pathogens, including HIV, effectively in the school or institution environment.
Universal precautions include the following:
 - 7.1.1 The basis for advocating the consistent application of universal precautions lies in the assumption that in situations of potential exposure to HIV, all persons are potentially infected and all blood should be treated as such. All blood, open wounds, sores, breaks in the skin, grazes and open skin lesions, as well as all body fluids and excretions which could be stained or contaminated with blood (for example tears, saliva, mucus, phlegm, urine, vomit, faeces and pus) should therefore be treated as potentially infectious.
 - (a) Blood, especially in large spills such as from nosebleeds, and old blood or blood stains, should be handled with extreme caution.
 - (b) Skin exposed accidentally to blood should be washed immediately with soap and running water.
 - (c) All bleeding wounds, sores, breaks in the skin, grazes and open skin lesions should ideally be cleaned immediately with running water and/or other antiseptics.
 - (d) If there is a biting or scratching incident where the skin is broken, the wound should be washed and cleansed under running water, dried, treated with antiseptic and covered with a waterproof dressing.
 - (e) Blood splashes to the face (mucous membranes of eyes, nose or mouth) should be flushed with running water for at least three minutes.
 - (f) Disposable bags and incinerators must be made available to dispose of sanitary wear.
 - 7.1.2 All open wounds, sores, breaks in the skin, grazes and open skin lesions should at all times be covered completely and securely with a non-porous or waterproof dressing or plaster so that there is no risk of exposure to blood.
 - 7.1.3 Cleansing and washing should always be done with running water and not in containers of water. Where running tap water is not available, containers should be used to pour water over the area to be cleansed. Schools without running water should keep a supply, eg in a 25-litre drum, on hand specifically for use in emergencies. This water can be kept fresh for a long period of time by adding a disinfectant, such as Milton, to it.
 - 7.1.4 All persons attending to blood spills, open wounds, sores, breaks in the skin, grazes, open skin lesions, body fluids and excretions should wear protective latex gloves or plastic bags over their

- hands to eliminate the risk of HIV transmission effectively. Bleeding can be managed by compression with material that will absorb the blood, eg a towel.
- 7.1.5 If a surface has been contaminated with body fluids and excretions which could be stained or contaminated with blood (for instance tears, saliva, mucus, phlegm; urine, vomit, faeces and pus), that surface should be cleaned with running water and fresh, clean household bleach (1:10 solution), and paper or disposable cloths. The person doing the cleaning must wear protective gloves or plastic bags.
- 7.1.6 Blood-contaminated material should be sealed in a plastic bag and incinerated or sent to an appropriate disposal firm. Tissues and toilet paper can readily be flushed down a toilet.
- 7.1.7 If instruments (for instance scissors) become contaminated with blood or other body fluids, they should be washed and placed in a strong household bleach solution for at least one hour before drying and re-using.
- 7.1.8 Needles and syringes should not be re-used, but should be safely disposed of.
- 7.2 All schools and institutions should train learners, students, educators and staff in first aid, and have available and maintain at least two first-aid kits, each of which should contain the following:
- (a) two large and two medium pairs of disposable latex gloves;
 - (b) two large and two medium pairs of household rubber gloves for handling blood-soaked material in specific instances (for example when broken glass makes the use of latex gloves inappropriate);
 - (c) absorbent material, waterproof plasters, disinfectant (such as hypochlorite), scissors, cotton wool, gauze tape, tissues, containers for water and a resuscitation mouth piece or similar device with which mouth-to-mouth resuscitation could be applied without any contact being made with blood or other body fluids.
 - (d) protective eye wear; and
 - (e) a protective face mask to cover nose and mouth.
- 7.3 Universal precautions are in essence barriers to prevent contact with blood or body fluids. Adequate barriers can also be established by using less sophisticated devices than those described in 7.2, such as –
- (a) unbroken plastic bags on hands where latex or rubber gloves are not available;
 - (b) common household bleach for use as disinfectant, diluted one part bleach to ten parts water (1:10 solution) made up as needed;
 - (c) spectacles; and
 - (d) a scarf.
- 7.4 Each classroom or other teaching area should preferably have a pair of latex or household rubber gloves.
- 7.5 Latex or household rubber gloves should be available at every sports event and should also be carried by the playground supervisor.
- 7.6 First-aid kits and appropriate cleaning equipment should be stored in one or more selected rooms in the school or institution and should be accessible at all times, also by the playground supervisor.
- 7.7 Used items should be dealt with as indicated in paragraphs 7.1.6 and 7.1.7.
- 7.8 The contents of the first-aid kits, or the availability of other suitable barriers, should be checked each week against a contents list by a designated staff member of the school or institution. Expired and depleted items should be replaced immediately.
- 7.9 A fully equipped first-aid kit should be available at all school or institution events, outings and tours, and should be kept on vehicles for the transport of learners to such events.
- 7.10 All learners, students, educators and other staff members, including sports coaches, should be given appropriate information and training on HIV transmission, the handling and use of first-aid kits, the application of universal precautions and the importance of adherence to universal precautions.
- 7.10.1 Learners, students, educators and other staff members should be trained to manage their own bleeding or injuries and to assist and protect others.
- 7.10.2 Learners, especially those in pre-primary and primary schools, and students should be instructed never to touch the blood, open wounds, sores, breaks in the skin, grazes and open skin lesions of others, nor to handle emergencies such as nosebleeds, cuts and scrapes of friends on their own. They should be taught to call for the assistance of an educator or other staff member immediately.
- 7.10.3 Learners and students should be taught that all open wounds, sores, breaks in the skin, grazes and open skin lesions on all persons should be kept covered completely with waterproof dressings or plasters at all times, not only when they occur in the school or institution environment.
- 7.11 All cleaning staff, learners, students, educators and parents should be informed about the universal precautions that will be adhered to at a school or an institution.
- 7.12 A copy of this policy must be kept in the media centre of each school or institution.

8. Prevention of HIV transmission during play and sport

- 8.1 The risk of HIV transmission as a result of contact play and contact sport is generally insignificant.

- 8.1.1 The risk increases where open wounds, sores, breaks in the skin, grazes, open skin lesions or mucous membranes of learners, students and educators are exposed to infected blood.
- 8.1.2 Certain contact sports may represent an increased risk of HIV transmission.
- 8.2 Adequate wound management, in the form of the application of universal precautions, is essential to contain the risk of HIV transmission during contact play and contact sport.
 - 8.2.1 No learner, student or educator may participate in contact play or contact sport with an open wound, sore, break in the skin, graze or open skin lesion.
 - 8.2.2 If bleeding occurs during contact play or contact sport, the injured player should be removed from the playground or sports field immediately and treated appropriately as described in paragraphs 7.1.1 to 7.1.4. Only then may the player resume playing and only for as long as any open wound, sore, break in the skin, graze or open skin lesion remains completely and securely covered.
 - 8.2.3 Blood-stained clothes must be changed.
 - 8.2.4 The same precautions should be applied to injured educators, staff members and injured spectators.
- 8.3 A fully equipped first-aid kit should be available wherever contact play or contact sport takes place.
- 8.4 Sports participants, including coaches, with HIV/AIDS should seek medical counselling before participation in sport, in order to assess risks to their own health as well as the risk of HIV transmission to other participants.
- 8.5 Staff members acting as sports administrators, managers and coaches should ensure the availability of first-aid kits and the adherence to universal precautions in the event of bleeding during participation in sport.
- 8.6 Staff members acting as sports administrators, managers and coaches have special opportunities for meaningful education of sports participants with respect to HIV/AIDS. They should encourage sports participants to seek medical and other appropriate counselling where appropriate.

9. Education on HIV/AIDS

- 9.1 A continuing life-skills and HIV/AIDS education programme must be implemented at all schools and institutions for all learners, students, educators and other staff members. Measures must also be implemented at hostels.
- 9.2 Age-appropriate education on HIV/AIDS must form part of the curriculum for all learners and students, and should be integrated in the life-skills education programme for pre-primary, primary and secondary school learners. This should include the following:
 - 9.2.1 providing information on HIV/AIDS and developing the life skills necessary for the prevention of HIV transmission;
 - 9.2.2 inculcating from an early age onwards basic first-aid principles, including how to deal with bleeding with the necessary safety precautions;
 - 9.2.3 emphasising the role of drugs, sexual abuse and violence, and sexually transmitted diseases (STDs) in the transmission of HIV, and empowering learners to deal with these situations;
 - 9.2.4 encouraging learners and students to make use of health care, counselling and support services (including services related to reproductive health care and the prevention and treatment of sexually transmitted diseases) offered by community service organisations and other disciplines;
 - 9.2.5 teaching learners and students how to behave towards persons with HIV/AIDS, raising awareness on prejudice and stereotypes around HIV/AIDS;
 - 9.2.6 cultivating an enabling environment and a culture of non-discrimination towards persons with HIV/AIDS; and
 - 9.2.7 providing information on appropriate prevention and avoidance measures, including abstinence from sexual intercourse and immorality, the use of condoms, faithfulness to one's partner, obtaining prompt medical treatment for sexually transmitted diseases and tuberculosis, avoiding traumatic contact with blood, and the application of universal precautions.
- 9.3 Education and information regarding HIV/AIDS must be given in an accurate and scientific manner and in language and terms that are understandable.
- 9.4 Parents of learners and students must be informed about all life-skills and HIV/AIDS education offered at the school and institution, the learning content and methodology to be used, as well as values that will be imparted. They should be invited to participate in parental guidance sessions and should be made aware of their role as sexuality educators and imparters of values at home.
- 9.5 Educators may not have sexual relations with learners or students. Should this happen, the matter has to be handled in terms of the Employment of Educators Act, 1998.
- 9.6 If learners, students or educators are infected with HIV, they should be informed that they can still lead normal, healthy lives for many years by taking care of their health.

10. Duties and responsibilities of learners, students, educators and parents

- 10.1 All learners, students and educators should respect the rights of other learners, students and educators.
- 10.2 The Code of Conduct adopted for learners at a school or for students at an institution should include provisions regarding the unacceptability of behaviour that may create the risk of HIV transmission.
- 10.3 The ultimate responsibility for the behaviour of a learner or a student rests with his or her parents. Parents of all learners and students:
 - 10.3.1 are expected to require learners or students to observe all rules aimed at preventing behaviour which may create a risk of HIV transmission; and
 - 10.3.2 are encouraged to take an active interest in acquiring any information or knowledge on HIV/AIDS supplied by the school or institution, and to attend meetings convened for them by the governing body or council.
- 10.4 It is recommended that a learner, student or educator with HIV/AIDS and his or her parent, in the case of learners or students, should consult medical opinion to assess whether the learner, student or educator, owing to his or her condition or conduct, poses a medically recognised significant health risk to others. If such a risk is established, the principal of the school or institution should be informed. The principal of the school or institution must take the necessary steps to ensure the health and safety of other learners, students, educators and staff members.
- 10.5 Educators have a particular duty to ensure that the rights and dignity of all learners, students and educators are respected and protected.

11. Refusal to study with or teach a learner or student with HIV/AIDS, or to work with or be taught by an educator with HIV/AIDS

- 11.1 Refusal to study with a learner or student, or to work with or be taught by an educator or other staff member with, or perceived to have HIV/AIDS, should be pre-empted by providing accurate and understandable information on HIV/AIDS to all educators, staff members, learners, students and their parents.
- 11.2 Learners and students who refuse to study with a fellow learner or student or be taught by an educator or educators and staff who refuse to work with a fellow educator or staff member or to teach or interact with a learner or student with or perceived to have HIV/AIDS and are concerned that they themselves will be infected, should be counselled.
- 11.3 The situation should be resolved by the principal and educators in accordance with the principles contained in this policy, the code of conduct for learners, or the code of professional ethics for educators. Should the matter not be resolved through counselling and mediation, disciplinary steps may be taken.

12. School and institutional implementation plans

- 12.1 Within the terms of its functions under the South African Schools Act, 1996, the Further Education and Training Act, 1998, or any applicable provincial law, the governing body of a school or the council of an institution may develop and adopt its own implementation plan on HIV/AIDS to give operational effect to the national policy.
- 12.2 A provincial education policy for HIV/AIDS, based on the national policy, can serve as a guideline for governing bodies when compiling an implementation plan.
- 12.3 Major roleplayers in the wider school or institution community (for example religious and traditional leaders, representatives of the medical or health care professions or traditional healers) should be involved in developing an implementation plan on HIV/AIDS for the school or institution.
- 12.4 Within the basic principles laid down in this national policy, the school or institution implementation plan on HIV/AIDS should take into account the needs and values of the specific school or institution and the specific communities it serves. Consultation on the school or institution implementation plan could address and attempt to resolve complex questions, such as discretion regarding mandatory sexuality education, or whether condoms need to be made accessible within a school or institution as a preventive measure, and if so under what circumstances.

13. Health advisory committee

- 13.1 Where community resources make this possible, it is recommended that each school and institution should establish its own Health Advisory Committee as a committee of the governing body or council. Where the establishment of such a committee is not possible, the school or institution should draw on expertise available to it within the education and health systems. The Health Advisory Committee may as far as possible use the assistance of community health workers led by a nurse, or local clinics.
- 13.2 Where it is possible to establish a Health Advisory Committee, the Committee should:
 - 13.2.1 be set up by the governing body or council and should consist of educators and other staff, representatives of the parents of learners at the school or students at the institution, representatives of the learners or students, and representatives from the medical or health care professions;

- 13.2.2 elect its own chairperson who should preferably be a person with knowledge in the field of health care;
- 13.2.3 advise the governing body or council on all health matters, including HIV/AIDS;
- 13.2.4 be responsible for developing and promoting a school or institution plan of implementation on HIV/AIDS and review the plan from time to time, especially as new scientific knowledge about HIV/AIDS becomes available; and

13.2.5 be consulted on the provisions relating to the prevention of HIV transmission in the Code of Conduct.

14. Implementation of this national policy on HIV/AIDS

- 14.1 The Director-General of Education and the Heads of provincial departments of education are responsible for the implementation of this policy, in accordance with their responsibilities in terms of the Constitution of the Republic of South Africa, 1996, and any applicable law. Every education department must designate an HIV/AIDS Programme Manager and a working group to communicate the policy to all staff, to implement, monitor and evaluate the Department's HIV/AIDS programme, to advise management regarding programme implementation and progress, and to create a supportive and non-discriminatory environment.
- 14.2 The principal or the head of a hostel is responsible for the practical implementation of this policy at school, institutional or hostel level, and for maintaining an adequate standard of safety according to this policy.
- 14.3 It is recommended that a school governing body or the council of an institution should take all reasonable measures within its means to supplement the resources supplied by the State in order to ensure the availability at the school or institution of adequate barriers (even in the form of less sophisticated material) to prevent contact with blood or body fluids.
- 14.4 Strict adherence to universal precautions under all circumstances (including play and sports activities) is advised, as the State will be liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school or institution.

15. Regular review

This policy will be reviewed regularly and adapted to changed circumstances.

16. Application

- 16.1 This policy applies to public schools which enroll learners in one or more grades between grade zero and grade twelve, to further education and training institutions, and to educators.
- 16.2 Copies of this policy must be made available to independent schools registered with the provincial departments of education.

17. Interpretation

In all instances, this policy should be interpreted to ensure respect for the rights of learners, students and educators with HIV/AIDS, as well as other learners, students, educators and members of the school and institution communities.

18. Where this policy may be obtained

This policy may be obtained from The Director: Communication, Department of Education, Private Bag X895, Pretoria, 0001, Tel. No. (012) 312-5271.

This policy is also available on the Internet at the following web site: <http://education.pwv.gov.za>

DEVELOPING AN HIV/AIDS POLICY IN THE WORKPLACE

HIV/AIDS Management can involve the following:

- Workplace policy development
- Risk analysis and impact assessment
- Advice on cost effective management of HIV/AIDS
- Manpower planning and incapacity management
- Health care management
- Prevention programmes

HIV/AIDS MANAGEMENT SERVICES		
Consultancy	Contact Name	Contact Details
AIDS Management and Support*	Dr. Clive Evian	Tel: (011) 786 6492 Fax: (011) 786 6492 E-mail: drclive@icon.co.za
Business and Practice Development*	Mr. Charles Harbottle	Tel: (011) 469 0546 Fax: (011) 469 0546 Cell: 083 777 1959

* Services offered nationally.

Consultancy	Contact Name	Contact Details
HIV Management Services*	Dr. Malcolm Steinberg/ Dr. Anthony Kinghorn	Tel: (011) 269 4033 Fax: (011) 884 7524 E-mail: antking@iafrica.com
Metropolitan Life*	Dr. Thomas Muhr	Tel: (021) 940 5177 Fax: (021) 940 5678 E-mail: thomas.muhr@metlife.co.za
Mx Health Institute*	Dr. L. McDonald	Tel: (012) 663 8111 Fax: (012) 663 3009 E-mail: mxhealth@pixie.co.za
Southern Life Association – AIDS Management Consultancy*	Mr. Wayne Myslik	Tel: (021) 658 0963 Fax: (021) 658 0347 E-mail: wmyslik@iafrika.com
University of Natal – Health Economics and HIV/AIDS Research Division*	Prof. Alan Whiteside	Tel: (031) 260 2590 Fax: (031) 260 2587 E-mail: whitesid@shepfs2.und.ac.za

LEGAL CONSULTANTS

Legal consultants can offer advice on AIDS and employment law, employment policies, unfair labour practices and assistance to trade unions.

AIDS Legal Network*	Ms. Mary Caesar	Tel: (021) 448 3812 Fax: (021) 448 4089
Centre for Applied Legal Studies/ AIDS Law Project*	Mr. Mark Heywood	Tel: (011) 403 6918 Fax: (011) 403 2341 Cell: 125ma3he@solon.law.wits.ac.za
Lawyers for Human Rights*	Ms. Ann Strode	Tel: (033) 421 130 Fax: (033) 949 522 E-mail: ihrpmb@win.apc.org
Legal and Human Rights Programme (National Department of Health, HIV/AIDS & STDs Directorate)	Ms. Ann Strode & Ms. Catherine Barrett	Tel: (033) 421 130 Fax: (033) 949 522

For further HIV/AIDS management and legal services contact ATTICs or Provincial Health Departments.

PREVENTION OF HIV/AIDS

There is presently no cure for HIV/AIDS and for this reason prevention of HIV infections is imperative. Prevention initiatives could include distributing educational materials, staging theatre performances and ensuring accessible condom supplies.

1. AWARENESS/EDUCATIONAL PROGRAMMES

The most effective contribution to HIV/AIDS prevention is the provision of HIV/AIDS awareness and education in the workplace

Organisation/Department	Contact Details
(a) Educational Resources	
Catalogue of HIV/AIDS materials: National Department of Health, HIV/AIDS & STDs Directorate	Tel: (012) 312 0121 Fax: (012) 328 5743
Film Resource Unit – Videos	Tel: (011) 838 4280/1/2 Fax: (011) 838 4451
AIDS HELPLINE	Tel: 0800 012 322
ATICCs	See page A – 26
Provincial Health Departments	See page A – 26

* Services offered nationally.

<i>Organisation/Department</i>	<i>Contact Details</i>
(b) Industrial Theatre	
Hecate*	Tel: (011) 465 8748 Fax: (011) 465 4079
Raintree*	Tel: (011) 325 5535 Fax: (011) 325 5540
AREPP – African Research and Educational Puppetry Programme*	Tel: (011) 483 1024/5 Fax: (011) 483 1786
CJ Industrial Theatre Consultants**	Tel/Fax: (016) 815 638 Cell: 083 726 4596
(c) Peer Education Training	
AIDS Education and Training	Tel: (011) 726 1495 Fax: (011) 726 8673
Mx Health Institute Ms. Engela Roos	Tel: (012) 663 8111 Fax: (012) 663 3009
Project Support Group (Zimbabwe) Prof. David Wilson	Tel: (09 263 4) 334 830 Fax: (09 263 4) 333 407 E-mail: david@psg.uz.zw
ATICCs (service/referral)	See page A – 26
(d) Presentations by People Living with HIV/AIDS (PWAs)	
NAPWA (service)	See page A – 26
Old Mutual – “I Have Hope” Peer Group Project	Tel: (021) 509 6769 Fax: (021) 509 5193
Metropolitan Life – Eduaids Project*	Tel: (021) 940 6121 Fax: (021) 509 5193

2. UNIVERSAL PRECAUTIONS

Universal precautions when administering first aid to injured personnel are recommended.

<i>Organisation</i>	<i>Contact Details</i>
Interim Medical and Dental Council	Tel: (012) 328 6680 Fax: (012) 328 5120
St. Johns Ambulance*	Tel: (011) 646 5520 Fax: (011) 646 5845
South African Occupational Health Nursing Association*	Tel: (011) 239 3743 Fax: (011) 239 3702
South African Society of Occupational Medicine*	Tel/Fax: (012) 667 5160

3. CONDOMS

Access to condoms in the workplace is essential. Condoms can be supplied freely to staff or sold through internal outlets and vending machines.

(a) Free Condom Supply	
Provincial Health Departments	
ATICCs	
(b) Subsidised Condoms (Social Marketing)	
Society for Family Health*	Tel: (011) 482 1427 Fax: (011) 482 3333

* Services offered nationally.

(c) Commercial Condom Supply

Durex	Tel: (011) 314 3102 Fax: (011) 314 3210
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(d) Condom Distribution**Condom dispensers (free condoms):**

Condocon	Tel: (011) 786 64 92 Fax: (011) 786 6492
Society for Family Health	Tel: (011) 482 1427 Fax: (011) 482 3333
Chapmor Industries	Tel: (011) 452 1101 Fax: (011) 609 3898

Condom Vending Machines (socially marketed condoms):

Society for Family Health*	Tel: (011) 482 1427 Fax: (011) 482 3333
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WELLNESS MANAGEMENT

The impact of the disease on HIV positive employees as well as the spread of HIV and other sexually transmitted diseases (STDs) can be reduced with regular health care and support.

1. TREATMENT OF STDs

Treatment of STDs dramatically reduces the risk of contracting HIV (see also Health Care #)

<i>Organisation/Department</i>	<i>Contact Details</i>
AIDS Management and Support – Dr. Clive Evian	Tel/Fax: 786 9492 Call: 082 456 3717
DoH, HIV/AIDS & STDs Directorate Dr. David Coetzee	Tel: (012) 312 0129 Fax: (012) 326 2891
STD Reference Centre – SAIMR	Tel: (011) 489 9490 Fax: (011) 489 9492
ATICCs (service and referral)	

2. TESTING

Mandatory HIV testing is strongly discouraged. Employees can be referred for voluntary and confidential testing and counselling.

<i>Organisation/Department</i>	<i>Contact Details</i>
ATICCs (service and referral)	See page A – 26
Provincial Health Departments (referral)	See page A – 26
Provincial Government Hospitals	
Private pathologists	

3. COUNSELLING

Counselling is important for the physical and mental wellbeing of HIV positive employees and their families.

<i>Organisation/Department</i>	<i>Contact Details</i>
ATICCs (service and referral)	See page A – 26
Life Line Southern Africa* (service and referral)	Tel: (011) 880 9676 Fax: (011) 447 4084
NAPWA (service and referral)	See page A – 26
AIDS HELPLINE	Tel: 0800 012 322

4. HEALTH CARE #

Early treatment of opportunistic diseases through on-site primary care services or referral can reduce health costs.

<i>Organisation/Department</i>	<i>Contact Details</i>
South African Occupational Health Nursing Association*	Tel: (011) 239 3743 Fax: (011) 239 3702
South African Society of Occupational Medicine*	Tel: (012) 667 5160

5. TB TREATMENT

By attacking the immune system HIV increases a person's chances of developing TB. With correct treatment this opportunistic disease can be cured in HIV-positive people

<i>Organisation/Department</i>	<i>Contact Details</i>
DoH, HIV/AIDS & STDs Directorate Dr. H. Housler	Tel: (012) 312 0121 Call: (012) 326 2891
SANTA (South African National Tuberculosis Association)*	Tel: (011) 454 0260 Fax: (011) 454 0096
TB Alliance*	Tel: (021) 946 3873 Fax: (021) 946 3830
TB Care Association	Tel: (021) 400 3787 Fax: (021) 21 1980

6. HOSPICE/HOME BASED CARE

A person in the terminal stages of the disease can be referred to a hospice.

<i>Organisation/Department</i>	<i>Contact Details</i>
Hospice Association of South Africa*	Tel: (021) 531 2094 Call: (021) 731 7917
Red Cross Society*	Tel: (011) 486 1313/4 Fax: (011) 486 1092

Further Resources and Information

PUBLICATIONS

<ul style="list-style-type: none"> • "Guidelines for Developing a Workplace Policy and Programme on HIV/AIDS and STDs" • South African AIDS Network – Directory 	National Department of Health, HIV/AIDS & STDs Directorate Tel: (012) 312 0121
<ul style="list-style-type: none"> • "AIDS and the Law – a Resource Manual" • Employment Code of Good Practice 	AIDS Law Project and Lawyers for Human Rights Tel: (011) 403 6918

NETWORKING/FORUMS

AIDS and the Workplace Forum – DoH, HIV/AIDS and STDs Directorate	Tel: (012) 312 0121
South African AIDS Business Council (Mr. Wayne Myslik)	Tel: (021) 658 0963
AIDS Consortium (Ms. Morna Cornell)	Tel: (011) 403 0265

* Services offered nationally.

GENERAL REFERENCE

AIDS Training Information and Counselling Centres (ATICCs)

City	Contact Person	Tel	Fax
Bloemfontein	Ms. Daleen Raubenheimer	(051) 405 8544	(051) 405 8818
Cape Town	Ms. Trish van der Velde	(021) 400 3400/2184	(021) 419 5248
Durban	Mr. Themba Mdluli	(031) 300 3104	(031) 306 9294
East London	Ms. Rose Hegner	(0431) 342 096/383	(0431) 439 743
Qwa Qwa	Ms. Ansie Claasens	(058) 713 2752	(058) 713 2502
Johannesburg	Ms. Mary Crewe	(011) 725 6711/2	(011) 725 5966
Klerksdorp	ATICC Manager	(018) 464 2010	(018) 464 2151
Nelspruit	Mr. Elphas Nkosi	(013) 759 2167	(013) 752 3770
Pietermaritzburg	Ms. Heidi van Rooyen	(0331) 942 111	(0331) 423 245
Pietersburg	Mr. Herbie Smith	(015) 290 2363	(015) 290 2364
Port Elizabeth	Mrs. Jeeva Munsamy	(041) 506 1249 (041) 506 1415	(041) 506 1486
Pretoria	Ms. Marlene Fourie	(012) 308 8743	(012) 308 8754
Queenstown	Ms. Victoria Ndyamara	(0451) 82233 x2291	(0451) 83244
Roodeporrt	Ms. Antonia Barnard	(011) 763 1224	(011) 763 6588
Umtata	Mrs. Nokwana Mzinyathi	(0471) 312 763	(0471) 311 944
Vanderbijlpark	Mr. Stanley Rangaza	(016) 950 5337/8	(016) 981 9722
Welkom	Ms. Joanne Bartlett	(057) 353 3029	(057) 352 9277
Witbank	Mr. Gerhard Burger	(0135) 906 204	(0135) 906 459

Provincial Health Departments

Province	HIV/AIDS coordinator	Tel	Fax
Eastern Cape	Ms. Marlene Poolman	(040) 609 3463/57	(040) 635 0072
Free State	Ms. Nsiki Jolingana	(051) 403 3855/58 083 305 8768	(051) 403 3851
Gauteng	Dr. Liz Floyd	(011) 355 3866 082 372 0552	(011) 355 3386 (011) 838 1708
Kwazulu Natal	Mrs. Wanda Mthembu	(0331) 952 729	(0331) 426 744
Mpumalanga	Dr. Kelvin Billingham	(013) 752 8085 x2073	(013) 755 3549
North West	Ms. Christine Adonis	(0140) 87 5875/5421	(0140) 87 5332
Northern Cape	Ms. Jane Stuurman-Moleketi	(0531) 800 600	(0531) 33 814
Northern Province	Ms. Lorna Pappo	(015) 295 2851	(015) 291 2925
Western Cape	Ms. Sylvia Abrahams	(021) 946 1500	(021) 946 3525

NAPWA (National Association of People Living with HIV/AIDS)

Province	Contact person	Tel	Fax
National Office	Mr. Peter Busse	(011) 403 8113	(011) 403 4404
Gauteng	Mr. Ben Masuku	(011) 982 5451	(011) 982 5451
Kwazulu Natal	Mrs. Mercy Makhalemele	(031) 300 3914 082 676 6617	(031) 305 5032
Western Cape	Mr. Rick Stephen	(021) 24 1106	(021) 24 1107
North West	Mr. Martin Malete	(01465) 55763	(01465) 56655
Eastern Cape	Mr. Thanduzolo Doro	(041) 573 397	(041) 544 083

POLICY FOR THE REGISTRATION OF LEARNERS FOR HOME EDUCATION

G.N. 1411 of 1999 published in *Government Gazette* No. 20659 dated 23 November 1999

POLICY FOR THE REGISTRATION OF LEARNERS FOR HOME EDUCATION

The Minister of Education, after consultation with each Member of the Council of Education Ministers, hereby gives notice in terms of section 3(4)(g) of the National Education Policy Act, 1996 (No. 27 of 1996) of the policy for the registration of learners for home education as set out in the schedule. This policy must be read with section 51 of the South African Schools Act, 1996 (No. 84 of 1996).

Minister of Education
November 1999

SCHEDULE

POLICY FOR THE REGISTRATION OF LEARNERS FOR HOME EDUCATION

1. Interpretation

In this policy any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 84 of 1996), (hereafter referred to as the Act), has that meaning.

2. Scope

This policy applies uniformly in all provincial departments of education as national norms and standards pertaining to home education.

3. Administration of home education

The Head of Department is responsible for the administration of the registration of learners to receive education at home and for the monitoring thereof. The Head of Department may delegate the responsibility to an official of the Department designated for the purpose.

4. Home education

Home education as contemplated in section 51 of the Act is –

- (a) a programme of education that a parent¹ of a learner(s) may provide to his/her own child at their own home. In addition the parent may, if necessary, enlist the specific services of a tutor for specific areas of the curriculum; or
- (b) a legal, independent form of education, alternative to attendance at a public or an independent school.

Application for registration

5. A parent of a learner of compulsory school-going age, must apply to the Head of Department to register each learner(s) to receive education at home, for the following compulsory phases of education: Foundation Phase (grades 1-3), Intermediate Phase (grades 4-6), Senior Phase (grades 7-9). The age grade norms determined by the Minister in terms of the Act apply to a learner in home education (Government Notice No. 2433 of 1998). A parent of a learner, who is no longer of compulsory school-going age or grade as contemplated in section 3 of the Act, need not apply for registration for home education.
6. A parent of a learner with special education needs referred to in section 3(2) of the Act, who wishes to register his or her child for home education must also apply for registration.
7. A parent must complete the prescribed application form for home education, which should be made available to him or her by the Head of Department or a duly authorised official, together with the conditions for registration. The contact address of a person from whom information pertaining to the provincial curriculum for the school phase of the learner, which also specifies the minimum standard of education, must also be provided to the

1 "Parent" means –

- (a) the parent or guardian of a learner,
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school.

parent. The parent must forward the completed form and a copy of the birth certificate of the learner to the Head of Department or the designated official. A *pro forma* application form is hereto attached for the guidance of provincial departments of education.

Conditions for registration of a learner for education at home

8. (a) The Head of Department, before setting conditions and considering registration in terms of section 51(2) of the Act, must obtain at least the following information from the parent pertaining to:
 - (i) supporting arguments to substantiate that education at home will be in the interest of the learner and that the learner will benefit from it, will be able to exercise his or her fundamental right to education, and will be taught at least as regularly and as well as in a public school. To determine what would be in the best interest of the learner, the parent must declare the highest education standard achieved by him or her, the hours of the day and the minimum days per year during which the parent plans to teach the learner, information about the programme that will be followed and the learning resources that will be available; and
 - (ii) the proposed curriculum to be used for home education for approval.
- (b) The learner programme must suit the age and ability of the learner. It will comply with the minimum requirements of the curriculum in public schools of the province and will not be inferior to the standard of education provided at public schools. The curriculum must comply with the language policy and the outcomes (standards) specified for each of the phases.
- (c) The learner will receive at least 3 hours contact teaching time per school day.
- (d) The education provided at home must be consistent with the values contained in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and the Act. Parents who choose home education for reasons related to curriculum, philosophy and pedagogy must not instill unfair discrimination, racism or religious intolerance in learners. The education must be consistent with the values contained in the Constitution that all roleplayers must adhere to.

Registration of a learner for home education

9. The Head of Department must take all reasonable steps to respond within 30 days after receipt of the application on the prescribed form. If he or she is satisfied that all conditions have been complied with, the Head of Department must register the learner for home education and provide the parent with a certificate of registration. If not, he or she must inform the parent in writing of the reasons for the application not being successful.
10. The registration under paragraph 9 remains in force until the learner reaches the end of each phase or until it is revoked. If a learner was educated at a public or independent school prior to being educated at home, the parent must obtain a transfer certificate from the school.
11. If the Head of Department refuses to register the learner, the parent must be informed that he or she may appeal in writing to the Member of the Executive Council in terms of section 51(4) of the Act.
12. The procedures prescribed in section 3(5) or (6) of the Act must be applied against a parent of a learner of compulsory school-going age who, for whatever reasons, is not registered for home education, and is not enrolled at a public school or a registered independent school, or is exempted from compulsory school attendance in terms of section 4 of the Act.

Duties of the parent for the monitoring of home education

13. After the learner has been registered for home education, the parent must perform the following duties:
 - (a) A record of attendance must be kept.
 - (b) A portfolio of the work of a learner must be kept. Up-to-date records of progression of a learner must be maintained. A portfolio of the work of the learner with evidence of intervention and other education support given to the learner must be kept. Such records must be made available for inspection by a duly authorised official of the provincial department of education.
 - (c) The parent must keep evidence of continuous assessment of the learner's work, which reflects the learner's progress towards achieving the outcomes of the learning programme. Evidence must also be kept of assessment/examinations at the end of each year of home education and at the end of grades 3, 6 and 9 stating whether or not the outcomes for these grades have been achieved.
 - (d) The parent must keep all relevant assessment results for a period of three years for monitoring by the Head of Department.
 - (e) At the end of every phase, the parent should appoint an independent, suitably qualified person(s) approved by the Head of Department at the parent's own expense for the assessment of the learner's progress at the end of the phase that the learner is completing. A parent may approach a public school or a registered independent school for assistance in obtaining such services. The person(s) must submit a statement to the Head of Department confirming that the learner so assessed has indeed reached the required level.
 - (f) Should a learner be admitted to a public school or registered independent school, the parent must request the Head of Department in writing to terminate the learner's registration for home education.

Withdrawal of registration

- 14. The Head of Department may withdraw the registration of a learner who is receiving education at home, after having made a reasonable effort to obtain or verify relevant information, if –
 - (a) any information contained in the application is false;
 - (b) any of the conditions in paragraph 8 is not complied with; or
 - (c) any of the criteria set in section 51(2)(b) of the Act is no longer complied with.
- 15. In accordance with section 51(4) of the Act, the registration may be withdrawn only after the Head of Department has –
 - (a) informed the parent in writing of his or her intention to take action and the reasons therefor;
 - (b) granted the parent an opportunity to make representations to him or her in relation to such action; and
 - (c) has considered any such representations.
- 16. The Head of Department must inform the parent in terms of section 51(4) of the Act, that he or she may, in writing, appeal to the Member of the Executive Council against the withdrawal of registration.
- 17. If a learner is within the compulsory school attendance age when the registration contemplated in terms of section 51 of the Act is withdrawn, such learner must then attend a school (either public or independent). A parent who fails to comply with the provisions of section 3 of the Act regarding compulsory school attendance will, unless the learner is properly registered in terms of section 51 of the Act, be guilty of an offence as contemplated in section 3(6).

ANNEXURE

Note: This is a pro forma application form as referred to in paragraph 8 and provincial departments of education may use it as a guide to develop their own official application forms. Parents must apply for registration on the official form of the provincial department of education.

..... PROVINCE
DEPARTMENT OF EDUCATION

PRO FORMA APPLICATION FOR THE REGISTRATION OF A LEARNER FOR HOME EDUCATION

All parents who wish to apply for the registration of learners for home education must complete this form. A separate form must be completed for each learner.

1. Phases

Mark with an X the phase for which home education is required:

- Foundation Phase (grades 1-3)
- Intermediate Phase (grades 4-6)
- Senior Phase (grades 7-9)

2. Information about parent who is responsible for education at home

- (a) Name of parent:
- (b) Postal address of parent:
- (c) Street/physical address and telephone number of parent:
- (d) Street/physical address where home education is to be provided:
- (e) Occupation of parent:
- (f) Qualifications, experience and expertise:

3. Information about learner

- (1) Name:
- (2) Date of birth and age:
- (3) Grade for which application is being made:
- (4) Previous school attended and grade completed:
- (5) Physical disabilities (if any):
- (6) Year of commencement of home education:

4. Additional learning resources available for the benefit of the learner (including the services of a tutor as contemplated in paragraph 4(a) of the policy and the full extent to which he or she will be utilised.)

.....
.....

5. Education programme

Please enclose as a separate Annexure full detail of the education programme that the learner will be following.

6. Number of hours of education per day

(1) Hours of the day during which the learner will be educated:

(2) Hours of contact teaching time:

7. Record of last grade, eg copy of a report

This record must be enclosed with the application form (if applicable)

8. State the reason(s) why you are applying to have your child educated at home

.....
.....
.....

9. Declaration

I (name of parent)

parent of (name of child)

hereby declare that the information I have supplied is correct.

Signed (parent)

Date

Please note that, should your application be refused or the registration revoked, you have the right to appeal to the Member of the Executive Council in writing.

FOR DEPARTMENTAL USE ONLY

Application approved

Application refused

Reasons for refusal

Date on which the registration certificate was issued and posted to the parent (if applicable)

Date on which parent was informed about revocation (if applicable)

Reasons for revoking the registration:

The form may, for record purposes, be extended to cater for decisions taken in case of an appeal.

NATIONAL POLICY REGARDING INSTRUCTIONAL TIME FOR SCHOOL SUBJECTS

as promulgated by

G.N. 1473 of 1999 published in *Government Gazette* No. 20692 dated 10 December 1999

The Minister of Education, hereby gives notice in terms of section 7 of the National Education Policy Act 27 of 1996 that he has determined the national policy in terms of section 3(4)(1) of the said Act to be applied in respect of curriculum frameworks, core syllabuses and education programmes, learning standards, examinations and the certification of qualifications as far as these relate to the matters referred to in the Schedule hereto.

K ASMAL
Minister of Education

SCHEDULE

NATIONAL POLICY REGARDING INSTRUCTIONAL TIME FOR SCHOOL SUBJECTS

Approval of national policy regarding instructional time for school instructional offerings.

The documents setting out such policy are obtainable upon written request from the Director-General: Department of Education, Private Bag X895, Pretoria, 0001. For attention Dr L P Kriel at phone (012) 312-5293 or fax (012) 328-6028.

1 Time allocation for the various school phases

1.1 Introduction

In terms of Section 4 of the Employment of Educators Act, 1998, all educators should be at school during the formal school day, which should not be less than 7 hours per day, except for special reasons and with prior permission of the Principal. The Principal will exercise his or her discretion in this regard based on provincial policy. The 7 hours per day includes the breaks and the period/s in which the learners are not at school.

The following guidelines are given in determining the scheduled teaching time:

Primary School:

- Post level 1: Between 85% and 92%;
- Post level 2: Between 85% and 90%;
- Deputy Principal: 60%; and
- Principal: Between 10% and 92%, depending on which post level appointed to.

Secondary School:

- Post level 1: Between 85% and 90%;
- Post level 2: 85%
- Deputy Principal: 60%; and
- Principal: Between 5% and 60%, depending on which post level appointed to.

However, there is currently no national policy, stipulating the minimum number of weekly teaching time for the various school instructional offerings, as contained in the policy document, *A résumé of instructional programmes in public schools, Report 550 (97/06)*.

The policy documents for Curriculum 2005 make provision for notional time with regard to the *Foundation Phase (Grades R-3), Intermediate Phase and Senior Phase*. However, the notional time allocated to the aforementioned phases is expressed in percentage form with no actual time attached to it.

In order to prioritise the instructional offerings that comprise the formal curriculum, the minimum time allocation for each school instructional offering, as contained in the policy document, *A résumé of instructional programmes in public schools, Report 550 (97/06)*, is stipulated in the tables below. It serves to indicate the range of experiences offered according to the emphases considered to be essential in a balanced curriculum. There should, however, be sufficient flexibility of application to permit some adaptation according to the varying needs of learners, resources available and approaches applied, at a given school.

No specific allocation has been made to flexi-time, however, the concept is inherent in the flexible policy. This permits schools, if necessary, to make carefully considered adaptations to the above table, in order to accommodate local priorities.

It is important, however, that the emphases achieved by the allocation of time to the various instructional offerings in the tables below, should not be distorted by adaptations made at a local level.

1.2 Foundation Phase (Grades 1–2)

Grade 1 and 2 must, in terms of the policy document *Foundation Phase (Grades R-3.)*, comply with the following notional time as listed in [Table 6](#). Considering the actual contact time for the Foundation Phase as 22,5 hours per week for Grades 1 and 2, and 25 hours per week for Grade 3, the percentage notional time was converted to hours for each of the three learning areas in this phase ([Tables 1 and 2](#)).

Table 1: Time for the Foundation Phase (Grades 1 and 2)

<i>Learning Area</i>	<i>Notional Time (%)</i>	<i>Weekly Contact Time (h)</i>
Life Skills	25%	5 h 40 min
Literacy	25%	5 h 40 min
Numeracy	25%	5 h 40 min
Flexi-time	25%	5 h 40 min

Table 2: Time for the Foundation Phase (Grade 3, from 2000)

<i>Learning Area</i>	<i>Notional Time (%)</i>	<i>Weekly Contact Time (h)</i>
Life Skills	25%	6 h 15 min
Literacy	25%	6 h 15 min
Numeracy	25%	6 h 15 min
Flexi-time	25%	6 h 15 min

In view of the fact that Curriculum 2005 will be implemented in Grade 3 in 2000, it should therefore follow the pattern in [Table 2](#) above.

1.3 Intermediate Phase (Grades 4–6)

In terms of the policy document *Intermediate Phase (Grades 4–6)*, the following notional time, as listed in [Table 3](#) is required, once Curriculum 2005 has been implemented in this phase. Considering the actual contact time for the Intermediate Phase as 26 hours 30 minutes, the percentage notional time was converted to hours.

Table 3: Time for the Intermediate Phase 2005

<i>Learning Area</i>	<i>Notional Time (%)</i>	<i>Weekly Contact Time (h)</i>
Language, Literacy and Communication	35%	9 h 15 min
Mathematical Literacy, Mathematics and Mathematical Sciences	15%	4 h
Natural Sciences and Technology	15%	4 h
Human, Social, Economic and Management Sciences	15%	4 h
Arts, Culture and Life Orientation	15%	4 h
Flexi-time	5%	1 h 20 min

With regard to the current Intermediate Phase the following (Table 4) is stipulated.

Table 4: Stipulated weekly time allocatin for the Intermediate Phase (Grades 4–6) as contained in Report 550 (97/06)

<i>Instructional offerings</i>	<i>Hours</i>	<i>Periods</i>
Compulsory common core (1–7)		
Mathematics	4 h	8
Languages 1 and 2	7 h	14
General Science	3 h 30 min	7
Geography	2 h	4
History	2 h	4
Physical and Health Education	1 h	2
Compulsory fields of study (8–12)		
Arts Education and Crafts Education	2 h	4
Religious Education	1 h	2
Language 3	3 h	6
Information Skills		
Guidance		
Gardening		
Cultural Studies		
Optional Time	1 h	2
TOTAL	26 h 30 min	53

1.4 Senior Phase (Grades 7–9)

In terms of the policy document *Senior Phase (Grades 4–6)* the following notional time, as listed in Table 5 is required, once Curriculum 2005 has been implemented in this phase. Considering the actual weekly teaching time for the Senior Phase, Grade 7 as 26 hours 30 minutes and Grades 8 and 9 as 27 hours 30 minutes, the percentage notional time was converted to hours.

Table 5: Time for the Senior Phase (Grade 7) Curriculum 2005

<i>Learning Area</i>	<i>Notional Time (%)</i>	<i>Weekly Contact Time (h)</i>
Language, Literacy and Communication	20%	5 h 20 min
Human and Social Sciences	10%	2 h 40 min
Technology	10%	2 h 40 min
Mathematical Literacy, Mathematics and Mathematical Sciences	13%	3 h 25 min
Natural Sciences	12%	3 h 10 min
Arts and Culture	10%	2 h 40 min
Economic and Management Science	10%	2 h 40 min
Life Orientation	10%	2 h 40 min
Flexible Time	5%	1 h 20 min

In view of the fact that Curriculum 2005 will be implemented in Grade 7 in 2000, it should therefore follow the pattern in Table 5 above.

Table 6: Time for the Senior Phase (Grade 8–9) Curriculum 2005

<i>Learning Area</i>	<i>Notional Time (%)</i>	<i>Weekly Contact Time (h)</i>
Language, Literacy and Communication	20%	5 h 30 min
Human and Social Sciences	10%	2 h 45 min
Technology	10%	2 h 45 min
Mathematical Literacy, Mathematics and Mathematical Sciences	13%	3 h 35min
Natural Sciences	12%	3 h 20 min
Arts and Culture	10%	2 h 45 min
Economic and Management Science	10%	2 h 45 min
Life Orientation	10%	2 h 45 min
Flexible Time	5%	1 h 25 min

The time allocation for the Senior Phase (Grades 8 and 9) (Tables 6 and 7) and the Further Education and Training Phase (Grades 10–12) (Table 8), will be as follows:

Table 7: Weekly time allocation for the Senior Phase (Grades 8–9) as contained in Report 550 (97/06)

<i>Instructional offerings</i>	<i>Weekly Contact Time (h)</i>
Compulsory common core (1–5)	
Languages 1 and 2	7 h 30 min
Mathematics	4 h
General Science	3 h 30 min
Geography/History	3 h
Optional instructional offerings that are examined. A minimum of two and a maximum of four.	
Exploratory instructional offerings listed in Groups 6 and 7	6 h
Compulsory instructional offerings that are not necessarily examined. A minimum of four.	
Religious instructional offerings listed in Group 8	1 h
Arts instructional offerings listed in Group 9	30 min
Physical and Health Education instructional offerings listed in Group 10	1 h
Guidance instructional offerings listed in Group 11	1 h
TOTAL	27 h 30 min

1.5 Further Education and Training Phase (Grades 10–12)

Table 8: Weekly time allocation for the Further Education and Training Phase (Grades 10–12)

<i>Instructional offerings</i>	<i>Weekly Contact Time (h)</i>
Compulsory common core (1–6)	
Two languages (<u>Group A</u>)	8 h 30 min
A minimum of four instructional offerings selected from Groups A–F	16 h
Compulsory instructional offerings that are not necessarily examined. (7–10)*	
Guidance instructional offerings listed in Group 7	3 h
Physical Education (Boys) or Physical Education (Girls)	
Religious Education instructional offerings	
African Spoken Language, Information Skills, School Music, Youth Preparedness	
TOTAL	27 h 30 min

* Three hours per week are allocated for optional instructional offerings that are not necessarily examined, provided that a minimum of 30 minutes and a maximum of 1 hour per week contact time, will be allocated to each of the four categories of optional, non-examinable instructional offerings.

2 Final remarks

In terms of Section 4 of the Employment of Educators Act, 1998 the formal school day for teachers will be 7 hours. The formal teaching time during the formal school week of 35 hours will be as follows:

- Foundation Phase: Grades 1 and 2 = 22 h 30 min and Grade 3 = 25 h;
- Intermediate Phase: 26 h 30 min;
- Senior Phase: Grade 7 = 26 h 30 min and Grades 8 and 9 = 27 h 30 min;
and
- FET: 27 h 30 min.

It must, however, be clearly stated that, although instructional offerings, *inter alia*, Guidance, Religious Education, Physical Education for Boys and Girls, Youth Preparedness, School Music and Information Skills, are non-examinable instructional offerings, they are in terms of national policy compulsory and form therefore part of the learning programmes of the various school phases, as contained in the policy document, *A résumé of instructional programmes in public schools, Report 550 (07/06)*. Teachers should in view of this, adhere to these prescriptions, as well as the minimum weekly time allocated to these instructional offerings.

ANNEXURE A

CURRENT NATIONAL POLICY WITH REGARD TO PROGRAMME REQUIREMENTS IN THE VARIOUS SCHOOL PHASES

1 Introduction

The policy document, *A résumé of instructional programmes in public schools, Report 550 (97/06)* accommodates the national norms and standards regarding the programme and promotion requirements for school education, Grades 3–12, as stipulated in Section 3(4)(l) of the National Education Policy Act, 1996 (Act 27 of 1996). With regard to Grades 1 and 2, the policy requirements as contained in the policy document, viz *Foundation Phase (Grades R-3)*, are applicable.

2 Programme requirements for Grades 1 to 12

2.1 The minimum number of instructional offerings to be offered in the various school phases

Table 1: Number of learning areas in the Foundation Phase (Curriculum 2005)

Grade	FOUNDATION PHASE	
	Number of learning areas	
1	8 Learning areas to be covered within the 3 Learning Programmes	
2	8 Instructional offerings to be covered within the 3 Learning Programmes	
3	8 Instructional offerings to be covered within the 3 Learning Programmes	
		<i>Total</i>

Table 2: Number of learning areas in the Intermediate Phase (Curriculum 2005)

Grade	INTERMEDIATE PHASE	
	Number of learning areas	
4	5 Learning areas to be covered within the 8 Learning Programmes	
5	5 Learning areas to be covered within the 8 Learning Programmes	
6	5 Learning areas to be covered within the 8 Learning Programmes	
		<i>Total</i>

Table 3: Minimum number of compulsory instructional offerings in the Intermediate Phase as contained in Report 550 (97/06)

Grade	INTERMEDIATE PHASE		<i>Total</i>
	Number of instructional offerings		
	Compulsory instructional offerings for promotion	Compulsory instructional offerings not necessarily for promotion	
4	2	9	11
5	6	6	12
6	6	6	12

Table 4: Number of learning areas in the Senior Phase from 2000 (Curriculum 2005)

Grade	SENIOR PHASE		Total
	Number of learning areas		
7	8 Learning areas to be covered within the 8 Learning Programmes		8

Table 5: Minimum number of compulsory instructional offerings in the Senior Phase as contained in Report 550 (97/06)

Grade	SENIOR PHASE		Total
	Number of instructional offerings		
	Compulsory instructional offerings for promotion	Compulsory instructional offerings not necessarily for promotion	
7	5	6	11
8	7	4	11
9	7	4	11

Curriculum 2005 will, however, be implemented in Grade 7 in the year 2000. In view of this, 8 learning areas will be covered within 8 learning programmes.

Table 6: Minimum number of compulsory instructional offerings in the Further Education and Training Phase as contained in Report 550 (97/06)

Grade	FURTHER EDUCATION AND TRAINING PHASE		Total
	Number of instructional offerings		
	Compulsory instructional offerings for promotion	Compulsory instructional offerings not necessarily for promotion	
10	The two required languages, plus four instructional offerings, selected from <u>Groups A–F</u> = 6	4	10
11	The two required languages, plus four instructional offerings, selected from <u>Groups A–F</u> = 6	4	10
12	The two required languages, plus four instructional offerings, selected from <u>Groups A–F</u> = 6	4	10

2.2 The programme requirements for the various school phases

2.2.1 Foundation Phase (Grades 1 and 2) and Grade 3 from 2000

In Grades 1 and 2, eight learning areas must be covered within the following three learning programmes:

- Literacy;
- Numeracy; and
- Life Skills.

2.2.2 Foundation Phase (Grade 3) as contained in Report 550 (97/06) for 1999

Compulsory instructional offerings taken into account for promotion

1. Mathematics;
2. Language 1; and
3. Language 2.

Compulsory general instructional offerings that are not taken into account for promotion

CATEGORIES 4–8
Bible Education or Hindu Studies or Islamic Studies or Religious Education or Right Living or Scripture
Art or Art and Crafts or Art Education
Class Music
Environmental Studies
Physical Education

Optional instructional offerings: A minimum of one of the following:

CATEGORY 9
Language 3
Family Guidance or Guidance or Youth Preparedness
Handicrafts or Needlework
Gardening
Health Education
Information Skills Media Guidance or Media-user Guidance
Dance: Creative Movement

2.2.3 *Intermediate Phase (Grade 4)*

Compulsory instructional offerings taken into account for promotion

1. Mathematics;
2. Language 1; and
3. Language 2.

Compulsory general instructional offerings that are not taken into account for promotion

4. General Science;
5. Geography
6. History;
7. Physical Education; and
8. Health Education.

A minimum of 2, selected from the following 2 groups:

CATEGORY 9
Art or Dance or Class Music

And

CATEGORY 10
Basic Handicraft or Basic Techniques or Handicrafts or Handwork or Woodwork or Needle Craft or Needlework

A minimum of 1 from the following:

CATEGORY 11
Bible Education or Hindu Studies or Islamic Studies or Religious Education or Right Living or Scripture

A minimum of 1, selected from the following 5 groups, Category 12:

CATEGORY 12
Language 3
Book Education or Information Skills or Library or Media Guidance or Media User Guidance
Family Guidance or Guidance or Educational Guidance or Youth Preparedness
Gardening
Cultural Studies

2.2.4 Intermediate Phase (Grades 5–6)

Compulsory instructional offerings taken into account for promotion

1. Mathematics;
2. Language 1;
3. Language 2;
4. General Science;
5. Geography; and
6. History.

Compulsory general instructional offerings that are not taken into account for promotion

7. Physical Education and Health Education

A minimum of 2, selected from the following 3 groups, Categories 8 + 9

CATEGORY 8 + 9
Art or Art and Crafts or Art Education
Dance: Creative Movement or Class Music
Basic Handicraft or Basic Techniques or Handicrafts or Handwork or Woodwork or Needle Craft or Needlework

A minimum of 1 from the following:

CATEGORY 10
Bible Education or Hindu Studies or Islamic Studies or Religious Education or Right Living or Scripture

A minimum of 2, selected from the following 5 groups, Categories 11 + 12

CATEGORY 11 + 12
Language 3
Book Education or Information Skills or Library or Media Guidance or Media User Guidance
Family Guidance or Guidance or Educational Guidance or Youth Preparedness
Gardening
Cultural Studies

2.2.5 *Senior Phase (Grades 7 only for 1999)*

Compulsory instructional offerings taken into account for promotion

1. Mathematics;
2. General Science;
3. Geography and History;
4. Language1; and
5. Language 2.

Compulsory general instructional offerings that are not taken into account for promotion

A minimum of 1 instructional offering, selected from each of the following 5 groups

CATEGORY 6
Art or Dance Movement or Class Music

CATEGORY 7
Physical Education

CATEGORY 8
Health Education

CATEGORY 9
Bible Education or Hindu Studies or Islamic Studies or Religious Education or Right Living or Scripture

CATEGORY 10
Family Guidance or Guidance or Educational Guidance or Youth Preparedness

A minimum of 1 instructional offering, selected from any one of the following 5 groups, Category 11:

CATEGORY 11
Language 3
Agricultural Science
Cultural Studies
Basic Techniques or General Handwork or Handicraft or Homecraft or Needlework or Needlework and Clothing or Technical Orientation or Woodwork
Book Education or Information Skills or Library or Media Guidance or Media-User Guidance

2.2.6 Senior Phase (Grades 8 and 9)

Compulsory instructional offerings taken into account for promotion

1. Mathematics;
2. General Science;
3. Geography and History;
4. Language 1; and
5. Language 2.

Optional instructional offerings that are examined

A minimum of 2 and a maximum of 4 instructional offerings, selected from any one of the following 10 groups, Categories 6 + 7:

CATEGORY 6 + 7
Language 3 Accounting Business Economics Agricultural Science Farm Mechanics Applied Agricultural Science Physiology Typing
Home Economics or Needlework and Clothing
Ballet Practical Ballet Music Performance: 2 nd Instrument Design and Painting Design and Sculpture
Art or Theory of Art
Music or Dance
Design or Graphic Art
Speech and Drama or Speech and Speech-Reading
Painting or Sculpture
Basic Techniques or General Handwork or Industrial Arts or Technical Orientation or Workshop Theory or Trade Theory and/or Workshop Practice or Trade Theory and Workshop Practice or Technical Theory and Practice
Woodwork or Metalwork or Woodwork and Metalwork Technical Drawing

A minimum of nil of the following instructional offerings:

CATEGORY 6 + 7 (continued)
Biblical Studies Bookbinding Bricklaying and Plastering Building Construction Computer-Literacy Electrician-Work Electronics Fitting and Turning Hotelkeeping and Catering Motor Body Repairing Motor Mechanics Plumbing and Sheetmetalwork Shorthand Snelskrif Watchmaking Woodworking

Optional instructional offerings that are not necessarily examined

A minimum of one of the following instructional offerings:

CATEGORY 8
Bible Education or Islamic Studies or Religious Education Right Living Scripture

A minimum of one of the following instructional offerings:

CATEGORY 9
Class Music School Music Music Class Singing Art Dance: Creative Movement

A minimum of one of the following instructional offerings:

CATEGORY 10
Physical and Health Education (Boys) or Physical and Health Education (Girls)

A minimum of one of the following instructional offerings:

CATEGORY 11
Guidance Vocational Guidance Family Guidance Civic Responsibility Youth Responsibility

A minimum of nil of the following instructional offerings:

CATEGORY 12
Information Skills Library Media Guidance Guidance Media User Guidance

2.2.7 Programme requirements for the Further Education and Training Phase (Grades 10–12)

Compulsory instructional offerings that are examined

- A. A minimum of SIX instructional offerings must be offered, namely:
Two languages (Group A); the Language of Learning and Teaching and one Approved Language, provided that one of the two is offered on the First Language Level, and the other one on either First or Second Language Level (2).
- B. A minimum of four instructional offerings selected from Groups A–F, namely:
Group A: Official Languages;
Group B: Mathematics;
Group C: Natural Sciences;
Group D: Third and Foreign Languages;*
Group E: Human and Social Sciences;
Group F: Vocational oriented instructional offerings (4).

* A candidate presenting six instructional offerings shall not be allowed to offer more than four languages, ie two additional languages selected from either Groups A or D.

Compulsory instructional offerings that are not necessarily examined

A minimum of 1 instructional offering, selected from each of the following 4 groups, Categories 7–10:

CATEGORY 7–10
Guidance or Vocational Guidance
Physical Education (Boys) or Physical Education (Girls)
Biblical Education or Islamic Studies or Religious Education or Right Living or Scripture
Family Guidance African Language: Spoken Language Library or Media Guidance or Media User Guidance Class Music or School Music or Music: Class Singing Youth Preparedness or Civic Responsibility



NORMS AND STANDARDS FOR EDUCATORS

G.N. 82 of 2000 published in *Government Gazette* No. 20844 dated 4 February 2000

NORMS AND STANDARDS FOR EDUCATORS

The Minister of Education has, in terms of section 3(4)(f) and (l) of the National Education Policy Act, 1996 (Act No. 27 of 1996), determined Norms and Standards for Educators as National Policy, and which policy is, in terms of section 7 of the said Act hereby published.

Professor Kader Asmal, MP
Minister of Education

SCHEDULE

NORMS AND STANDARDS FOR EDUCATORS

List of Acronyms

Advanced Certificate in Education	ACE	General Education and Training	GET
Adult Basic Education and Training	ABET	Heads of Education Departments Committee.....	HEDCOM
Bachelor of Education Degree	BEd	Master of Education Degree.....	MEd
Certificate in Education	CE	National Qualifications Framework	NQF
Committee on Teacher Education Policy.....	COTEP	National Standards Body.....	NSB
Diploma in Education	DE	Outcomes-based Education.....	OBE
Early Childhood Development.....	ECD	Post Graduate Certificate in Education	PGCE
Education, Training and Development	ETD	Recognition of Prior Learning.....	RPL
Education Training and Development Practices..	ETDP	South African Council for Educators	SACE
Education and Training Quality Assurance.....	ETQA	Sector Education and Training Authority.....	SETA
Further Education and Training.....	FET	South African Qualifications Authority.....	SAQA

Glossary

Applied competence means the ability to put into practice in the relevant context the learning outcomes acquired in obtaining a qualification.

Credit means that value assigned to a given number of notional hours of learning.

Critical Outcomes or **Critical Cross-field Education and Training Outcomes** means those generic outcomes which inform all teaching and learning, and are as defined in these regulations.

Education and Training Quality Assurance body (ETQA) means a body established in terms of section 5(1)(a)(ii) of the Act, responsible for monitoring and auditing achievements in terms of national standards and qualifications, and to which specific functions relating to the monitoring and auditing of national standards and qualifications have been assigned in terms of section 5(1)(b)(i) of the Act.

Elective learning or **Elective** means a selection of additional credits at the level of the NQF specified, from which a choice may be made to ensure that the purpose(s) of the qualification is achieved.

Field means a particular area of learning used as an organizing mechanism for the National Qualifications Framework.

Fundamental Learning or **fundamental** means that learning which forms the grounding or basis needed to undertake the education, training or further learning required in the obtaining of a qualification.

Integrated Assessment means that form of assessment which permits the learner to demonstrate applied competence and which uses a range of formative and summative assessment methods.

Level Descriptor means that statement describing a particular level of the eight levels of the National Qualifications Framework.

National Standards Body (NSB) means a body registered in terms of section 5(1)(a)(ii) of the Act, responsible for establishing education and training standards or qualifications, and to which specific functions relating to the registration of national standards and qualifications have been assigned in terms of section 5(1)(b)(i) of the Act.

Notional Hours of Learning means the learning time that it is conceived it would take an average learner to meet the outcomes defined, and includes concepts such as contact time, time spent in structured learning in the workplace and individual learning.

Outcomes means the contextually demonstrated end products of the learning process.

Provider means a body which delivers learning programmes which culminate in specified National Qualifications Framework standards and or qualifications and manages the assessment thereof.

Primary Focus means that activity or objective within the sector or sub-system upon which an organisation or body concentrates its efforts.

Qualification means a planned combination of learning outcomes which has a defined purpose or purposes, and which is intended to provide qualifying learners with applied competence and a basis for further learning; and it means the formal recognition of the achievement of the required number and type of credits and such other requirements at specific levels of the National Qualifications Framework as may be determined by the relevant bodies registered for such purpose by the South African Qualifications Authority.

Quality Assurance means the process of ensuring that the degree of excellence specified is achieved.

Recognition of Prior Learning means the comparison of the previous learning and experience of a learner howsoever obtained against the learning outcomes required for a specified qualifications, and the acceptance for purposes of qualifications of that which meets the requirements.

Specific Outcomes means contextually demonstrated knowledge, skills and values which support one or more critical outcomes.

Specialised learning or Specialisation means that specialised theoretical knowledge which underpins application in the area of specialisation.

Standard means registered statements of desired education and training outcomes and their associated assessment criteria.

Unit Standard means registered statements of desired education and training outcomes and their association assessment criteria together with administrative and other information as specified in these regulations.

1. Scope and Purpose of this policy statement

The term *educator* in this policy statement applies to all those persons who teach or educate other persons or who provide professional educational services at any public school, further education and training institution or departmental office. The term includes educators in the classroom, heads of departments, deputy-principals, principals, education development officers, district and regional managers and systems managers.

As soon as other processes of generating standards and qualifications have been finalised by the relevant stakeholder bodies, the policy will be augmented to encompass the entire range of educators as defined in the Employment of Educators Act (Act No. 76 of 1998), including those persons who teach, educate or train other persons in adult basic education centres or in early childhood development centres and those who provide professional therapy and educational psychological services.

The term *educator development* used in this policy refers to ongoing education and training of educators as a continuum, including both pre-service and in-service education and training.

The policy describes the *roles*, their associated set of *applied competences* (norms) and *qualifications* (standards) for the development of educators. It also establishes key strategic objectives for the development of learning programmes, qualifications and standards for educators. These norms and standards provide a basis for providers to develop programmes and qualifications that will be recognised by the Department of Education for purposes of employment. This policy on Norms and Standards for Educators needs to be informed by continued research, and provides a focus for that research.

The roles, their associated set of applied competences and the qualifications described here will be used by the Department of Education for purposes of recognition and evaluation of qualifications for employment as an educator.

2. Background to the development of this policy

This policy statement derives from the final report produced by the Technical Committee on the Revision of Norms and Standards for Educators, Department of Education, September 1998. The Technical Committee engaged in a variety of activities over a period of nine months culminating in the final report. Besides literature and policy review, the Committee consulted intensively with a range of stakeholders and drew heavily on the work of others, including:

- The regulations and discussion documents of the South African Qualifications Authority (SAQA);
- The reports of the Education, Training and Development Practices Project;
- The report of the President's Education Initiative (*Getting Learning Right, 1999*);
- The Centre for Educational Technology and Distance Education (*Criteria for Quality Distance Education*);
- Adult Basic Education and Training standards generating task team;
- Early Childhood Development Interim Accreditation Committee;
- The Green Paper on 'Quality Education for All Learners: The Challenge of Addressing Barriers to Learning and Development'.

This policy statement should be read together with *The Final Report of the Technical Committee on the Revision of the Norms and Standards for Educators* (Department of Education, September 1998) and with collective agreements of the Education Labour Relations Council, including those on *Development Appraisal*, the *Duties and Responsibilities of Educators and Educator Workloads*, as well as the South African Council for Educators' *Code of Conduct*.

3. Roles and competences

The cornerstone of this Norms and Standards policy is the notion of *applied competence* and its associated *assessment criteria*.

Applied competence is the overarching term for three interconnected kinds of competence:

- *Practical competence* is the demonstrated ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.
- It is grounded in *foundational competence* where the learner demonstrates an understanding of the knowledge and thinking that underpins the action taken; and
- integrated through *reflexive competence* in which the learner demonstrates ability to integrate or connect performances and decision-making with understanding and with an ability to adapt to change and unforeseen circumstances and to explain the reasons behind these adaptations.

Applied competence also refers to the ability to integrate the discrete competences which constitute each of the seven educator roles. This is important so that competence in a role is assessed, rather than simply the ability to perform a discrete competence. In turn, the seven roles should also be assessed in an integrated and applied manner.

In addition, this applied competence must be demonstrated within the subject or phase specialist role that defines the *purpose* of the qualification. While all qualifications must develop applied competence, the level at which this competence is demonstrated will differ according to the purpose and nature of the qualification.

All the competences must be developed in all initial educator qualifications. They should not, however, be seen as static. They may be developed in different ways, with different emphases and at different depths. Providers have the responsibility to decide how this should be achieved, and before designing a learning programme it will be necessary to establish the particular nature of the clients and which qualification the learners are to be prepared for.

A number of factors will impact on this decision, including:

- the type of learners in the programme, especially their levels of maturity and experience;
- the context – rural, urban or peri-urban;
- the phase(s) to be catered for;
- language experience;
- whether the courses are to be offered through contact or distance education.

Different qualifications may demand different NQF levels for the achievement of similar competences. For example, an initial teaching qualification on level 6 for the senior phase in the general education and training band will develop and assess the competence of an educator to be a leader, administrator and manager at a lower level and in a more restricted range, focused on the classroom, than an advanced qualification at level 7, aimed at school principals, district managers and education development officers. Some qualifications might require the same level of practical competence, but could differ with regard to their degree of rigour in terms of reflexive and foundational competences. Hence the 'mix' of competences can be manipulated in order to attain the required breadth (range) and depth of the qualification.

Some competences may be seen to be more suitable for experienced rather than beginning educators, eg designing original learning programmes, accessing and working in partnership with professional services and other resources in order to provide support for learners. They are nevertheless included in the initial educator programme since the competences will develop as the educator becomes more experienced.

Although *teaching practice* is recognised as an essential feature that should be included in all educator programmes, no competences are specifically associated with it and there is no prescribed period of time. This is a programme element to be determined by the provider concerned and the relevant quality assurance body.

Teaching practice is seen as a mode of delivery through which all the different roles of educators should be developed and assessed. Time spent in the workplace is considered to be very important and should provide the authentic context within which student educators experience and demonstrate the integration of the competences developed in the entire curriculum.

Educators will need some proficiency in more than one official language. The levels of proficiency required are described in a number of the competences. For employment purposes providers are requested to indicate the language proficiency attained by a graduate in terms of any appropriate language endorsement.

Notes on the roles and their associated competences

1. The seven roles and associated competences for educators for schooling provide the *exit level outcomes*. They are in effect the *norms* for educator development and therefore the central feature of all initial educator qualifications and learning programmes. The critical cross-field outcomes are integrated into the roles and

- their applied competence. Providers have the freedom and the responsibility to design their learning programmes in any way that leads learners to the successful achievement of the outcomes as represented in their associated assessment criteria.
2. While providers should develop these roles and competences in all qualifications offered, they will combine and weigh the roles differently in accordance with the specific purpose of the qualification. A more advanced qualification may pay less attention to a number of the roles and be focused primarily on one or two roles.
 3. The seventh role, that of a learning area/subject/discipline/phase specialist, is the over-arching role into which the other roles are integrated, and in which competence is ultimately assessed. The specialisation can take a variety of forms. It can be linked to phase (for example, foundation phase), or to a subject/learning area (for example, mathematics or human and social sciences), or a combination thereof. Qualifications must be designed around the specialist role as this encapsulates the 'purpose' of the qualification and 'shapes' the way the other six roles and their applied competences are integrated into the qualification.
 4. A specialisation for teaching will always include both a subject/learning area specialisation and a phase specialisation. In the case of foundation phase educators, the specialisation will be the three learning areas of the foundation phase as well as an understanding of learners and learning in the first years of formal schooling.
 5. The role of learning area/subject/discipline/phase specialist is described above as it relates to the central role of learning mediation. However, other specialisations, based on the other roles, are possible in 'post-basic' qualifications. For example, educators could specialise in Educational Management that goes beyond the classroom into the management of an institution or department; or in Curriculum Studies that builds on the role of researcher as well as the role of learning materials designer; or Materials Development in which the emphasis on materials and programmes for the classroom and school shifts to materials development for the public domain.
 6. The list of roles and their associated competences below is meant to serve as a *description* of what it means to be a competent educator. It is not meant to be a checklist against which one assesses whether a person is competent or not. The roles and competences must be integrated in the learning programme and should inform the exit level outcomes of a qualification and their associated assessment criteria. Ultimately, the qualification should reflect an applied and integrated competence. This demonstrated ability to integrate theory and practice in teaching must be assessed within all educator qualifications.
 7. In the descriptions below the seven roles are described in a manner appropriate for an initial teaching qualification.

The seven roles are:

Learning mediator

The educator will mediate learning in a manner which is sensitive to the diverse needs of learners, including those with barriers to learning; construct learning environments that are appropriately contextualised and inspirational; communicate effectively showing recognition of and respect for the differences of others. In addition an educator will demonstrate sound knowledge of subject content and various principles, strategies and resources appropriate to teaching in a South African context.

Interpreter and designer of learning programmes and materials

The educator will understand and interpret provided learning programmes, design original learning programmes, identify the requirements for a specific context of learning and select and prepare suitable textual and visual resources for learning. The educator will also select, sequence and pace the learning in a manner sensitive to the differing needs of the subject/learning area and learners.

Leader, administrator and manager

The educator will make decisions appropriate to the level, manage learning in the classroom, carry out classroom administrative duties efficiently and participate in school decision making structures. These competences will be performed in ways which are democratic, which support learners and colleagues, and which demonstrate responsiveness to changing circumstances and needs.

Scholar, researcher and lifelong learner

The educator will achieve ongoing personal, academic, occupational and professional growth through pursuing reflective study and research in their learning area, in broader professional and educational matters, and in other related fields.

Community, citizenship and pastoral role

The educator will practise and promote a critical, committed and ethical attitude towards developing a sense of respect and responsibility towards others. The educator will uphold the constitution and promote democratic values and practices in schools and society. Within the school, the educator will demonstrate an ability to develop a supportive and empowering environment for the learner and respond to the educational and other needs of learners and fellow educators.

Furthermore, the educator will develop supportive relations with parents and other key persons and organisations based on a critical understanding of community and environmental development issues. One critical dimension of this role is HIV/AIDS education.

Assessor

The educator will understand that assessment is an essential feature of the teaching and learning process and know how to integrate it into this process. The educator will have an understanding of the purposes, methods and effects of assessment and be able to provide helpful feedback to learners. The educator will design and manage both formative and summative assessment in ways that are appropriate to the level and purpose of the learning and meet the requirements of accrediting bodies. The educator will keep detailed and diagnostic records of assessment. The educator will understand how to interpret and use assessment results to feed into processes for the improvement of learning programmes.

Learning area/subject/discipline/phase specialist

The educator will be well grounded in the knowledge, skills, values, principles, methods, and procedures relevant to the discipline, subject, learning area, phase of study, or professional or occupational practice. The educator will know about different approaches to teaching and learning (and, where appropriate, research and management), and how these may be used in ways which are appropriate to the learners and the context. The educator will have a well-developed understanding of the knowledge appropriate to the specialism.

The roles are broken down into:

- **Practical Competence**
- **Foundational Competence, and**
- **Reflexive Competence.**

LEARNING MEDIATOR

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Using the language of instruction appropriately to explain, describe and discuss key concepts in the particular learning area/subject/discipline/phase.
Using a second official language to explain, describe and discuss key concepts in a conversational style.
Employing appropriate strategies for working with learner needs and disabilities, including sign language where appropriate.
Preparing thoroughly and thoughtfully for teaching by drawing on a variety of resources; the knowledge, skills and processes of relevant learning areas; learners' existing knowledge, skills and experience.
Using key teaching strategies such as higher level questioning, problem-based tasks and projects; and appropriate use of group-work, whole class teaching and individual self-study.
Adjusting teaching strategies to: match the developmental stages of learners; meet the knowledge requirements of the particular learning area; cater for cultural, gender, ethnic, language and other differences among learners.
Adjusting teaching strategies to cater for different learning styles and preferences and to mainstream learners with barriers to learning.
Creating a learning environment in which: learners develop strong internal discipline; conflict is handled through debate and argument, and learners seek growth and achievement.
Creating a learning environment in which: critical and creative thinking is encouraged; learners challenge stereotypes about language, race, gender, ethnicity, geographic location and culture.
Using media and everyday resources appropriately in teaching including judicious use of: common teaching resources like text-books, chalkboards, and charts; other useful media like overhead projectors, computers, video and audio (etc); and popular media and resources, like newspapers and magazines as well as other artefacts from everyday life.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding different explanations of how language mediates learning: the principles of language in learning; language across the curriculum; language and power; and a strong emphasis on language in multi-lingual classrooms.
Understanding different learning styles, preferences and motivations.
Understanding different explanations of how learners learn at different ages, and potential causes of success or failure in these learning processes.
Understanding the pedagogic content knowledge – the concepts, methods and disciplinary rules – of the particular learning area being taught.
Understanding the learning assumptions that underpin key teaching strategies and that inform the use of media to support teaching.
Understanding the nature of barriers to learning and the principles underlying different strategies that can be used to address them.
Understanding sociological, philosophical, psychological, historical, political and economic explanations of key concepts in education with particular reference to education in a diverse and developing country like South Africa.
Exploring, understanding, explaining, analysing and utilizing knowledge, skills and values underpinning ETD practices.

Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Reflecting on the extent to which the objectives of the learning experience have been achieved and deciding on adaptations where required.
Defending the choice of learning mediation undertaken and arguing why other learning mediation possibilities were rejected.
Analysing the learning that occurs in observed classroom interactions and in case studies.
Making judgements on the effect that language has on learning in various situations and how to make necessary adaptations.
Assessing the effects of existing practices of discipline and conflict management on learning.
Reflecting on how teaching in different contexts in South Africa affects teaching strategies and proposing adaptations.
Reflecting on the value of various learning experiences within an African and developing world context.
Reflecting on how race, class, gender, language, geographical and other differences impact on learning, and making appropriate adaptations to teaching strategies.
Critically evaluating the implications for schooling of political social events and processes and developing strategies for responding to these implications.
Critically reflecting on the ways barriers to learning can be overcome.
Critically reflecting on the degree to which issues around HIV/AIDS have been integrated into learning.
Analysing the strengths and weakness of the ways in which environmental, human rights and other critical cross-field issues have been addressed.

INTERPRETER AND DESIGNER OF LEARNING PROGRAMMES AND MATERIALS

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Interpreting and adapting learning programmes so that they are appropriate for the context in which teaching will occur.
Designing original learning programmes so that they meet the desired outcomes and are appropriate for the context in which they occur.
Adapting and/or selecting learning resources that are appropriate for the age, language competences, culture and gender of learning groups or learners.
Designing original learning resources including charts, models, worksheets and more sustained learning texts. These resources should be appropriate for subject; appropriate to the age, language competence, gender, and culture of learners; cognisant of barriers to learning.
Writing clearly and convincingly in the language of instruction.
Using a common word processing programme for developing basic materials.
Evaluating and adapting learning programmes and resources through the use of learner assessment and feedback.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding the principles of curriculum: how decisions are made; who makes the decisions, on what basis and in whose interests they are made.
Understanding various approaches to curriculum and programme design, and their relationship to particular kinds of learning required by the discipline; age, race, culture and gender of the learners.
Understanding the principles and practices of OBE, and the controversies surrounding it, including debates around competence and performance.
Understanding the learning area to be taught, including appropriate content knowledge, pedagogic content knowledge, and how to integrate this knowledge with other subjects.
Knowing about sound practice in curriculum, learning programme and learning materials design including: how learners learn from texts and resources; how language and cultural differences impact on learning.
Understanding common barriers to learning and how materials can be used to construct more flexible and individualised learning environments.
Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Reflecting on changing circumstances and conditions and adapting existing programmes and materials accordingly.
Critically evaluating different programmes in real contexts and/or through case studies both in terms of their educational validity as well as their socio-political significance.

LEADER, ADMINISTRATOR AND MANAGER

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Managing classroom teaching of various kinds (individualised, small group etc.) in different educational contexts and particularly with large and diverse groups.
Constructing a classroom atmosphere which is democratic but disciplined, and which is sensitive to culture, race and gender differences as well as to disabilities.
Resolving conflict situations within classrooms in an ethical sensitive manner.
Promoting the values and principles of the constitution particularly those related to human rights and the environment.
Maintaining efficient financial controls.
Working with other practitioners in team-teaching and participative decision making.
Accessing and working in partnership with professional services and other resources in order to provide support for learners.
Respecting the role of parents and the community and assisting in building structures to facilitate this.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding approaches to problem-solving, conflict resolution and group dynamics within a South African and developing world context characterised by diversity.
Understanding various approaches to the organisation of integrated teaching programmes and team teaching.
Understanding various approaches to the management of classrooms, with particular emphasis on large, under-resourced and diverse classrooms.
Knowledge of available professional and community support services and strategies for using their expertise.
Understanding current legislation on the management of learners and schools.
Knowledge of educators' unions, the South African Council for Educators and other relevant professional bodies.
Understanding constitutional commitments to human rights and the environment.
Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Reflecting on strategies to assist educators working on integrated teaching programmes and in team teaching.
Critically examining a variety of management options, making choices based on existing and potential conditions, and defending these choices.
Adapting systems, procedures and actions according to circumstances.

COMMUNITY, CITIZENSHIP AND PASTORAL ROLE

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Developing life-skills, work-skills, a critical, ethical and committed political attitude and a healthy lifestyle in learners.
Providing guidance to learners about work and study possibilities.
Showing an appreciation of, and respect for, people of different values, beliefs, practices and cultures.
Being able to respond to current social and educational problems with particular emphasis on the issues of violence, drug abuse, poverty, child and women abuse, HIV/AIDS and environmental degradation. Accessing and working in partnership with professional services to deal with these issues.
Counselling and/or tutoring learners in need of assistance with social or learning problems.
Demonstrating caring, committed and ethical professional behaviour and an understanding of education as dealing with the protection of children and the development of the whole person.
Conceptualising and planning a school extra-mural programme including sport, artistic and cultural activities.
Operating as a mentor through providing a mentoring support system to student educators and colleagues.

Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding various approaches to education for citizenship with particular reference to South Africa as a diverse, developing, constitutional democracy.
Understanding key community problems with particular emphasis on issues of poverty, health, environment and political democracy.
Knowing about the principles and practices of the main religions of South Africa, the customs, values and beliefs of the main cultures of SA, the Constitution and the Bill of Rights.
Understanding the possibilities for life-skill and work-skill education and training in local communities, organisations and business.
Knowing about ethical debates in religion, politics, economics, human rights and the environment.
Understanding child and adolescent development and theories of learning and behaviour with emphasis on their applicability in a diverse and developing country like South Africa.
Understanding the impact of class, race, gender and other identity-forming forces on learning.
Understanding formative development and the impact of abuse at individual, familial, and communal levels.
Understanding common barriers to learning and the kinds of school structures and processes that help to overcome these barriers.
Knowing about available support services and how they may be utilised.
Knowing about the kinds of impact school extra-mural activities can have on learning and the development of children and how these may best be developed in co-operation with local communities and business.
Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Recognising and judging appropriate intervention strategies to cope with learning and other difficulties.
Reflecting on systems of ongoing professional development for existing and new educators.
Adapting school extra curriculum programmes in response to needs, comments and criticism.
Reflecting on ethical issues in religion, politics, human rights and the environment.
Reflecting on ways of developing and maintaining environmentally responsible approaches to the community and local development.
Adapting learning programmes and other activities to promote an awareness of citizenship, human rights and the principles and values of the constitution.
Critically analysing the degree to which the school curriculum promotes HIV/AIDS awareness.
Critically analysing the degree to which the school curriculum addresses barriers to learning, environmental and human rights issues.

SCHOLAR, RESEARCHER AND LIFELONG LEARNER

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Being numerically, technologically and media literate.
Reading academic and professional texts critically.
Writing the language of learning clearly and accurately.
Applying research meaningfully to educational problems.
Demonstrating an interest in, appreciation and understanding of current affairs, various kinds of arts, culture and socio-political events.
Upholding the principles of academic integrity and the pursuit of excellence in the field of education.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding current thinking about technological, numerical and media literacies with particular reference to educators in a diverse and developing country like South Africa.
Understanding the reasons and uses for, and various approaches to, educational research.
Understanding how to access and use common information sources like libraries, community resource centres, and computer information systems like the internet.
Understanding and using effective study methods.

Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Reflecting on critical personal responses to, literature, arts and culture as well as social, political and economic issues.
Reflecting on knowledge and experience of environmental and human rights issues and adapting own practices.

ASSESSOR

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow, and to perform the chosen action.)</i>
Making appropriate use of different assessment practices, with a particular emphasis on competence-based assessment and the formative use of assessment, in particular continuous and diagnostic forms of assessment.
Assessing in a manner appropriate to the phase/subject/learning area.
Providing feedback to learners in sensitive and educationally helpful ways.
Judging learners' competence and performance in ways that are fair, valid and reliable.
Maintaining efficient recording and reporting of academic progress.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding the assumptions that underlie a range of assessment approaches and their particular strengths and weaknesses in relation to the age of the learner and learning area being assessed
Understanding the different learning principles underpinning the structuring of different assessment tasks.
Understanding a range of assessment approaches and methods appropriate to the learning area/subject/discipline/phase.
Understanding language terminology and content to be used in the assessment task and the degree to which this is gender and culturally sensitive.
Understanding descriptive and diagnostic reporting within a context of high illiteracy rates among parents.
Reflexive competences
<i>(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)</i>
Justifying assessment design decisions and choices about assessment tasks and approaches.
Reflecting on appropriateness of assessment decisions made in particular learning situations and adjusting the assessment tasks and approaches where necessary.
Interpreting and using assessment results to feed into processes for the improvement of learning programmes.

LEARNING AREA/SUBJECT/DISCIPLINE/PHASE SPECIALIST

Practical competences
<i>(Where the learner demonstrates the ability, in an authentic context, to consider a range of possibilities for action, make considered decisions about which possibility to follow and to perform the chosen action.)</i>
Adapting general educational principles to the phase/subject/learning area.
Selecting, sequencing and pacing content in a manner appropriate to the phase/subject/learning area; the needs of the learners and the context.
Selecting methodologies appropriate to learners and contexts.
Integrating subjects into broader learning areas and learning areas into learning programmes.
Teaching concepts in a manner which allows learners to transfer this knowledge and use it in different contexts.
Foundational competences
<i>(Where the learner demonstrates an understanding of the knowledge and thinking which underpins the actions taken.)</i>
Understanding the assumptions underlying the descriptions of competence in a particular discipline/subject/learning area.
Understanding the ways of thinking and doing involved in a particular discipline/subject/learning area and how these may be taught.
Knowing and understanding the content knowledge of the discipline/subject/learning area.
Knowing of and understanding the content and skills prescribed by the national curriculum.
Understanding the difficulties and benefits of integrating this subject into a broader learning area.
Understanding the role that a particular discipline/subject/learning area plays in the work and life of citizens in South African society – particularly with regard to human rights and the environment.

Reflexive competences
(Where the learner demonstrates the ability to integrate or connect performances and decision making with understanding and with the ability to adapt to change and unforeseen circumstances and explain the reasons behind these actions.)
Reflecting on and assessing own practice.
Analysing lesson plans, learning programmes and assessment tasks and demonstrating an understanding of appropriate selection, sequencing and pacing of content.
Identifying and critically evaluating what counts as undisputed knowledge, necessary skills, important values.
Making educational judgements on educational issues arising from real practice or from authentic case study exercises.
Researching real educational problems and demonstrating an understanding of the implications of this research.
Reflecting on the relations between subjects/disciplines and making judgements on the possibilities of integrating them.

4. Qualifications framework

According to SAQA¹ a **qualification** is:

a planned combination of learning outcomes which has a defined purpose or purposes, and which is intended to provide qualifying learners with applied competence and a basis for further learning

Also,

a qualification may be achieved in whole or in part through the recognition of prior learning, which concept includes but is not limited to learning outcomes achieved through formal, informal and non-formal learning and work experience.

The following framework of qualifications, together with the seven roles and their associated applied competences allows providers, through the Standards Generating Body for Educators in Schooling, to develop qualifications and programmes that are designed for specific purposes and contexts, but within an overall regulatory framework promoting national standards. It will also be used by the Department of Education to recognise and evaluate qualifications for employment in education.

Qualifications for educators for schooling will be qualifications based on exit level outcomes and associated assessment criteria or qualifications based on unit standards.

Qualifications for educators in the Schooling sub-field of Field 05 will be entitled by two categories: *Type* and *Specialisation*.

Type is the name of the qualification that indicates level and credits on the NQF. The list of qualification types and their aims is shown on the next page.

Specialisation is a phrase in brackets after the qualification type, for example, Diploma in Education (Senior Phase: Human and Social Sciences). It indicates the *particular purpose* of the qualification and could include a phase specialisation (such as Foundation Phase), a subject/learning area specialisation (e.g. Further Education: Mathematics), a specialisation in a particular role (e.g. Education Management), or a professional or occupational practice (e.g. Curriculum Studies). There is no predetermined set of purposes/specialisations.

The qualifications described here may need to be amended in the light of new academic policy on higher education.

	Aim of qualification	Total credits	Level
Certificate in Education	To develop introductory practical and foundational competence, and some degree of reflexive competence. To provide an entry or exit point before the completion of the Diploma in Education.	120	5
Diploma in Education	To accredit a learner with introductory practical, foundational and reflexive competence. To provide an entry and exit point before the completion of the Bachelor of Education degree.	240	5
First Bachelor's Degrees	To accredit a general formative qualification with one or more subject/learning area specialisations in order to provide access to a PGCE as a 'capping' qualification.	360/ 480	6
Post-Graduate Certificate in Education	To accredit a generalist educator's qualification that 'caps' an undergraduate qualification. As an access requirement candidates are required to have appropriate prior learning which leads to general foundational and reflexive competence. The qualification focuses mainly on developing practical competence reflexively grounded in educational theory.	120	6
Bachelor of Education	To accredit an initial qualification for educators in schools. The learner will have strong practical and foundational competence with the reflexive competence to make judgements in a wide context. The qualification is intended for candidates seeking a focused teaching degree with strong subject and educational theory competence.	480	6

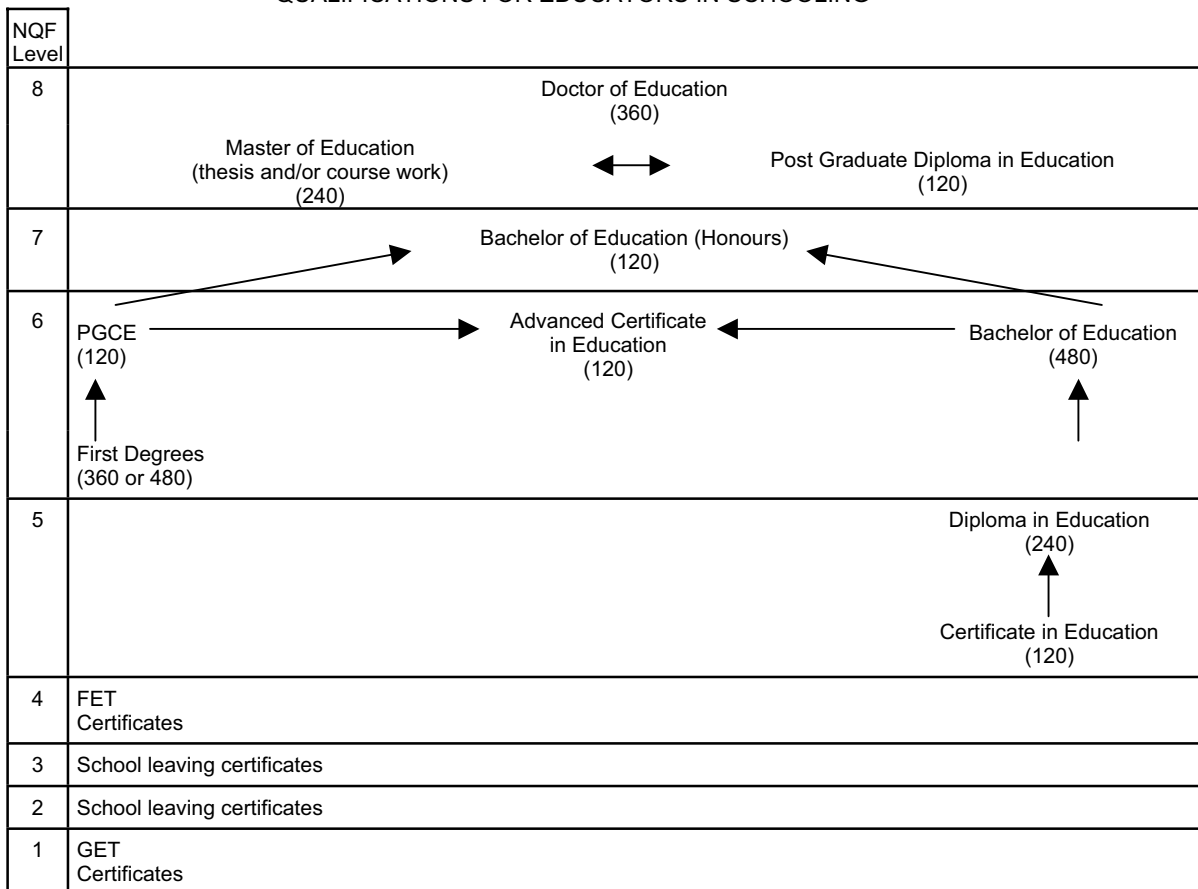
continued

¹ SAQA Regulations, *Government Gazette* No. 6140, 28 March 1998, sections 8(1)(a), (h).

	Aim of qualification	Total credits	Level
Advanced Certificate in Education	To accredit further specialised subject/learning area/discipline/phase competence, or a new subject specialisation, or a specialisation in one or more of the roles as an advanced study intended to 'cap' an initial or general teaching qualification. Through this qualification learners will be prepared to embark on a course of study at NQF level 7. It must, therefore, include appropriate demands in terms of rigour.	120	6
Bachelor of Education (Honours)	To accredit the advanced and specialised academic, professional or occupational study of an aspect of education. It is designed to build the competence of expert educators and curriculum specialists, system managers, or educational researchers. Through this qualification learners will be prepared to embark on a course of study leading to an M Ed at NQF level 8. Although the B Ed (Honours) must include some specialisation and a focus on research, the nature of these will vary depending on whether an academic, professional or occupational focus is chosen.	120	7
Post Graduate Diploma in Education	To accredit advanced and specialised occupational, academic and professional study. This qualification can accredit the coursework component of a Masters' degree or provide an entry or exit point before the completion of a Masters' degree.	120	8
Master of Education	To accredit the advanced and specialised academic or professional study of an aspect of education with emphasis on research. The degree may be taken by thesis or by a combination of thesis and coursework.	240	8
Doctor of Education	To accredit the highly advanced and specialised academic or professional study of an aspect of education in which the learner demonstrates capacity for sustained, original research.	360	8

The various qualification types are shown in the following diagram:

QUALIFICATIONS FOR EDUCATORS IN SCHOOLING²



2 Please note that the number of credits indicated in brackets after each qualification are minimum credits of which a minimum of 72 should be at or above the level at which the qualification is registered.

MINIMUM SPECIALIST REQUIREMENTS FOR BASIC TEACHING QUALIFICATIONS

There is no longer a list of prescribed teaching subjects. Learners and providers are advised, however, that the design of programmes and qualifications, including subject choices, must lead to the competence to teach learning programmes, learning areas, subjects or foci in the school curriculum.

The considerable importance of the specialist role should be reflected in the apportionment of credits. For each basic qualification, there is a minimum number of SAQA credits dedicated to the specialist role:

DE	96 credits
B Ed	240 credits
PGCE	20 credits

The precise specialist requirements for the initial teaching qualifications leading to qualified educator status are as follows:

Foundation Phase (Grade R to Grade 3)

- A study of the 3 learning programmes as prescribed by the national curriculum. These must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- Expertise in the development of early literacy, particularly reading competence.
- Expertise in the development of early numeracy.
- Expertise in the development of life-skills.
- The above specialist requirements should carry the following credits:

DE	72 credits at NQF 5 or higher, 24 credits at NQF 4 or higher.
B Ed	96 credits at NQF 6, 108 credits at NQF 5 or higher.
PGCE	20 credits at NQF 6.

Intermediate Phase (Grade 4 to Grade 6)

- A study of the 5 learning programmes as prescribed by the national curriculum. These must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- Expertise in the development of reading competence, particularly reading comprehension.
- Expertise in the development of numeracy.
- Expertise in the development of life-skills.

The above specialist requirements should carry the following credits:

DE	72 credits at NQF 5 or higher, 24 credits at NQF 4 or higher.
B Ed	96 credits at NQF 6, 108 credits at NQF 5 or higher.
PGCE	20 credits at NQF 6.

Senior Phase (Grade 7 to Grade 9)

- A study of at least two subjects which meet the requirements of the learning area specialisations as prescribed by the national curriculum.
- The studies must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- The above specialist requirements should carry the following credits:

DE	72 credits at NQF 5 or higher.
B Ed	96 credits at NQF 6, 84 credits at NQF 5 or higher.
PGCE	20 credits at NQF 6.

In addition

- A study of **one** out of the learning areas of:
 - Mathematical Literacy, Mathematics and Mathematical Sciences
 - Natural Sciences
 - Technology

This study must be in a learning area not taken elsewhere in the curriculum.

It should carry at least 24 credits at NQF level 4 or higher for all qualifications except the PGCE where it may be recognised as prior learning.

Further Education (Grade 10 to Grade 12)

DE	36 credits at NQF 6, 60 credits at NQF 5 or higher.
B Ed	96 credits at NQF 6, 108 credits at NQF 5 or higher.
PGCE	20 credits at NQF 6.

Notes on articulation

Articulation within the qualifications framework for educators for schooling:

- Learners who complete a 360 or 480 credit Bachelor's (other than a B Ed) degree are deemed to have completed their subject specialization, but need to complete a Post Graduate Certificate in Education as a professional capping qualification.
- A 480 credit B Ed degree includes both the professional qualification and the subject or phase specialization.
- There are two entry and exit points within a B Ed – a Certificate in Education or a Diploma in Education.
- Learners entering a B Ed from a new 240 credit Diploma in Education or an old three-year Diploma in Education will be required to complete an additional 240 credits of the B Ed degree in order to achieve the over-arching purpose of the degree on a higher level.
- The flexibility of a qualification, the degree to which access and exit points are open or closed, will be described in the 'rules of combination' and the 'learning assumed to be in place' contained in the registration information of the qualification.

Articulation and mobility within the workplace

- The roles, their associated applied competences and the qualifications framework provide a basis for the ongoing professional development of educators which will be steered by the Department of Education through using its occupational requirements – job descriptions, appraisal criteria, workload, post descriptions and career pathing – to influence the design of qualifications and learning programmes. The creation of multiple career and learning paths, will encourage the development of educators who are competent to teach in different contexts and in different ways, playing different roles and using different applied competences.

Articulation within field 05: Education, training and development:

- The broad similarity between the contextual roles for educators for schooling, the generic roles proposed in the ETDP final report and the draft standards for ECD and ABET practitioners provides a basis for portability and flexibility between qualifications and programmes in different sub-fields of NSB Field 05. This will increase mobility for learners and practitioners by opening up different career and learning paths.
- Since 'a qualification may be achieved in whole or part through the recognition of prior learning, which concept includes but is not limited to learning outcomes achieved through formal, informal and non-formal learning and work experience',³ the process of assessment of applied competence achieved through recognition of prior learning also provides for mobility of learners between different learning programmes and places of work.

5. The transformation of existing practice: Standards for the design and delivery of educator development programmes

A statement of the roles and competences (norms) for educators and the provision of a qualifications structure and specialist requirements (standards) are fundamental to the development of educators. They provide a definition of competence within this field, and a means of assessment of this competence. However, in themselves they will be unable to assure the quality of the learning programmes and qualifications.

It is necessary to establish key strategic objectives for the design and delivery of educator development programmes and qualifications which will provide guidance for the transformation of existing practice. The objectives are stated as standards for design and delivery and provide a basis for quality assurance of programmes by Education and Training Quality Assurance bodies. Quality assurance measures and mechanisms will be put in place by SAQA, the Council on Higher Education and its Higher Education Quality Committee, and/or the relevant Sector Education and Training Authority (SETA).

Standards for the design and delivery of programmes will include the following criteria:

Purpose of the qualification

- The purpose of the qualification states clearly the roles, the specialism(s), the level, the target learners, employability and the articulation routes.
- The purpose is in line with national and/or local needs.
- The purpose informs the statement of applied competence, curriculum design and the assessment strategy.

³ SAQA Regulation 8(1)(h) *Government Gazette* 28 March 1998.

Target learners

- Entry knowledge of learners is assessed/checked and informs the development of the programme.
- Access is promoted and learner support is provided.
- There are processes for the recognition of prior learning and experience.

Applied and integrated teaching competence

- The applied and integrated competence to be achieved by the learners is expressed in exit level outcomes, and is clearly related to the purpose of the qualification.
- The learning programme is designed in such a way that it develops this competence.
- The courses/modules in the programme and the roles that the programme seeks to develop are integrated.

Applied and integrated assessment

- The assessment strategy is clearly related to the purpose and exit level outcomes of the programme.
- The practical, foundational and reflexive competences for each role provide a basis for assessment criteria.
- Accountability and transparency are necessary features of all assessment practices and learners should be informed of the assessment criteria and strategies before the learning begins.
- Evidence can be demonstrated through a variety of options: case studies; problem-solving assignments; teaching practice in simulated and in situ contexts; portfolios of learning materials; projects; written and oral examinations.
- The assessment strategy assesses the extent to which learners have achieved *horizontal integration*, that is, the integration of roles and the knowledge and skills delivered through the different courses/modules which make up the educator development programme. It is designed in such a way that the seven roles are assessed through the specialism.
- The assessment strategy also assesses the extent to which learners have achieved the *vertical integration* of foundational, practical and reflexive competence. In other words, it assesses whether learners are able to integrate the ability to perform important teaching actions competently (a practical competence), understand the theoretical basis for these actions (foundational competence), and reflect on and make changes to teaching practices (reflective competence) so that they can be described as achieving an applied and integrated competence.
- The assessment strategy assesses the extent to which learners have the ability *to teach in authentic and changing South African contexts*.
- The assessment is *ongoing and developmental*.
- There are detailed diagnostic records of learners' progress.

Knowledge of the specialisation

- The development of knowledge of the specialism (discipline, subject, learning area, phase of study) embraces content knowledge (knowing that), concepts and theories (knowing why), procedural knowledge (knowing how), and strategic knowledge (knowledge about why, when, where and who).⁴
- Knowledge of the specialism is central to the programme and integrated into the development of competence in the other roles.

Integration of theory and practice

- The worth and value of qualifications and learning programmes are determined by the learners' ability to demonstrate applied and integrated competence in the satisfying of academic, professional and occupational requirements. Such an integrated approach to learning places great emphasis on the lifelong professional development of educators.
- In order for qualifications and their associated learning programmes to be recognised for employment in education, providers must ensure that the roles and applied competence specified in the exit level outcomes of the qualification meet the requirement of learners to demonstrate their ability to integrate theory and practice.
- School experience is integrated into the programme, rather than being a separate 'add-on'. It is a structured teaching and learning experience with some form of observational assessment.
- The programme is contextually sensitive.
- There are close links between the work place (schools) and the institutions providing the programme.

⁴ ETDP Project, *Final Report: An Indigenous Model of Profession Paths, Qualification and Standards within the National Qualifications Framework*, October 1998, National Training Board and German Technical Co-operation, p.26.

Extended professionalism

- Providers develop programmes and an institutional ethos which develops educators as extended professionals and lifelong learners.
- Programmes are increasingly offered in modes that allow practising educators to attend.
- Learning materials are developed and used to create spatial flexibility in courses: learners can learn at a variety of sites and do not necessarily have to have face-to-face contact with their educators.
- Assignments are designed to encourage problem-solving within authentic contexts.
- The programme prioritises the promotion of critical engagement, reasoning and reflective thinking.
- The programme grounds teaching in a wider social, economic and political understanding and awareness.
- The provider demonstrates an understanding of educator development as an activity that goes wider than formal schooling.
- The teaching staff is involved in policy and development activities outside of their mainstream activity.

Programme design process

- The programme is designed on the basis of research, with national/local needs and standard as well as the needs of target learners and employers in mind.
- The programme has outcomes, learning and assessment strategies that are appropriate to the purpose of the qualification.
- Programmes are regularly reviewed in the light of new developments in the field as well as on the basis of feedback from employers, learners, tutors, and assessment processes.

Recognition of qualifications for employment in public education

In evaluating qualifications for employment in education, qualifications meeting the following criteria will be recognised. The qualification must:

- integrate the critical cross-field outcomes into exit-level outcomes of the qualification;
- integrate the six contextual roles and their applied competences into the seventh specialised or elective role that is described in the exit-level outcomes;
- be registered on the National Qualifications Framework;
- integrate the job descriptions, workloads, post level requirements and other specific occupational requirements of the employer;
- integrate the professional requirements for registration with SACE;
- be certified by the relevant ETQA or its designated body;
- be attained through a provider accredited by the relevant ETQA or its designated body.

The Department of Education will publish a list of such recognised qualifications on a regular basis.

Implementation of the norms and standards for educators

- The nomenclature of existing educator qualifications must be changed in accordance with these norms and standards by June 30, 2001.
- From April 1, 2002, only those programmes leading to qualifications which are registered on the NQF and where the programme and the provider are accredited by the Higher Education Quality Committee of the Council on Higher Education will be eligible for funding from the Department of Education.
- All existing educator qualifications which have been formally accredited by COTEP and HEDCOM and have been recorded and/or provisionally registered by SAQA will be recognised by the Department of Education for purposes of employment in public education until June 30, 2003.

CRITERIA FOR THE RECOGNITION AND EVALUATION OF QUALIFICATIONS FOR EMPLOYMENT IN EDUCATION BASED ON THE NORMS AND STANDARDS FOR EDUCATORS, 2000

G.N. 935 of 2000 published in *Government Gazette* No. 21565 dated 22 September 2000

CRITERIA FOR THE RECOGNITION AND EVALUATION OF QUALIFICATIONS FOR EMPLOYMENT IN EDUCATION BASED ON THE NORMS AND STANDARDS FOR EDUCATORS, 2000

I, Kader Asmal, Minister of Education, has, in terms of section 3(4)(f) and (r) of the National Policy Act (Act 27 of 1996), determined national policy for the Recognition and Evaluation of Qualifications for Employment in Education based on the Norms and Standards for Educators. This policy is hereby published in terms of section 7 of the said Act.

Professor Kader Asmal, MP
Minister of Education
September 2000

CRITERIA FOR RECOGNITION AND EVALUATION OF QUALIFICATIONS FOR EMPLOYMENT IN EDUCATION BASED ON THE NORMS AND STANDARDS FOR EDUCATORS

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ACRONYMS

ABET	Adult Basic Education and Training	NDE	National Diploma in Education
ACE	Advanced Certificate in Education	NPDE	National Professional Diploma in Education
ETQA	Education and Training Quality Assurance Body	NTD	National Technical Diploma
B Ed	Bachelor of Education	NQF	National Qualifications Framework
B Ed (Honours)	Bachelor of Education (Honours)	PGCE	Post-Graduate Certificate in Education
CE	Certificate in Education	PGDE	Post-Graduate Diploma in Education
CHE	Council on Higher Education	PTC	Primary Teachers' Certificate
COTEP	Committee on Teacher Education Policy	NSB	National Standards Body
DE	Diploma in Education	REQV	Relative Education Qualification Value
D Ed	Doctor of Education	RPL	Recognition of Prior Learning
FDE	Further Diploma in Education	SAQA	South African Qualifications Authority
HEDCOM	Heads of Education Departments Committee	SEC	Secondary Education Certificate
HDE	Higher Diploma in Education	SED	Secondary Education Diploma
INSET	In-Service Education and Training	SETA	Sector Education and Training Authority
JSTC	Junior Secondary Teachers' Certificate	SGB	Standards Generating Body
M Ed	Master of Education		

EXPLANATORY NOTES TO THE NORMS AND STANDARDS FOR EDUCATORS, FEBRUARY 2000

The new Norms and Standards for Educators present a completely new way of designing and delivering teacher education in South Africa. The cornerstone of the new policy is the seven roles for educators and their associated applied competence that should be integrated into the purpose and exit level outcomes of the qualification. The institution has the freedom to design and deliver their learning programmes in a flexible manner that will lead to the attainment of the learning outcomes or educator competences.

It is hence expected from institutions to scrutinize their existing qualifications and redesign or adapt them in accordance with the new Norms and Standards. (Refer Section 5, page 30 of the *Norms and Standards Educators, 2000*.)

1. Competences

- All the competences must be developed and demonstrated in all seven educator roles in all initial teacher education programmes.
- Advanced/post-graduate programmes may however focus on specific competences and roles.
- Students are expected to be fully proficient in at least ONE official language and partly proficient (sufficient for purposes of ordinary classroom communication) in at least ONE other official language. The language proficiencies of a learner should be indicated on their certificates.

2. Qualifications for Educators in Schooling (Refer *Educator Qualifications Framework*)

- The Certificate in Education (120 credits) and the Diploma in Education (240 credits) are entry and exit points on the Bachelor of Education (480 credits) path. A teacher with either or both of these two qualifications (placing them on REQV 11 or 12) will not be regarded as professionally qualified.
- To be registered with SACE as a professionally qualified educator a minimum of REQV 13 is required or 360 SAQA credits at level 5 or above.
- The Diploma in Education comprises a total of 240 credits which includes the 120 credits of the Certificate in Education. It is not an accumulation of the 120 credits for the Certificate in Education together with 240 credits for the Diploma in Education to equal 360 credits.
- Providers may use the certificate and diploma as initial qualifications for those students who do not have a matriculation exemption.
- First Bachelors degrees should include sufficient credits in appropriate subjects so that the teacher will be competent in his/her chosen specialisation. Detailed definitions of approved qualifications and a list of approved school subjects are contained in later sections of this document.
- After a Bachelor of Education degree or a first Bachelors degree and a Post-Graduate Certificate in Education, the teacher could further his/her studies on either a horizontal level by enrolling for an Advanced Certificate in Education or vertically by completing a Bachelor of Education (Honours) degree.
- The new Advanced Certificate in Education is a new qualification on level 6 that will replace the current FDEs (which are in many cases currently offered on level 5). The ACE is intended to replace the FDE and the HDE and may be used for up-grading or further training in a specialisation or for re-training.
- Entry into the Advanced Certificate in Education may be vertically from a three-year diploma in education (REQV 13) and equivalent qualifications or horizontally from a PGCE or B Ed or from an NQF level 7 or 8 qualification. In other words, the ACE will follow either a general formative appropriate degree (BA, B Comm or B Sc) together with [by] a PGCE (which will replace the current HDE post-graduate) or it will follow a new 480 credit B Ed. Existing educators who are in possession of a three-year college diploma may also be admitted to the new level 6 ACE.

- A student that completed an old three-year Diploma in Education and an Advanced Certificate in Education (120 credits) or an old one-year full-time Further Diploma in Education may enrol for a Bachelor of Education (Honours) degree, if such a student complies with all the institutional requirements.
- A student may not advance from a 480 credit Bachelor of Education degree to a 240 credit Masters degree. He/she could however enrol for a 360 credit Masters degree programme or a 120 B Ed (Hons) programme followed by a 240 credit Masters degree programme.
- The new B Ed (Honours) will replace the existing post-graduate B Ed. The new B Ed (Honours) may be designed with a particular focus on the advanced development of either academic or professional or occupational competence. It is not necessary to award the new B Ed (Hons) retrospectively to past B Ed graduates. If, however, the institutions wishes to endorse past B Ed certificates as equivalent to the new B Ed (Hons) it may do so. From a graduate's complete set of qualifications and the dates of certification, it would be evident which B Ed they have attained. The new 480 credit B Ed in the Norms and Standards will be endorsed to the effect to indicate that it is a first or initial professional teaching qualification, eg Foundation Phase, or Further Education and Training Phase: Mathematics. That will also help to distinguish between the old and the new B Ed.

3. Articulation within the qualifications framework (Refer section 4)

Learners entering a 480 Bachelor of Education degree from an old three-year Diploma in Education, will be required to study an additional 240 credits to complete the 480 Bachelor of Education degree. The institution may credit the student through the Recognition of Prior Learning and/or school experience up to a maximum of 120 credits.

4. Implementation of the Norms and Standards for Educators (Refer to section 4 of Norms and Standards for Educators, February 2000)

First Bullet (*sic*)

The change of nomenclature in accordance with the Norms and Standards imply more than a mere redesignation of the current programmes. It requires that existing programmes be redesigned in order to reflect the notion of applied competence and its associated assessment criteria and the seven educator roles. The June 30, 2001 date allows institutions sufficient time to register, accredit, seek funding approval and approval for employment purposes through the CHE, SAQA and DoE processes to ensure that all their qualifications are suitably named for the academic year 2002.

This process does contain some flexibility and uncertainty as the CHE is developing new academic policy which may necessitate some changes to the Norms and Standards for Educators. It is, however, important to move towards a standardised qualification framework as soon as possible and providers are urged to adopt the Norms and Standards for Educators (February 2000) nomenclature.

Third Bullet (*sic*)

All existing qualifications formally approved by COTEP and HEDCOM may continue to be offered until June 30, 2003. A student admitted to such a qualification as late as January 2003 would still be able to complete his/her qualification. All COTEP and HEDCOM approved qualifications will continue to be recognised for purposes of employment. This lengthy time span is designed to allay fears and uncertainties. However, providers and students are urged to move across to the new framework as soon as possible. The process of incorporating teacher education and colleges of education into higher education is likely to enable many students to transfer from their existing qualifications to qualifications compliant with the Norms and Standards for Educators (February 2000). Students should have no fears that their existing COTEP and HEDCOM approved qualifications will not be recognised for purposes of employment after June 30, 2003. This date refers only to a student admitted to any of these programmes for the first time after this date who will not receive recognition for such a programme for employment in education.

REGISTRATION, ACCREDITATION AND APPROVAL OF QUALIFICATIONS

Teacher Education qualifications and programmes are subject to the same processes of registration, accreditation and approval as all other higher education programmes. In addition, publically funded teacher education qualifications must meet the criteria laid down by the Minister of Education in the Criteria for the Recognition and Evaluation of Qualifications for Employment in Education.

In the interim until the end of 2000, applications for the registration, accreditation and approval of new qualifications should be submitted in accordance with the document:

Department of Education/Council on Higher Education/ South African Qualifications Authority Interim Joint Committee on Registration of New Qualifications, Accreditation of New Learning Programmes and Approval of New Learning Programmes for Funding Purposes.

Providers will be informed by SAQA, the CHE and the DoE as to the appropriate processes that will have to be followed with effect from January 2001.

In addition to the above, providers must submit their qualifications to the Department of Education for evaluation for purposes of employment. To apply for recognition and evaluation of their qualifications, providers must use the following format:

Submission of new teacher education qualifications for approval by the Department of Education for employment in public education

1. Name of the institution

2. Title of the qualification

Refer to Section 4 of the *Norms and Standards for Educators, 2000*, for approved appellations of professional educator qualifications.

3. Purpose of the qualification

- The purpose of the qualification states clearly the roles, specialism(s), level, target learners, employability and articulation routes.
- The purpose is in line with national and/or local needs.
- The purpose informs the statement of applied competence, curriculum design and assessment strategy.

4. Target learners and learning assumed to be in place

- Assessment of entry knowledge of learners.
- Promotion of access to the programme and the providing of learner support.
- Processes for the recognition of prior learning and experience.

5. Exit level outcomes and applied and integrated teaching competence

- The critical cross-field outcomes are integrated into the exit level outcomes of the qualification.
- The contextual roles (all six of them in the case of a 480 credit B Ed) and their applied competences are integrated into the seventh specialised or elective role that is described in the exit level outcomes, and is clearly related to the purpose of the qualification.

6. Credit specifications

- Total number of credits required for the qualification.
- Minimum or maximum credits required at specific levels, including evidence that the minimum specialist requirements in the case of a 480 credit B Ed, as described in the Norms and Standards for Educators, are complied with.

7. Applied and integrated assessment

- The assessment strategy is clearly related to the purpose and exit level outcomes of the qualification.
- The assessment criteria are based on the practical, foundational and reflexive competences described for each of the roles in the Norms and Standards for Educators.
- The seven roles are assessed through the specialism.
- The ability of learners to integrate theory and practice should be assessed. Learners must be able to integrate their competence to perform important teaching actions (practical competence), their understanding of the theoretical basis for these actions (foundational competence) and their ability to reflect on and make changes to their teaching practices (reflective competence).
- Knowledge of the specialism (discipline, subject, learning area, phase of schooling) is central to the learning programme and the assessment of content knowledge, concepts and theories, procedural knowledge and strategic knowledge should form a key part of the assessment strategy.
- Teaching experience is integrated in a structured manner into the learning programme and is associated with part of the assessment strategy.
- Detailed diagnostic records of learners' progress should be kept.

8. Articulation with other qualifications, programmes and providers

9. Quality assurance mechanisms

- Brief description of the internal quality review process that is in place to ensure own quality improvement and the effective and efficient delivery of the teacher education learning programme.
- Last and next review date of the qualification and learning programme.
- Most recent report findings of the external review of the programme by an ETQA.

10. Mode of delivery of the programme

- Full-time, part-time, face-to-face contact, school-based and workplace integrated, distance, telematic, electronic, on-campus or mixed mode, off-campus, satellite campus, outsourced to or in partnership with other providers.

11. Date of implementation of the programme for the first time

12. Approval by Council and Senate

13. Date of submission

14. Contact information

- Name of contact person
- Physical address
- Postal address
- Telephone number (Telkom/Cell phone)
- Fax number
- E-mail

15. Applications should be sent to;

Mr M J Loots
Department of Education
23 Schoeman Street
Private Bag X 895
PRETORIA
0001
Tel: (012) 312 5188
Fax: (012) 321 6770
E-mail: Loots.m@educ.pwv.gov.za

EVALUATION OF QUALIFICATIONS FOR EMPLOYMENT IN EDUCATION

1. The following are taken into consideration when evaluating a qualification for employment in education

1. Learning assumed to be in place (including recognition of prior learning) in order to be admitted to the learning programme that will lead to the attainment of the qualification.
2. Status of the institution that offers the learning programme and awards the qualification, as reflected by their registration with and accreditation by competent statutory bodies, eg state departments of government, quality assurance agencies, professional councils, qualifications authorities, councils on higher education or sector education and training authority.
3. National Qualifications Framework Level on which the qualification has been registered, and the number of credits (hours of learning) required on specific levels, as well as the total number of credits earned through the awarding of the qualification.
4. Purpose of the qualification and exit level outcomes (applied competence) associated with the qualification.
5. Assessment towards complying with the requirements to obtain the qualification (formal examinations, portfolios, research publications, dissertations, theses, practical work, workplace experience, learnerships).
6. Compliance of the qualification with the academic, professional and occupational requirements as described in the national policy document *Norms and Standards for Educators*, Department of Education (*Government Gazette* No. 20844, 4 February 2000), with other national policy (currently as in Reports 116, 150, 151 and document in regard to registration, accreditation and approval of new programmes and qualifications by the *Interim Joint Committee – Department of Education, Council on Higher Education and the South African Qualifications Authority*), and with SAQA Regulations pertaining to qualifications in general.
7. Qualifications will be recognised as from the date on which the educator meets all the requirements for obtaining the qualification concerned, according to a written statement by the examining body. In the absence of such a statement, a qualification will be recognised as from the date on which the certificate was issued.
8. An educator whose qualifications have been evaluated correctly by an education department in accordance with the document *Evaluation of Qualifications for Employment in Education, 1995-1999*, retains the recognition given to such qualifications for the duration of his/her teaching career. However, it might be required from educators to renew their qualifications from time to time as part of their ongoing professional development and to comply with the requirements for career progression.

2. Recognition of Academic Qualifications

- 1. An approved first academic qualification** (obtained before 1 January 2001) is a qualification –
 - that comprises a minimum of three years full-time academic study (or the equivalent thereof in terms of part-time/distance study – approximately 6 years);
 - that has been awarded by an institution which has been accredited for teacher education;
 - that satisfies the requirements of the university/technikon concerned; and
 - that comprises at least two academic year courses in an appropriate subject/field of study¹ and at least one academic year course in another appropriate subject/field of study that equip the holder of the qualification with the foundational and reflexive competence required to teach in a particular phase/subject/discipline/learning area.
- 2. An approved first academic qualification** (obtained after 1 January 2001) is a qualification –
 - that comprises a minimum of 360 SAQA credits;
 - is registered by SAQA on NQF level 6 or above;
 - that has been awarded by an institution that is registered and accredited for teacher education;
 - of which both the providing institution and the learning programme comply with the requirements of the ETQA concerned;
 - that comprises approximately 36 credits on level 6 in an appropriate subject/field of study and approximately 36 credits on level 5 in another appropriate subject/field of study that provide the holder of the qualification with the required foundational and reflexive competence in order to gain access to a Post Graduate Certificate in Education that will qualify the learner as a professional educator in a particular phase/subject/discipline/learning area. (Also refer to the minimum specialist requirements for a PGCE in the *Norms and Standards for Educators*.)
- 3. A partially approved first academic qualification** (obtained before 1 January 2001) is a qualification –
 - that comprises a minimum of three years full-time academic study (or the equivalent thereof in terms of part-time/distance study – approximately 6 years);
 - that has been awarded by an institution which has been accredited for teacher education;
 - that satisfies the requirements of the university/technikon concerned; and
 - that comprises at least two academic year courses in (an) appropriate subject(s)/field(s) of study that equip the holder of the qualification with the foundational and reflexive competence required to teach in a particular phase/subject/discipline/learning area.
- 4. A partially approved first academic qualification** (obtained after 1 January 2001) is a qualification –
 - that comprises a minimum of 360 SAQA credits;
 - is registered by SAQA on NQF level 6 at least;
 - that has been awarded by an institution that is registered and accredited for teacher education;
 - of which both the providing institution and the learning programme comply with the requirements of the ETQA concerned;
 - that comprises approximately 36 credits on level 5 in an appropriate subject/field of study that provide the holder of the qualification with the required foundational and reflexive competence in order to teach in a particular phase/subject/discipline/learning area. (Refer to the minimum specialist requirements for the different phases in the *Norms and Standards for Educators*.)

3. Assigning Relative Education Qualification Values (REQVs) to qualifications that are recognised for employment in education

1. Definition of Relative Education Qualification Value (REQV)

$REQV (10 + n) = (n \times 120)$ SAQA credits, $n = 1, 2, \dots, 7$

Eg $REQV 13 = REQV (10 + 3) = (3 \times 120) = 360$ SAQA credits

2. Basic (first) qualifications

<i>Qualification</i>	<i>Credits</i>	<i>NQF level</i>	<i>REQV</i>
Certificate In Education	120	5	11
Diploma in Education	240	5	12
Bachelor of Education	480	6	14
Approved General First Degree	360/480	6/7	13/14
Partially approved degree	360/480	6/7	12/13

¹ See Appendix 3.

3. Advanced (further) additional qualifications

Additional REQVs are awarded to approved² additional qualifications obtained in appropriate fields of study³ on the basis of one additional REQV for each additional 120 new SAQA credits⁴ earned, provided that –

- a maximum of two additional REQVs (240 new SAQA credits) are recognised per NQF level;
- a professionally unqualified educator may only receive recognition to a maximum of REQV 15;
- a professionally qualified educator can receive additional REQV recognition to a maximum of REQV 17, but only if the educator is in possession of an approved qualification on level 8.

4. Recognition of other appropriate qualifications for employment in specific teaching posts

The criteria for the recognition of appropriate qualifications such as the current N3 to N6 Certificates and Diplomas, Apprenticeships, Passed Trade Tests, existing technikon qualifications, Certificates of Competency, other provider degrees, diplomas, certificates or licentiates obtained in the fields of Engineering, Business Studies, Art, Agriculture, Utility Services, Social Services, including Music, Dance, Ballet, Hotel and Catering, Nursing, Social Work, Educational Therapy and Educational Psychology will be retained.⁵ The criteria will be reviewed as soon as new standards and qualifications have been developed and registered by the appropriate SGBs and NSBs.

4. New learning opportunities for educators with old teacher education certificates and diplomas

According to the *Norms and Standards for Educators, 2000*, old teacher education certificates, diplomas, higher diplomas and further diplomas will be phased out. There are, however, a large number of educators who are still in possession of such diplomas and certificates. Provision has been made for these educators to improve their existing qualifications via the new framework for professional qualifications for educators in schools (Refer qualifications framework).

1. Educators who are in possession of an old HDE together with an old FDE⁶ (REQV 15) *plus* –
 - 1.1 a new level 7 120 credit B Ed (Honours): + 1 additional REQV (REQV 16);
 - 1.2 a new level 6 ACE or a new level 6 B Ed: no additional REQV level.
2. Educators who are in possession of an old HDE (REQV 14) *plus* –
 - 2.1 a new 120 credit level 6 ACE: + 1 additional REQV (REQV 15);
 - 2.2 a new 480 credit level 6 B Ed (at least 120 new credits should be earned): + 1 additional REQV (REQV 15);
 - 2.3 (2.1) or (2.2) *plus* a new 120 credit level 7 B Ed (Honours): + 1 additional REQV (REQV 16).
3. Educators who are in possession of an old three-year DE⁷ together with an old FDE (REQV 14) *plus* –
 - 3.1 a new 120 credit level 6 ACE: + 1 additional REQV (REQV 15).
 - 3.2 a new 480 credit level 6 B Ed (at least 120 new credits should be earned): + 1 additional REQV (REQV 15).
 - 3.3 (3.1) or (3.2) *plus* a new 120 credit level 7 B Ed (Honours): + 1 additional REQV (REQV 16).
4. Educators who are in possession of an old three-year DE2 (REQV 13) *plus* –
 - 4.1 a new 120 credit level 6 ACE: + 1 additional REQV (REQV 14).
 - 4.2 a new 480 credit level 6 B Ed (at least 240 new credits should be earned): + 2 additional REQVs (REQV 15).
 - 4.3 (4.1) *plus* a new 120 level 7 B Ed (Honours): + 1 additional REQV (REQV 15) (It could be required of a student with an old 3-year DE and an ACE to do additional work in order to be admitted to the new B Ed (Honours).)
 - 4.4 (4.2) *plus* a new 120 credit level 7 B Ed (Honours): + 1 additional REQV (REQV 16).

2 Approved by the Department of Education for employment in public education.

3 Refer Appendix 3.

4 For first degrees obtained before 1 January 2001, 120 new SAQA credits are equated to 4 new degree year courses. In the case of post-graduate qualifications obtained before 1 January 2001, one additional REQV is awarded per qualification.

5 Refer sections 7, 8 and 9.

6 Including old one-year post-professional Teachers' Certificates and Diplomas in Specialised Education.

7 Including the old PTC + Std 10 + SEC + SED and PTC + DE (Upgrading).

5. Educators who are in possession of teacher education qualifications that are classified as REQV 12⁸ or lower plus –
- 5.1 a new 480 credit level 6 B Ed degree: + 2 additional REQVs (REQV 14).
- 5.2⁹ a new 240 credit level 5 National Professional Diploma in Education* (at least 120 new credits should be earned):¹⁰ REQV 13.
- 5.3 (5.1) *plus* a new 120 credit level 7 B Ed (Honours): + 1 additional REQV (REQV 15).
- 5.4 (5.2) *plus* a new 120 credit level 6 ACE: + 1 additional REQV (REQV 14).
- 5.5 (5.2) *plus* a new 480 credit level 6 B Ed (at least 240 new credits should be earned): + 2 additional REQVs (REQV 15).
- 5.6 (5.4) *plus* a new 120 credit level 7 B Ed (Honours): + 1 additional REQV (REQV 15). (It could be required of a student with an ACE to do additional work in order to be admitted to the new B Ed (Honours)).
- 5.7 (5.5) *plus* a new 120 credit level 7 B Ed (Honours): +1 additional REQV (REQV 16).

REQV Improvement for educators with qualifications on REQV 12 or lower

<i>Qualifications</i>	<i>New credits earned</i>	<i>Accumulated credits</i>	<i>REQV</i>
Std 8/10			10
<i>plus</i> Certificate in Education	+ 120	120	11
<i>plus</i> NPDE (part one)	+ 120	240	12
<i>plus</i> completed NPDE	+ 120	360	13
Std 8 + PTC		120	11
<i>plus</i> NPDE (part one)	+ 120	240	12
<i>plus</i> completed NPDE	+ 120	360	13
Std 10 + 2 yr qualification ¹¹		240	13
<i>plus</i> completed NPDE	(RPL maximum of 120 credits) +120	360	13
NPDE		360	13
<i>plus</i> ACE	+ 120	480	14

5. Professional Educators' Qualifications Framework

According to SAQA¹² a qualification is:

a planned combination of learning outcomes which has a defined purpose or purposes, and which is intended to provide qualifying learners with applied competence and a basis for further learning.

Also,

a qualification may be achieved in whole or in part through the recognition of prior learning, which concept includes but is not limited to learning outcomes achieved through formal, informal and non-formal learning and work experience.

The following framework of qualifications, together with the seven roles and their associated applied competences allows providers, through the Standards Generating Body for Educators in Schooling, to develop qualifications and programmes that are designed for specific purposes and contexts, but within an overall regulatory framework promoting national standards. It will also be used by the Department of Education to recognise and evaluate qualifications for employment in education.

Qualifications for educators for schooling will be qualifications based on exit level outcomes and associated assessment criteria or qualifications based on unit standards.

8 For example, Std 8/10 + PTC, Std 10 + JSTC, PTC + SEC, PTC + Post Professional Certificate, PTC + Part completed DE (Upgrading).

9 Refer table below.

* The new 240 credit level 5 National Professional Diploma in Education, with at least 72 credits on level 5, is an interim qualification with the aim to provide existing under-qualified educators an alternative access route into the new qualifications framework in the *Norms and Standards for Educators*. It should accredit these educators with foundational and academic competence and equip them for further study at level 6. The NPDE could be designed and delivered in a flexible manner through units of learning, unit standards, workplace experience, RPL to a maximum of 120 credits, INSET programmes or learnerships. It should have a specific classroom focus and all 7 roles should be covered, but to a lesser extent than for a 480 credit B Ed. It should, however, have strong articulation with the lower levels of the B Ed and could serve as an entry or exit point of the B Ed at the first 240 credits level. The life span of the NPDE, with a specific purpose of certifying under-qualified educators as fully qualified professionals, will be 5 years.

Educators with old teacher education certificates or diplomas may also opt to offer academic first or post-graduate degrees in appropriate fields of study. Additional REQV recognition for such additional qualifications will be accorded in accordance with Section 3.

10 Educators on REQV 10 will first have to complete the 120 credit Certificate in Education and thereafter the 240 credit NPDE in order to be classified as REQV 13.

11 Std 10 + PTC, Std 10 + JSTC, PTC + SEC, PTC + Post Professional Certificate, PTC + Part completed DE (Upgrading).

12 SAQA Regulations, *Government Gazette* No. 6140, 28 March 1998, sections 8(1)(a), (h).

Qualifications for educators in the Schooling sub-field of Field 05 will be entitled by two categories: Type and *Specialisation*.

Type is the name of the qualification that indicates level and credits on the NQF. The list of qualification types and their aims is shown on the next page.

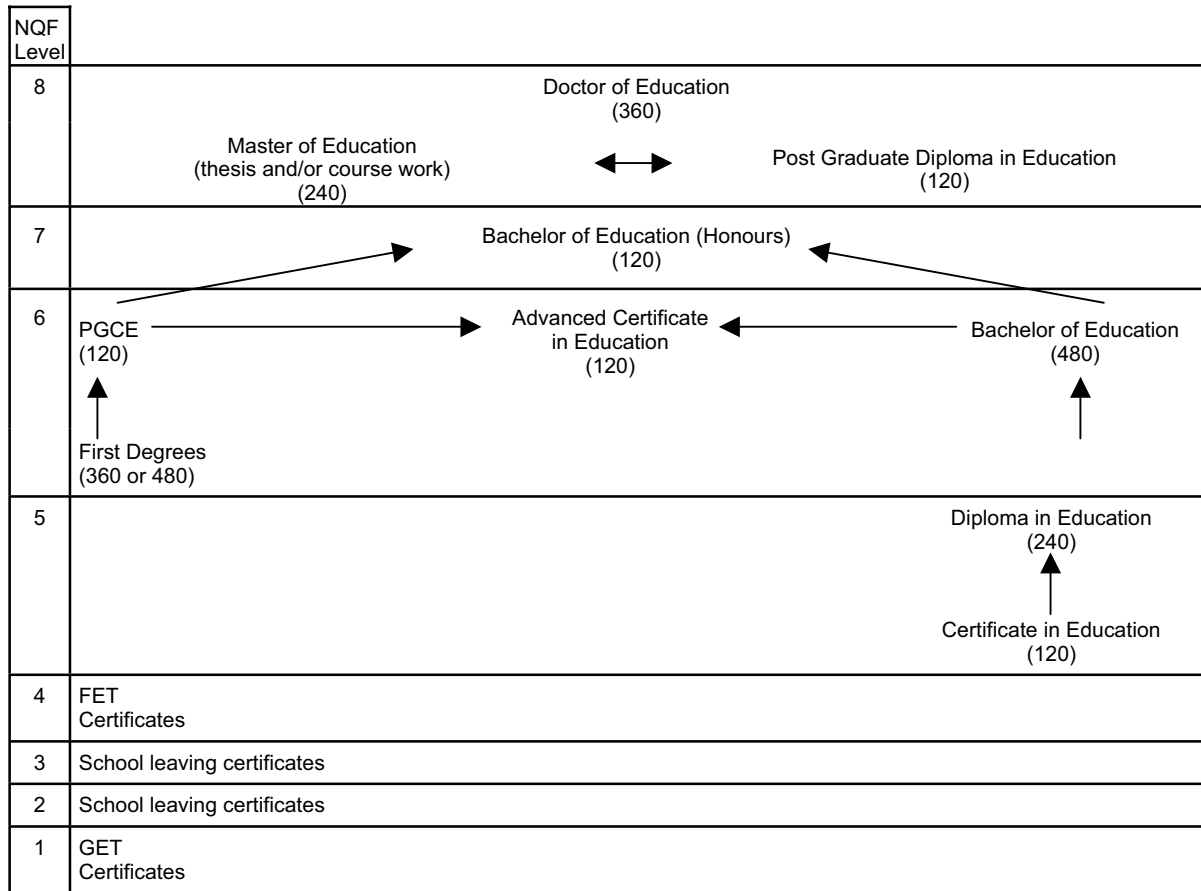
Specialisation is a phrase in brackets after the qualification type, for example, Diploma in Education (Senior Phase: Human and Social Sciences). It indicates the particular purpose of the qualification and could include a phase specialisation (such as Foundation Phase), a subject/learning area specialisation (e.g. Further Education: Mathematics), a specialisation in a particular role (e.g. Education Management), or a professional or occupational practice (e.g. Curriculum Studies). There is no predetermined set of purposes/specialisations.

The qualifications described here may need to be amended in the light of new academic policy on higher education.

	Aim of qualification	Total credits	Level
Certificate in Education	To develop introductory practical and foundational competence, and some degree of reflexive competence. To provide an entry or exit point before the completion of the Diploma in Education.	120	5
Diploma in Education	To accredit a learner with introductory practical, foundational and reflexive competence. To provide an entry and exit point before the completion of the Bachelor of Education degree.	240	5
First Bachelor's Degrees	To accredit a general formative qualification with one or more subject/learning area specialisations in order to provide access to a PGCE as a 'capping' qualification,	360/480	6
Post-Graduate Certificate in Education	To accredit a generalist educator's qualification that 'caps' an undergraduate qualification. As an access requirement candidates are required to have appropriate prior learning which leads to general foundational and reflexive competence. The qualification focuses mainly on developing practical competence reflexively grounded in educational theory.	120	6
Bachelor of Education	To accredit an initial qualification for educators in schools. The learner will have strong practical and foundational competence with the reflexive competence to make judgments in a wide context. The qualification is intended for candidates seeking a focused teaching degree with strong subject and educational theory competence.	480	6
Advanced Certificate in Education	To accredit further specialised subject/learning area/discipline/phase competence, or a new subject specialisation, or a specialisation in one or more of the roles as an advanced study intended to 'cap' an initial or general teaching qualification. Through this qualification learners will be prepared to embark on a course of study at NQF level 7. It must, therefore, include appropriate demands in terms of rigour.	120	6
Bachelor of Education (Honours)	To accredit the advanced and specialised academic, professional or occupational study of an aspect of education. It is designed to build the competence of expert educators and curriculum specialists, system managers, or educational researchers. Through this qualification learners will be prepared to embark on a course of study leading to an M Ed at NQF level 8. Although the B Ed (Honours) must include some specialisation and a focus on research, the nature of these will vary depending on whether an academic, professional or occupational focus is chosen.	120	7
Post Graduate Diploma in Education	To accredit advanced and specialised occupational, academic and professional study. This qualification can accredit the coursework component of a Masters degree or provide an entry or exit point before the completion of a Masters' degree.	120	8
Master of Education	To accredit the advanced and specialised academic or professional study of an aspect of education with emphasis on research. The degree may be taken by thesis or by a combination of thesis and coursework.	240	8
Doctor of Education	To accredit the highly advanced and specialised academic or professional study of an aspect of education in which the learner demonstrates capacity for sustained, original research.	360	8

The various qualification types are shown in the following diagram;

1. Qualifications for Educators in Schooling¹³



2. Minimum Specialist Requirements for Basic Teaching Qualifications

There is no longer a list of prescribed teaching subjects for professional educator qualifications. Learners and providers are advised, however, that the design of programmes and qualifications, including subject choices, must lead to the competence to teach learning programmes, learning areas, subjects or foci in the school curriculum.

The considerable importance of the specialist role should be reflected in the apportionment of credits. For each basic qualification, there is a minimum number of SAQA credits dedicated to the specialist role:

- DE 96 credits
- B Ed 240 credits
- PGCE 20 credits

The precise specialist requirements for the initial teaching qualifications leading to qualified educator status are as follows:

Foundation Phase (Grade R to Grade 3)

- A study of the 3 learning programmes as prescribed by the national curriculum. These must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- Expertise in the development of early literacy, particularly reading competence.
- Expertise in the development of early numeracy.
- Expertise in the development of life-skills.
- The above specialist requirements should carry the following credits:

- DE 72 credits at NQF 5 or higher, 24 credits at NQF 4 or higher.
- B Ed 96 credits at NQF 6, 108 credits at NQF 5 or higher.
- PGCE 20 credits at NQF 6.

¹³ Please note that the number of credits indicated in brackets after each qualification are minimum credits, of which a minimum of 72 should be at or above the level at which the qualification is registered.

Intermediate Phase (Grade 4 to Grade 6)

- A study of the 5 learning programmes as prescribed by the national curriculum. These must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- Expertise in the development of reading competence, particularly reading comprehension.
- Expertise in the development of numeracy.
- Expertise in the development of life-skills.
- The above specialist requirements should carry the following credits:

DE 72 credits at NQF 5 or higher, 24 credits at NQF 4 or higher.

B Ed 96 credits at NQF 6, 108 credits at NQF 5 or higher.

PGCE 20 credits at NQF 6.

Senior Phase (Grade 7 to Grade 9)

- A study of at least two subjects which meet the requirements of the learning area specialisations as prescribed by the national curriculum.
- The studies must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- The above specialist requirements should carry the following credits:

DE 72 credits at NQF 5 or higher.

B Ed 96 credits at NQF 6, 84 credits at NQF 5 or higher.

PGCE 20 credits at NQF 6.

In addition

- A study of **one** out of the learning areas of:
 - Mathematical Literacy, Mathematics and Mathematical Sciences
 - Natural Sciences
 - Technology

This study must be in a learning area not taken elsewhere in the curriculum.

It should carry at least 24 credits at NQF level 4 or higher for all qualifications except the PGCE where it may be recognised as prior learning.

Further Education (Grade 10 to Grade 12)

- A study of one or more subjects or specialisations suitable for the phase.
- The study must include the disciplinary bases of content knowledge, methodology and relevant pedagogic theory.
- The above specialist requirements should carry the following credits:

DE 36 credits at NQF 6, 60 credits at NQF 5 or higher.

B Ed 96 credits at NQF 6, 108 credits at NQF 5 or higher.

PGCE 20 credits at NQF 6.

6. Evaluation of Foreign Qualifications for Employment in Education**1. General**

1. Applications for the evaluation of foreign qualifications should be submitted to one of the provincial departments of education, who will in turn, submit it to the Evaluation Committee at the national department of education.
2. Each foreign qualification should be accompanied by the following official information:
 - Certified copy of the qualification certificate;
 - Official transcript of the qualification, indicating the different subjects/fields of study passed, as well as the number of hours of study and practice for each of the subjects/fields of study/units of learning;
 - Official statement from the educational authority in the country of origin as to whether the particular qualification is recognised for employment in education in that country, and for which phase of schooling;
 - Geographic location, postal, fax and e-mail contact information of the foreign institution concerned.
3. Foreign qualifications are always evaluated in accordance with the most recent policy on *Norms and Standards for Educators*. Subject to the information available, the evaluator will attempt to match the qualification as closely as possible with a similar qualification on the South African qualifications

framework for educators. Shortcomings, if any, will be indicated, as well as suggested ways of improving the qualification in order to get full recognition.

4. The Evaluation Committee only evaluates qualifications for employment in public education. Holders of foreign qualifications who do not wish to seek employment in education, but, for example, wish to enroll for further study should submit their qualifications directly to the institution concerned.

2. Professional qualifications

1. Only professional qualifications that are recognised as such in the country of origin will be considered for recognition for employment in public education in South Africa.
2. The learning programme should have at least covered the minimum specialist requirements for the particular phase of schooling concerned as described in the *Norms and Standards for Educators*.
3. Holders of foreign professional teaching qualifications should be appointed on probation for at least one year before being considered for permanent appointment. During the probation year, they should also complete an in-service programme on outcomes-based education and the new school curriculum.

3. Academic qualifications

1. Academic and other appropriate vocational foreign qualifications will be evaluated in accordance with the minimum requirements for such qualifications (Refer Section 2).

7. Recognition of appropriate qualifications for permanent appointment in specific educator posts

(For lecturers at technical colleges refer Section 8)

1. List of posts in which professionally unqualified persons could be appointed permanently should they hold appropriate qualifications for such posts

- Posts for Technical Subjects, including Hair Care
- Posts for Technical Drawing
- Posts for Instrumental Music
- Posts for Practical Ballet, National Greek Dances, History of Ballet and Anatomy
- Posts for training in the Hotel and Catering Industry
- Accompanist posts for Ballet
- Posts for Speech and Drama
- Posts for the teaching of Nursing at Schools for Special Education and Schools for Specialised Education
- Librarian posts at colleges and departmental head office libraries
- Posts for school Social Workers
- Posts for Education Psychologists and Therapists
- Educator posts at non-education institutions

The incumbent of a post as listed in paragraph 1 usually possesses

- qualifications which do not comply with the criteria for approved degrees and/or general teaching diplomas;
- skills and knowledge which have been acquired also through practical training or by experience; and
- basic training which is often not offered by teacher education providers.

2. Appropriate qualifications for employment in posts as listed in paragraph 1

2.1 Appropriate degree

An appropriate degree is a degree

- which is recognised for a specified post as listed in paragraph 1 and specially qualifies a person for the particular post; and
- which has been approved for such purpose.

2.2 Appropriate diplomas/certificates

Only diplomas/certificates appropriate to a specific post as listed in paragraph 1 are recognised for purposes of employment in a post as listed in paragraph 1. When evaluating such a diploma/certificate the applicable subject will be stated clearly.

2.3 Recognition of further appropriate diplomas/certificates

A further appropriate diploma/certificate (obtained after a first appropriate diploma/certificate) is recognised for REQV purposes only if it entails advanced study following the first appropriate diploma/certificate which has been recognised for a specific post as listed in paragraph 1.

Where two or more appropriate diplomas/certificates on the same horizontal level are submitted for the same post as listed in paragraph 1, only one diploma/certificate will be recognised.

A maximum of two approved diplomas/certificates on the same horizontal level (and one professional qualification) will be recognised for a post as listed in paragraph 1, provided that they do not overlap by more than 50% and the second diploma is taken in an appropriate but different field of study to the first diploma.

In the case of a second N diploma, six new courses must be included of which at least two should be at N5 level and at least two at N6 level.

Where two or more similar appropriate diplomas/certificates are offered, the one with the highest REQV classification will be recognised.

Every additional appropriate diploma/certificate will be recognised for a higher REQV level if it requires at least the equivalent of one academic year of full-time study or 120 new credits.

2.4 Recognition of partially completed degrees and completed degrees for incumbents of posts as listed in paragraph 1

Recognition is granted in accordance with Section 3.

3. General principles for the evaluation of qualifications for appointment to posts as listed in paragraph 1

- 3.1. Appropriate or approved qualifications that have been approved are recognised for posts as listed in paragraph 1.
- 3.2. When more than one qualification is evaluated, the qualification which affords the holder the highest REQV classification is taken as the starting point for evaluation purposes. The order in which qualifications have been obtained therefore makes no difference.
- 3.3. Recognition of qualifications for a post as listed in paragraph 1 is restricted to such a post for which qualifications have been recognised, provided that a candidate may also receive recognition of qualifications for a second specialisation or for general teaching.
- 3.4. A permanent incumbent of a post as listed in paragraph 1, whose qualifications are appropriate to another post as listed in paragraph 1, may be transferred in a permanent capacity to the other specialist post with retention of his REQV classification.
- 3.5. A permanent incumbent of a post as listed in paragraph 1 who does not qualify for permanent appointment in an ordinary or any other post as listed in paragraph 1 may be employed in such a post on a temporary basis with retention of his classification, provided that such person can be so employed for longer than one year only with the personal approval of a Head of Education.
- 3.6. A professionally qualified teacher who has been appointed to a general teaching post and who also holds qualifications that are applicable to a post as listed in paragraph 1 but who has never been appointed to such a post, receives REQV recognition for these qualifications.

4. Requirements for the recognition and the evaluation of qualifications for employment in posts as listed in paragraph 1

4.1 Posts for teachers of technical subjects

A three-subject National Technical Certificate III (N3), must include Trade Theory/Technology as a subject, plus a completed apprenticeship or a pass in a trade test plus two years' appropriate trade experience;*

OR

an equivalent qualification plus a completed apprenticeship or a pass in a trade test plus two years' appropriate trade experience. Trade Theory/Technology on the N3 level should form part of the completed trade training;*

OR

an approved degree for technical education; or a National Certificate (or Diploma) for Technicians or a National N Diploma or a National Diploma (Engineering) or a National Higher diploma which includes training in an appropriate technical subject;

OR

another appropriate approved qualification.

4.2 Posts for teachers of Electronics

A three-subject National Technical Certificate III (N3) which must include Electronics as a subject, plus two years' appropriate trade experience;*

OR

an equivalent qualification plus two years' appropriate trade experience.*

<p>* Persons in possession of this qualification may be appointed permanently to posts for the teaching of technical subjects or electronics and be remunerated according to an REQV 13(s) salary range.</p>
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A head of education may, in special cases and at his own discretion, appoint a person whose only qualifications are a completed apprenticeship or pass in a trade test, plus two years' appropriate trade experience, in a permanent or temporary capacity, and remunerate them according to an REQV 12(s) salary range.

4.3 Evaluation of technical qualifications

1. An apprenticeship + National Technical Diploma: REQV 13
2. National N Diploma: REQV 13
3. National Certificate for Technicians: REQV 13
4. National Diploma (Engineering): REQV 13
5. National Diploma for Technicians: REQV 14
6. National Higher Diploma: REQV 14
7. National Diploma in Technology/Masters' Diploma: REQV 15

4.4 Evaluation of technical qualifications together with completed approved degrees, partially approved degrees, partially completed degrees and diplomas in education

A technical qualification evaluated as REQV 13 for appointment to a post as listed in paragraph 1 (see paragraph 4.3 (1), (2), (3) and (4) above) together with –

1. an approved degree (which complies with paragraph 1.14.1): REQV15.
2. an approved partially completed degree: REQV 14.
3. A partially approved degree: REQV 14.
4. (1) above + National Teachers' Diploma (Workshop) or HDE (Technical): REQV 16
5. (2) above + NTD (Workshop) or HDE (Technical): REQV 15
6. (3) above + NTD (Workshop) or HDE (Technical): REQV 16

A Technical qualification evaluated as REQV 14 for appointment to a post as listed in paragraph 1 (See paragraph 4.3 (5) and (6) above) together with –

1. an approved degree: REQV 15 (to be classified as REQV 16 a teacher must be professionally qualified).
2. an approved partially completed degree: REQV 15
3. a partially approved degree: REQV 15
4. (1) above + NTD (Workshop) or HDE (Technical) or HDE: REQV 16 (a Masters' degree is required to be classified in as REQV 17)
5. (2) above + NTD (Workshop) or HDE (Technical): REQV 15 (an approved degree is required to be classified in as REQV 16).
6. (3) above + NTD (Workshop or HDE (Technical): REQV 15 (an approved degree is required to be classified in REQV 16).

A Technical qualification with an REQV 15 for appointment to a post as listed in paragraph 10.1 (see paragraph 5(7) above) together with –

1. an approved degree: REQV 15 (to be classified in REQV 16 a teacher must be professionally qualified).
2. an approved partially completed degree: REQV 15 (not professionally qualified).
3. a recognised degree: REQV 15 (not professionally qualified).
4. (1) above + NTD (Workshop) or HDE (Technical): REQV 16 (not in possession of a Masters' degree).
5. (2) above + NTD (Workshop) or HDE (Technical): REQV 15 (not in possession of an approved degree).
6. (3) above + NTD (Workshop) or HDE (Technical): REQV 15 (not in possession of an approved degree).

A three-subject National Technical Certificate III (N3), which must include Trade Theory/Technology as a subject, plus a completed apprenticeship or a pass in a trade test plus two years appropriate trade experience together with –

1. N4 or N5 + NTD (Workshop): REQV 13
2. 4T1 and 4T2 subjects + NTD (Workshop): REQV 13
3. an approved degree: REQV 14
4. an approved partially completed degree: REQV 12 (may be remunerated according to an REQV 13(s) salary range).
5. (1) above + an approved partially completed degree: REQV 14
6. (1) above + recognised degree: REQV 15
7. (3) above + NTD (Workshop) or HDE (Technical) or HDE: REQV 15

4.5 Post for teachers of Technical Drawing

A National Diploma for Technicians (Draughtsmanship) or a National Technical Diploma or equivalent qualification with Draughtsmanship or a similar subject, eg Machine Design, Building Construction, Electrical Designing, Structural Designing at T2 level at least, plus two years appropriate experience;

OR

an approved degree for technical education which includes Technical Drawing;

OR

a qualification approved for this purpose.

4.6 Posts for teachers of Instrumental Music

An appropriate approved qualification in Music (for the instrument(s) in which tuition is given).

NB Qualifications are recognised only if practical training in an instrument is included (with the exception of post-graduate degrees.)

4.7 Recognition of music qualifications

1. Not more than one teacher's licentiate/diploma in Music in the same instrument shall be recognised for the same person.

(NB: A teacher's licentiate does not qualify a person as professional.)

2. A second teacher's licentiate in another instrument may be recognised.
3. Only one performer's licentiate (in the same instrument recognised for (1) or (2) above) or a ULCM may be recognised in addition to the licentiates in (1) and (2) above.
4. Teachers' licentiates referred to in (1) and (2) above may not be offered in the following pairs of instruments:

Flute and Piccolo	Violin and Viola
Flute and Recorder	Cello and Double Bass
Recorder and Piccolo	Piano and Harpsichord
Two different recorders	Piano and Clavichord
Above and Cor Anglais	Clavichord and Harpsichord
Clarinet and Bass Clarinet	Any two brass wind-instruments controlled by pistons.
Bassoon and Double Bassoon	

5. For a post as accompanist of ballet a UPLM (Piano) without a teachers' licentiate or a UALM (University Accompanist Licentiate in Music) may be accepted. Only one of these licentiates will be recognised for the same person.

An Accompanist's Licentiate is recognised for posts of accompanists only.

6. Overlapping

When a qualification in Instrumental Music is offered at the same level as a qualification in Instrumental Music already recognised, this is regarded as overlapping. This means that –

- a. all teachers; licentiates/diplomas in Music, irrespective of the duration of training, which are offered at the same level and for the same instrument, overlap unless a teacher's licentiate/diploma in Music is the entrance requirement for a subsequent teacher's licentiate/diploma in Music, or is offered in another instrument. However, a performer's licentiate is always offered at a higher performer's level than a teacher's licentiate/diploma in Music;

NB A performer's licentiate will only be recognised provided that the candidate is in possession of a teacher's licentiate.

- b. a teacher's licentiate/diploma in Music always overlaps courses in instruments taken for a B degree;

If the second instrument has not been offered on main instrument level, it does not overlap with a teacher's licentiate/diploma. This excludes the Performer's Licentiate in instruments taken for the B.degree;

- c. a Licentiate in School Music (Class Music) is not recognised for appointment to a post as listed in paragraph 1 for teachers of Instrumental Music, if a candidate is already in possession of a teacher's licentiate in an instrument.

4.8 Evaluation of Diplomas and Licentiates in Music*

<i>Qualifications</i>	<i>Evaluation</i>
(a) UPLM** (Unisa)	REQV 13
(b) UALM*** (Unisa)	REQV 13
(c) ULCO (Unisa)	REQV 13
(d) ULCO (Organ) (Unisa)	REQV 13

NB

The above-mentioned qualifications obtained before 1990 are evaluated as REQV 12

(e) UTLM (Unisa)	REQV 13
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- NB** i. The UTLM is evaluated as REQV 13 instead of REQV 12, with effect from 1 January 1990, if obtained as from the following dates.

Piano: as from 1981

Recorder, Clarinet, Organ, Flute, Guitar, Hobo, French Horn: as from 1987

Singing: as from 1988

Other wood wind-instruments: as from 1989

Other brass wind-instruments: as from 1989

All other instruments: as from 1990

- ii. That persons in possession of a UTLM (Unisa) obtained before the above mentioned dates, will not be evaluated as REQV 13 following the passing of the method examination.

(f) Education Diploma in Music (OFS)	REQV 13
(g) Teacher's Licentiate in Music (OFS)	REQV 13
(h) Diploma for Church Organists (PUC)	REQV 13
(i) Lower University Diploma in Music Performance (PUC) 1 year after 'm'	None
(j) Licentiate Diploma in Music (Rhodes)	REQV 13
(k) TDMS (Stellenbosch)	REQV 13
(l) PDMS (Stellenbosch)	+ 1 level
(m) Diploma for Church Organist Stellenbosch	REQV 12
(n) Higher Diploma for Church Organist Stellenbosch	+1 level
(o) Diploma in Musical Education (Rhodes)	REQV 13
(p) Diploma in Music (Education) (UP)	REQV 13
(q) Diploma in Church Music (UP)	REQV 13
(r) Diploma in Music (Church Music) (UP)	REQV 13
(s) Diploma in Music (Performing Arts) (UP)	None
(t) Teacher's Licentiate in Music (UP)	REQV 13
(u) Teacher's Licentiate Diploma in Music (offered from 1976)	REQV 13
(v) Teacher's Diploma in Opera (UCT)	REQV 13
(w) Diploma in Orchestral Playing (UCT)	REQV 13
(x) Performer's Diploma in Music (UCT)	REQV 13
(y) Performer's Diploma in Opera (UCT)	REQV 13
(z) Diploma In Music Education (UPE)	REQV 13

4.9 Appointment of performers of instruments in approved symphony orchestras

Performers of instruments in approved symphony orchestras may be appointed as teachers in a post as listed in paragraph 10.1 for Instrumental Music in accordance with the following categories of REQV levels:

Tutti-player or lower position:	REQV 13(s)*
B-Principal Performer:	REQV 14 (s)*
A-Principal Performer or leader:	REQV 15 (s)*

*(s) indicates that these persons receive a personal salary.

Performers who are not members of one of the approved orchestras, may be tested by one of these orchestras and submit a statement indicating within which of the three REQV categories they fall.

(Approved orchestras: National Symphony Orchestra, Cape Town Municipal Orchestra, Durban Municipal Orchestra, PACT Orchestra, OFS Symphony Orchestra and CAPAB Orchestra)

* These qualifications are recognised only if practical training in an instrument is included.

** Recognised only if the holder also has a teacher's licentiate

*** Recognised for posts of accompanist only.

4.10 Posts for teachers of Practical Ballet, National and Greek Dancing, History of Ballet and Anatomy

An appropriate approved qualification.

4.11 Recognition of ballet qualifications

1. The highest qualification obtained in accordance with the scale below is accepted for evaluation purposes
2. Teachers receive recognition for qualifications awarded by the Royal Academy of Dancing OR the Imperial Society of Teachers of Dancing OR the University of Cape Town OR the South African Dancing Teachers' Association and the Spanish Dance Society in accordance with the following scale:

1st or 2nd Qualification	2nd or 1st Qualification	Total Evaluation
REQV 11-12-13-14-15	REQV 11	REQV 12-13-14-15-15
REQV 11-12-13-14-15	REQV 12	REQV 13-13-14-15-15
REQV 11-12-13-14-15	REQV 13	REQV 14-14-15-15-15
REQV 11-12-13-14-15	REQV 14	REQV 15-15-15-15-15

4.12 Evaluation of qualifications

REQV

1. *University of Cape Town*

- | | |
|---------------------------------------|----|
| (a) Teachers' Diploma in Ballet | 13 |
| (b) Teachers' Certificate in Ballet | 13 |
| (c) Performer's Diploma in Ballet | 13 |
| (d) Performer's Certificate in Ballet | 13 |

2. *Royal Academy of Dancing*

- | | |
|--|----|
| (a) Student Teacher's Certificate | 12 |
| (b) Elementary Teacher's Certificate or Teacher's Certificate plus Intermediate Executant/Advanced Executant (January 1988) | 13 |
| (c) Intermediate Teacher's Certificate | 14 |
| (d) Advanced Teacher's Certificate or
Advanced Teacher's Certificate in the Teaching of Children or Major Students (January 1988) | 15 |
| (e) Intermediate Executant | 11 |
| (f) Advanced Executant | 12 |
| (g) Solo Seal plus a recognised teacher's qualification in Ballet* | 11 |
| (h) Licentiate of the Royal Academy of Dancing | 13 |
| (i) Teaching Certificate
(This Certificate replaced the Elementary Teacher's Certificate) | 12 |
| (j) Teaching Diploma | 14 |
| (k) Advanced Teaching Diploma
(This exam replaced the Advanced Teacher's Certificate) | 15 |
| ((i) – (k): with effect from 1 January 1988) | |

3. *Imperial Society of Dancing*

(Formerly known as *Imperial Society of Teachers of Dancing*)

- | | |
|---|----|
| (a) Associate Teacher's Certificate | 13 |
| (b) Licentiate Teacher's Certificate | 14 |
| (c) Fellowship Teacher's Certificate | 15 |
| (d) Intermediate Certificate (Part A or Part B) | 11 |
| (e) Advanced Certificate (Part A or Part B) | 12 |
| (f) Final Diploma (Teacher's A and B) | 13 |

OR

- | | |
|---|----|
| Final Diploma (Performer's) (plus a recognised teacher's qualification in ballet) | 13 |
|---|----|

4. <i>Cecchetti Society of Southern Africa</i> (With effect from 1 January 2000)	REQV
(a) Associate Certificate	12
(b) Associate Diploma	13
(c) Licentiate Certificate	14
(d) Licentiate Diploma	15
(e) Fellowship (Educators must be professionally qualified for classification in REQV 16)	15
5. <i>South African Dance Teachers' Association</i> Advanced	11
6. <i>Pretoria Technikon</i> National Diploma in Performing Arts (Teacher of Ballet)	13
7. <i>The Spanish Dance Society</i>	
(a) Primer Ano Estudiante (Elementary Exam) Plus Profesor de Baile (Elementary Teachers')	11
(b) Segundo Ano Estudiante (Intermediate Exam) Plus Profesor de Baile (Elementary Teachers')	12
(c) Tercer Ano Estudiante (Advanced Exam) Plus Profesor de Baile (Elementary Teachers')	13
(d) Primer Ano Estudiante (Elementary Exam) Plus Profesor de Baile (Elementary Teachers')	12
(e) Segundo Ano Estudiante (Advanced Exam) Plus Instructor de Baile (Intermediate Teachers')	13
(f) Tercer Ano Estudiantne (Advanced Teachers') Plus Instructor de Baile (Intermediate Teachers')	14
(g) Tercer Ano Estudiante (Advanced Exam) Plus Instructor de Baile (Intermediate Teachers') Plus Maestro de Baile (Advanced Teachers')	15
4.13 Post for training in the Hotel and Catering Industry The South African National Diploma in Hotel Management or an equivalent qualification.	
4.14 Posts for the instruction of Nursing at Special Schools and Schools for Special Education NB: Registration as a Nurse with the South African Nursing Council is a pre-requisite. Not more than two of these diplomas may be recognised for the same person.	
4.15 The evaluation of nursing qualifications	
1. Diploma in General Nursing: REQV 13	
2. Diploma in General Nursing and Psychiatry: + 1 level	
3. Diploma in General Nursing and Midwifery: + 1 level	
4. Diploma in Midwifery: + 1 level	
5. Diploma in Orthopaedic Nursing: + 1level	
6. Diploma in Paediatric Nursing: + 1 level	
7. Diploma in Clinical Care, Administration and Teaching: + 1 level.	
8. Diploma in General Nursing Instructor: + 1 level	
9. Diploma in Public Health Nursing: + 1 level	
10. Diploma in Intensive Nursing: + 1 level	
11. Diploma in Operating-theatre Technique: + 1 level	
12. Diploma in Ophthalmic Nursing: + 1 level	
13. Diploma in Nursing Administration: +1 level	
4.16 Posts of Librarians at college libraries and departmental head office libraries. (An appropriate approved qualification.) OR (A Bachelor's degree plus a Higher Diploma in Library Science (as from January 1988))	

- 4.17 **Posts for School Social Workers.**
Registration as a Social Worker with the South African Council for Social Work
One of the following:
Four-year BA (Social Work) degree
Three-year BA (Social Work) degree
Three-year Diploma in Social Work
Four-year Diploma in Social Work
- 4.18 **Posts for Education Psychologist and Therapists**
Registration as a psychologist/therapist with the South African Medical and Dental Council.
An appropriate approved qualification classified as REQV 13 or higher.
- 4.19 **Posts for the teaching of Speech and Drama/Dramatic Art**
An appropriate qualification classified as REQV 13 or higher.
- 4.20 **Educator posts at non education institutions**
An appropriate qualification with an REQV 13 or higher.
8. **Evaluation of qualifications for employment in teaching posts at technical colleges/Further Education and Training institutions**
1. **Comments**
- An incumbent of a teaching post at a technical college must possess appropriate qualifications, which have been approved for employment in a teaching post at technical colleges.
 - Appropriate fields of study/subjects offered for recognised academic or vocational qualifications for employment at technical colleges may be selected from both Appendices 1 and 3.
2. **The recognition of approved diplomas or certificates**
- 2.1 No more than two appropriate diploma/certificates (diplomas in education excluded) on the same horizontal level will be recognised. The two approved diplomas/certificates are recognised provided that the overlapping is not more than 50% and the second diploma was offered in another suitable field of study.
In the case of a second N diploma, six new instructional offerings must be included of which at least two must be on N5 level and at least two on N6 level.
- 2.2 In the case where two approved diplomas are a continuation of each other, and the previous diploma is an admission requirement for the subsequent diploma, the two diplomas will be evaluated together as one diploma, and the REQV allocated to the highest diploma is recognised.
Example: A National Diploma and a National Higher Diploma will be regarded as one diploma for evaluation purposes.
- 2.3 A maximum of three diplomas will be recognised provided that one of them is a diploma in education.
3. **The recognition of diplomas in educator posts**
- 3.1 Only one of the diplomas in education indicated in paragraph 6.2 (excluding Further Diplomas in Education) is recognised.
- In addition to the general diplomas in education that are approved for general education as well as for post-school education, including the Higher Diploma in Education (Technical) and the National Diploma in Education (Technical), the following diplomas are approved for specific utilization in education at technical colleges:
 - National Higher Diploma: Post-school education
 - Postgraduate Diploma in Tertiary Education (University of South Africa).
- 3.2 Only one Further Diploma in Education (FDE), which does not overlap with other qualifications that have already been recognised for, will be recognised. (NB: FDE's in the fields of study Technika Mechanical, Technika Electrical, Technika Electronic and Technika Civil (obtained after 1 January 1995 will not be considered for REQV improvement).
- 3.3 Minimum requirements for one year diplomas in education (National Higher Diploma: Post school Education and Postgraduate Diploma in Tertiary Education).
- 3.3.1 Admission requirements
- 3.3.1.1 National Higher Diploma: Post-school education
At least a Senior Certificate (school education or vocational education) or an equivalent qualification, eg a National Technical Certificate III, plus the two required languages (see paragraph 1.16 of the Criteria) at a Senior Certificate level, with the proviso that provisional admission can be granted to immigrants who have resided for

fewer than four years in the Republic of South Africa and who do not yet comply with the language requirements.

For the National Higher Diploma: Post-school Education, Sake-Afrikaans and Business English on Senior Certificate level may replace the two required languages, provided that a minimum pass mark of 50% is attained in the instruction language and 40% is attained in the second required language.

AND

approved qualifications evaluated as REQV 13 (eg a National Technical Diploma or a National N Diploma);

OR

an approved degree.

3.3.1.2 Postgraduate Diploma in Tertiary Education

A Bachelor's degree

3.3.2 Science of Teaching

Five modules, of which at least one module in each of the following is offered:

Empirical Andragogics

Didactics

Educational Management

Media Science.

NB The fifth module is elective and Research Methodology could, for example, be included here.

3.3.3 A Course in Computer Literacy

3.3.4.1 Subject didactics for the National Diploma: Post-school education.

At least one subject methodology in a field of study as offered at technical colleges¹⁴ is required.

a. Where a candidate possesses an approved degree, the methodology that is envisaged for offering at technical colleges must be in a subject offered in the degree at least at second year level.

b. Where a candidate possesses an approved technical college and/or technikon qualification, the methodology that is envisaged for offering at technical colleges must be in a suitable subject at N6 or T3 level or their equivalent. For a methodology course in Technical Drawing, Machine Design, Building Construction, Electrical Design, Structural Design, Technical Drawing or another appropriate drawing-related subject must be taken at T2 or N4 level.

3.3.4.2 Subject didactics for the Postgraduate Diploma in Tertiary Education.

The methodology must be in a subject offered in the academic qualification at least at second year level.

3.3.5 The duration of the prescribed practical education must be a minimum of six weeks.

3.3.6 Language endorsement on diplomas in education.

3.3.6.1 The competence of the student who wants to enter employment at a technical college in using the prescribed languages as mediums of instruction is judged in a way agreed upon by the department of education concerned and the training institution concerned and indicated by means of an endorsement on the diploma by the institution that issued the diploma.

4. List of posts at technical colleges

4.1 Posts for instructional programmes on the N1 to N3 levels or NIC to NSC levels.

4.2 Posts for instructional programmes at the post-senior secondary level to REQV 13 level.

5. Minimum qualification requirements for a permanent appointment

5.1 Posts for offering of instructional programmes in the Engineering field of study

A three-subject National N3 Certificate of which Trade Theory, that is an appropriate subject theory or technology should be one subject, plus the two required languages passed on Senior Certificate level or its equivalent, plus a completed apprenticeship^{**} or a successful trade test plus two years'

¹⁴ Refer Appendix 1.

^{**} Apprenticeships of the following South African bodies will be recognised:

- Department of Manpower
- South African Defence Force
- SASOL
- South African Transport Services/Transnet
- An accredited Training Board.

appropriate trade experience. Sake-Afrikaans and Business English at Senior Certificate level will be regarded as equivalent to Afrikaans and English respectively at Senior Certificate level.

OR

a four subject National N3 Certificate of which Trade Theory, that is, an appropriate subject theory or technology, should be one of the subjects, plus a completed apprenticeship or a successful trade test plus two years appropriate trade experience.

Persons complying with the above-mentioned requirements will be classified and remunerated as REQV 13(s). Should they possess or obtain further appropriate qualifications, these qualifications will be considered for a higher REQV level, provided that this will place them at least on REQV 13.

- 5.2 Posts for offering instructional programmes in the fields of study of Business Studies, Art, Agriculture, Utility Services, Social Services and Maritime Studies.

An approved qualification that is evaluated as REQV 13

For the utility services field of study Haircare, the requirements are as stated in paragraph 4.1.

- 5.3 Posts for Instrumental Music

Refer Section 7 of the main document.

- 5.4 Posts for instruction in Practical Ballet, National and Greek Dances, History of Ballet, Anatomy

Refer Section 7 of the main document.

6. Evaluation of qualifications for a temporary appointment

- 6.1 Possessors of approved N6 qualifications can be appointed in a temporary capacity in teaching posts for the vocational education programmes (Fields of study in Business Studies, Art, Agriculture, Utility Services and Social Studies). (Two years of certified experience in the field is a prerequisite). Such persons are remunerated according to the REQV 13(s).*

- 6.2 Possessors of approved N3 to N5 qualifications in the Business Studies, Art, Agriculture, Utility Services and Social Studies fields of study for which apprenticeships or trade tests do not exist, and where the qualification concerned is the highest N qualification that is issued in the field of study concerned, can be appointed in a temporary capacity in teaching posts for the vocational education programmes. (Fields of Study in Business Studies, Art, Agriculture, Utility Services and Social Studies.) (Two years of certified experience in the field is a prerequisite). Such persons are remunerated according to the REQV 13(s)* salary range.

- 6.3 Persons who possess qualifications and/or suitable experience in a field of study for which an instructional programme does not already exist at a technical college, can be appointed in a temporary capacity on provided that the experience in the field is equivalent to the level of an N3 qualification. (The equivalence of this experience in the field to an N3 level must be certified by a principal of a technical college). Such persons are remunerated according to the REQV 13(s)* salary range.

- 6.4 A Head of Education can, according to his own discretion and on the recommendation of a principal of a technical college, consider persons who were appointed in a temporary capacity according to paragraphs 6.1 or 6.2 for a permanent appointment after two years of satisfactory service.

7. Further recognition for approved qualifications in particular fields of study

- 7.1 Persons who are in possession of approved academic and/or professional teaching qualifications and who obtain further approved qualifications which comply with all the requirements for appointment to particular posts at technical colleges as laid down in paragraphs 5.1, 5.2, 5.3, 5.4, 6.1 or 6.2 will be awarded one additional REQV level.

- 7.2 In the cases where an additional level has been awarded to an approved N3 to N6 qualification which complies with paragraphs 5.1, 6.1 or 6.2, a further additional level will only be awarded on completion of a approved National Diploma.

8. Evaluation of specific approved qualifications at technical colleges

- 8.1 Evaluation of vocationally related qualifications.

1. National Technical Diploma: REQV 13
2. National N Diploma: REQV 13
3. National Certificate for Technicians: REQV 13
4. National Higher Certificate for Technicians: REQV 13
5. National Diploma: REQV 13
6. National Diploma for Technicians: REQV 14
7. National Higher Diploma: REQV 14
8. National Diploma in Technology/Masters Diploma: REQV 15

* (s) Indicates that these persons receive a personal salary on an REQV 13 salary range

9. National Laureatus: REQV 15 (only professionally qualified persons can be classified as REQV 16).
- 8.2 Examples which may serve as guidelines for the evaluations of appropriate qualifications and for the REQV classification of such qualifications.
- 8.2.1 A vocationally related qualification evaluated as REQV 13 (see paragraph 8.1(1) to (5)) plus
1. an approved degree: REQV 15;
 2. an approved partially completed degree: REQV 14;
 3. (1) above + National Diploma in Education or HDE (Technical) or HDE (Postgraduate) or another approved diploma in education for technical college education: REQV 16; or
 4. (2) above + NDE (Technical) or HDE (Technical) or an approved diploma in education for technical college education: REQV 15.
- 8.2.2 A vocationally related qualification evaluated as REQV 14 (see paragraph 8.1(6) and 8.1(7)) plus
1. an approved degree: REQV15 (not professionally qualified);
 2. an approved partially completed degree: REQV 15
 3. (1) above + NDE (Technical) or HDE (Technical) or HDE (Postgraduate) or another approved diploma in education for technical college education: REQV 16 (can only be classified as REQV 17 provided that a Master's degree or a Diploma in Technology/Master's diploma is included; or
 4. (2) above + NDE (Technical) or HDE (Technical) or an approved diploma in education for technical college education: REQV 16
- 8.2.3 A vocationally related qualification evaluated as REQV 15 for appointment in technical college education (see paragraph 8.1(8)) plus
1. an approved or appropriate degree: REQV 15 (an approved diploma in education is required for classification as REQV 16)
 2. an approved partially completed degree: REQV 15 (an approved diploma in education is required for as REQV 16)
 3. (1) or (2) above + NDE (Technical) or HDE (Technical) or an approved diploma in education: REQV 16
- 8.2.4 A vocationally related qualification evaluated as REQV 16 (see paragraph 8.1(9)) plus
1. an approved degree or an approved partially completed degree: REQV 15 (an approved diploma in education is required for classes as REQV 16) or
 2. an NDE (Technical) or a HDE (Technical) or an approved diploma in education for technical college education: REQV 17
- 8.2.5 An apprenticeship and/or a passed trade test plus N3 plus –
1. N4 or N5 + NDE (Technical): REQV 13
 2. 4T1 + 4T2 subjects + NDE (Technical): REQV 13
 3. an approved degree: REQV 14
 4. an approved degree + an NDE (Technical) or a HDE (Technical) or a HDE (Postgraduate) or an approved diploma in education for technical college education: REQV 15
- 8.2.6 The following qualifications will each be granted one additional REQV level, for appointment in a teaching post at technical colleges:
1. Certificate of Competency as Engineer
 2. Certificate of Registration as Professional Engineer
 3. Certificate of Registration as an Architect
 4. Certificate of Registration as a Land Surveyor.

APPENDIX 1

ALPHABETICAL LIST OF NATIONAL INSTRUCTIONAL OFFERINGS AT TECHNICAL COLLEGES

(Report 191, 97-07, as revised June 2000)

Abattoir Hygiene	Catering Theory and Practical
Accounting for Butchers	Ceramics
Accounting	Cereal Production
Administration and Management	Chemical Laboratory Technology
Advertising Management	Chemical Plant Operation
Aerial Application (Pest Control)	Chemical Technology
Aerodynamics	Chemistry
Aesthetics Theory and Practical	Child Care
African Dance	Child Health
Afro Hair Care	Classical Dance
Aircraft Electrical Theory	Clinical Hair Study
Aircraft Electronics Theory	Clothing Construction
Aircraft Instrument Trade Theory	Clothing
Aircraft Maintenance Theory	Coal Mining
Aircraft Metalwork Theory	Coal Mining Economics
Aircraft Technology	Coal Mining Technology and Practice
Aluminium Manufacture	Coke and By-Product Process
Aluminium Smelter Technique	Colour (Art)
Aluminium Technology	Communication and Department
Animal Production	Communication and Human Relations
Applied Accounting	Communication Electronics
Applied Business Economics	Communication
Applied Hair Care	Computer Graphics
Applied General Science	Computer Practice and Typing Techniques
Applied Management	Computer Practice
Applied Physiology	Computer Principles
Armature Winding	Computer Aided Drafting
Arranging and Production (Music)	Computerised Financial Statements
Art of Africa	Computerised Financial Systems
Art of Drawing	Construction Plant Theory
Art of Entertainment	Contemporary Dance
Aural and Ensemble	Control Systems
Aural Training and Assemble Work: Popular Music	Cosmetic Make-up
Aviation Electronics	Cosmetics: Practical and Theory
Ballet: Practical and Theory	Cost and Management Accounting
Ballroom: Latin American and Free Style	Crop Production
Basic Classical and Contemporary Dance	Dairy Production
Basic Mining and Regulations	Data Management: Farming
Beef Cattle Production	Day Care Administration
Bharatha Natyam: Dance	Day Care Communication
Bharatha Natyam and Indian Folk Dance	Day Care Didactics
Body Conditioning	Day Care Entrepreneurship
Botany: Horticulture	Day Care Management
Bricklaying and Plastering	Day Care Personnel Development
Building Administration	Diesel Earthmoving Mechanics
Building and Civil Technology	Diesel-Electric Theory
Building and Structural Construction	Diesel Trade Theory
Building and Structural Surveying	Digital Electronics
Building Drafting	Draughting
Building Drawing	Drawing
Building Science	Dyeing and Fibre Technology
Business Economics	Economic and Legal Environment
Business English	Economics
Business Practice	Educare Didactics
Butchers' Theory and Practice	Educare Theory and Practical Education
Care of Children	Educational Psychology
Care of the Aged	Electrical Drafting
Care of the Handicapped	
Carpentry and Roofing	
Caterer Client Relations	

Electrical Installation Codes	Industrial Organisation and Planning
Electrical Trade Theory	Industrial Orientation
Electro-Mechanics	Industrial Science
Electrology	Information Processing
Electronic Music Keyboard Technique	Installation Rules
Electro-Technology	Instrument Mechanic Theory
Electrotechnics	Instrument Trade Theory
Engineering Drawing	Interior Principles: Theory and Practice
Engineering Physics	Interior Styles and Studies
Engineering Science	Internal Combustion Engines
Engineering Technology	Introduction to Interior
Entrepreneurship and Business Management	Introductory Space and Volume Studies
Environmental Engineering	Iron Production and Casting
Environmental Pest Control	Iron, Steel and Ferro Alloy Process Theory
Fabric Construction and Testing	Jewellery Design
Facial Machine Treatment	Jewellery Manufacturing
Facial Skin Care	Kathak (Dance)
Factory Organisation	Kathak and Indian Folk Dance
Farming Business Management	Kinesiology and Health Life Skills
Farming Business Practice	Knitted Fabric Analysis and Testing
Farming Communication	Knitting Theory
Farming Mechanics	Labour Relations
Fashion Drawing	Ladies (Caucation) Hair Care
Fault Finding and Protective Devices	Landscape Planning
Ferro Alloy Technology	Legal Knowledge: Mines
Fertilizer Manufacturing	Legal Practice
Fibre and Yam Characteristics and Testing	Life Skills
Financial Accounting	Line (Art)
Financial Management: Farming	Logic Systems
Fitting and Machining Theory	Long Staple Spinning Theory
Flower Production	Loss Control
Fluid Mechanics	Machines and Properties of Metals
Food Administration	Maintenance Management
Food and Beverage Service	Management Communication
Food and Nutrition	Management
Form and Colour Studies	Management: Farming
Foundry Theory	Management: Mining
Fruit Production	Manicure and Pedicure
Fumigation	Manual Massage
Funeral Practice	Marketing Communication
Furniture Design	Marketing Management
Furniture Makers' Theory	Marketing Research
General Drafting	Mathematics
General Music Knowledge, Harmony and Composition	Meat Inspection
General Textile Technology	Mechanical Drawing and Design
Gents' Hairdressing	Mechanotechnics
Graphic Design	Mechanotechnology
Graphic Interpretation	Medical Practice
Graphic Processes	Mercantile Law
Gunsmith Trade Theory	Metal Workers' Theory
Hair Care	Metallurgy
History of Art	Metalliferous Mining
History of Music and Form	Mine Planning
Horticulture Science	Mining Economics
Hotel Reception	Mining Engineering
Human Relations	Mining Geology
Human Resource Management: Farming	Mining Machinery
Hygiene and Safety	Mining Science
Improvisation (Music)	Mining Shafts
Income Tax	Missiles
Industrial Affairs	Motor Body Repairing
Industrial Chemistry	Motor Body Work Theory
Industrial Communication	Motor Electrical Theory
Industrial Confectionary Manufacture	Motor Machining Theory
Industrial Crop Production	
Industrial Electronics	
Industrial Instruments	

Motor Trade Theory	Radar Technology
Motor Vehicle Science	Radar Trade Theory
Motor Vehicle Technology	Radio and Television Theory
Motor Workshop Organisation and Administration	Radio Theory
Motor, Diesel and Tractor Mechanics	Refrigeration Technology
Moulders' Theory	Refrigeration Trade Theory
Municipal Administration	Refrigeration, Air Conditioning and Ventilation
Music Business and Styles	Repertoire
Music: Practical: Brass, Woodwind, Drums, Bass Guitar, Guitar, Piano, Keyboard, Vocal	Rigging Theory
Mutton Production	Road Construction Drawing
Nail Technology	Road Construction Theory
Nutrition and Menu Planning	Rock Engineering
Nutrition and Residential Care	Sake Afrikaans
Occupational Health and Safety Act	Sales Management
Office Practice	Sanitation and Housekeeping
Paint Application and Testing	Sanitation and Safety
Paint Chemistry	Sculpture: Art
Paint Manufacturing	Secretarial Catering
Paint Raw Materials	Semi-Worsted Spinning Theory
Paint Technology	Servicing Techniques
Paint Types and Systems	Shape and Form: Art
Painting and Decorating	Sheet Metal Workers' Theory
Painting	Short Staple Spinning
Paper Making	Shorthand
Pattern Construction	Small Business Management and Entrepreneurship
Pattern Makers' Theory	Smithing Theory
Personnel Management	Snelskrif
Personnel Training	Social Care
Pest Biology	Soft Furnishing Theory and Practice
Pesticide Marketing	Sound Engineering (Music)
Photo Technology	Spanish Dance
Photography	Spatial Planning Theory and Practical
Photography Trade Theory	Spinning Theory
Pictorial Drafting	Steel Production and Casting Theory
Pig Production	Strength of Materials and Structures
Plant Engineering: Mines, Works and Factories	Structural Steel Detailing
Plant Operation Theory	Supervision in Industry
Plant Pests and Diseases	Supervisory Management
Plastic Technology	Surface Elements Theory and Practical
Platers' and Structural Steelworkers' Theory	Surface Mining
Platers' Theory	Surface Mining Economics
Plating and Structural Steel Drawing	Surface Mining Geology
Plumbing Theory	Surface Mining Machinery
Popular Music Practical: Bass Guitar, Drums, Piano/Keyboard, Vocal	Surface Mining Surveying
Poultry Meat Inspection	Survival Equipment Theory
Poultry	Table Service
Power Machines	Tailors' Theory
Power Station Electricity	Tap Dance
Power Station Science	Technical Illustration
Power Station Theory	Telecom Trade Theory
Preparation and Preservation Theory: Funeral	Television Techniques
Principles of Pest Control	Textile Chemistry
Printing and Fibre Technology	Textile Design/Fibre Art
Production and Quality Control	Textile Engineering Science
Promotion Methodology: Theory and Practical	Textile Technology
Public Administration	Textile Testing
Public Finance	Texture: Art
Public Law	Theory of Dance
Public Relations	Theory of Music, Harmony and Composition: Popular Music
Pulp and Paper Making Theory	Three Dimensional Design
Psychology: Funeral	Three Dimensional Studies
Quantity Surveying	Timber Production
Radar Systems	

Tone: Art	Water Treatment Practice
Toolmakers' Theory	Waxing
Tourism Communication	Weaving
Tourist Destinations	Weed Control
Travel Office Procedures	Welders' Theory
Travel Services	Window Covering Theory and Practice
Two Dimensional Design	Wood Preservation
Typing	Wood Machinery/Joinery and Shopfitting Theory
Upholstery and Trimming Theory	Woodworkers' Theory
Upholstery Theory and Practical	Wool Production
Vegetable Production	Wool Spinning Theory
Ventilation, Gases and Dust and Regulations	Woolen and Semi-Worsted Spinning
Vine Production	Worsted Spinning
Vocational Orientation	
Warp and Weft Knitting	
Warp Knitting Theory	
Waste Water Treatment Practice	

9. Recognition of Qualifications for Employment in Adult Basic Education and Training Centres

Evaluation of approved qualifications to appointment at ABET-centers

9.1 Qualifications evaluated as REQV 11

- 9.1.1 Certificate in Adult Education, Training and Development, University of Cape Town
- 9.1.2 Certificate for Educators of Adults, University of the Western Cape (this qualification was provided until the end of 1999)
- 9.1.3 Higher Certificate for Educators, Trainers and Developers: Adult Learning, University of the Western Cape
- 9.1.4 Practitioner's Certificate in Adult Basic Education and Training, University of South Africa
- 9.1.5 Certificate: Community Development, University of Natal

9.2 Qualifications evaluated as REQV 12

- 9.2.1 A qualification as in 9.1.2 or 9.1.3 together with the Higher Diploma for Education, Training and Development Practitioners: Adult Learning, University of the Western Cape
- 9.2.2 A qualification as in 9.1.4 together with the Practitioner's Diploma in Adult Basic Education and Training, University of South Africa

9.3 Qualifications evaluated as REQV 13

- 9.3.1 National Diploma in Adult Basic Education and Training (obtained at a South African technikon and certified by SERTEC)

9.4 Qualifications evaluated as REQV 14

- 9.4.1 An approved qualification evaluated as REQV 13 together with the Advanced Diploma for Educators of Adults, University of Cape Town
- 9.4.2 An approved qualification evaluated as REQV 13 together with the Advanced Diploma for Educators of Adults, University of the Western Cape
- 9.4.3 An approved qualification evaluated as REQV 13 together with the Bachelor of Education degree (specialisation in ABET), University of South Africa
- 9.4.4 A B.TECH degree (Adult Basic Education and Training) (obtained at a South African technikon and certified by SERTEC)
- 9.4.5 An approved professional teachers' qualification evaluated as REQV 13 plus a Further Diploma in Education (ABET), offered by Potchefstroom College of Education
- 9.4.6 An approved professional teachers' qualification evaluated as REQV 13 plus a National Higher Diploma: Adult Basic Education, offered by technikons

9.5 Qualifications evaluated as REQV 15

- 9.5.1 An approved qualification evaluated as REQV 14 together with a Postgraduate Diploma in Literacy Studies, University of Cape Town
- 9.5.2 An approved qualification evaluated as REQV 14 together with the Bachelor of Education degree (specialisation in ABET), University of South Africa
- 9.5.3 Bachelor of Education degree: Adult Education/Post Graduate Diploma: Adult Education, University of Natal

9.6 Qualifications evaluated as REQV 16

- 9.6.1 An approved qualification evaluated as REQV 15 together with the Masters in Literacy Studies, University of Cape Town

- 9.6.2 An approved qualification evaluated as REQV 15 together with the Masters in Education: Adult Education, Training and Development, University of the Western Cape
- 9.6.3 An approved qualification evaluated as REQV 15 together with the Masters in Philosophy: Adult Education, Training and Development, University of the Western Cape
- 9.6.4 Master of Education; Adult Education, University of Natal

APPENDIX 2

Roles for educators in schooling

1. Learning mediator

The educator will mediate learning in a manner which is sensitive to the diverse needs of learners, including those with barriers to learning; construct learning environments that are appropriately contextualised and inspirational; communicate effectively showing recognition of and respect for the differences of others. In addition an educator will demonstrate sound knowledge of subject content and various principles, strategies and resources appropriate to teaching in a South African context.

2. Interpreter and designer of learning programmes and materials

The educator will understand and interpret provided learning programmes, design original learning programmes, identify the requirements for a specific context of learning and select and prepare suitable textual and visual resources for learning. The educator will also select, sequence and pace the learning in a manner sensitive to the differing needs of the subject/learning area and learners.

3. Leader, administrator and manager

The educator will make decisions appropriate to the level, manage learning in the classroom, carry out classroom administrative duties efficiently and participate in school decision making structures. These competences will be performed in ways which are democratic, which support learners and colleagues, and which demonstrate responsiveness to changing circumstances and needs.

4. Scholar, researcher and lifelong learner

The educator will achieve ongoing personal, academic, occupational and professional growth through pursuing reflective study and research in their learning area, in broader professional and educational matters, and in other related fields.

5. Community, citizenship and pastoral role

The educator will practice and promote a critical, committed and ethical attitude towards developing a sense of respect and responsibility towards others. The educator will uphold the constitution and promote democratic values and practices in schools and society. Within the school, the educator will demonstrate an ability to develop a supportive and empowering environment for the learner and respond to the educational and other needs of learners and fellow educators.

Furthermore, the educator will develop supportive relations with parents and other key persons and organisations based on a critical understanding of community and environmental development issues. One critical dimension of this role is HIV/AIDS education.

6. Assessor

The educator will understand that assessment is an essential feature of the teaching and learning process and know how to integrate it into this process. The educator will have an understanding of the purposes, methods and effects of assessment and be able to provide helpful feedback to learners. The educator will design and manage both formative and summative assessment in ways that are appropriate to the level and purpose of the learning and meet the requirements of accrediting bodies. The educator will keep detailed and diagnostic records of assessment. The educator will understand how to interpret and use assessment results to feed into processes for the improvement of learning programmes.

7. Learning area/subject/discipline/phase specialist

The educator will be well grounded in the knowledge, skills, values, principles, methods, and procedures relevant to the discipline, subject, learning area, phase of study, or professional or occupational practice. The educator will know about different approaches to teaching and learning (and, where appropriate, research and management), and how these may be used in ways which are appropriate to the learners and the context. The educator will have a well developed understanding of the knowledge appropriate to the specialism.

APPENDIX 3

List of appropriate subjects/fields of study for teacher education programmes

Note: The following list is meant to serve as a guideline to providers of teacher education programmes, educators who wish to improve their academic competence and evaluators of teacher qualifications. The list will be amended from time to time.

Accounting/Accountancy/Financial Accountancy	Geography/Environmental and Geographical Science
African Literature	German/German Studies
African Studies	Greek
Afrikaans/Afrikaans-Nederlands	Guidance and Counseling Psychology/ Psychology/Applied Psychology
Agricultural Biochemistry	Gujarati
Agricultural Economics	Handwork/Handicrafts/Basic Techniques/Needlework/ Woodwork
Agronomy/Agricultural Science	Harmony/Harmony and Counterpoint/Harmony, Counterpoint and Composition
Animal Husbandry/Animal Production	Health Education
Anthropology/Ethnology	Hebrew
Applied English Language Studies	Hindi
Applied Language Studies	Hindu Studies/Biblical Studies/Islamic Studies/Jewish Studies/Religious Studies
Applied Mathematics/Mathematical Statistics	History/African History
Applied Psychology	History of Art
Arabic	History of Music
Art/Art Education/Art and Handwork/Arts and Crafts	Home Management
Art Practical: Painting/Graphic Art/Sculpture/ Photography/Ceramics/Textiles/Fibre Arts/Jewellery/ Puppetry/Communication Design/Information Design/ Industrial Design/Art Documentation and Research	Hotel Keeping and Catering/Hotel and Tourism Management
Assessment of Learning	Human Resources Development
Biblical Studies/Hindu Studies/Islamic Studies/Jewish Studies/Religious Studies	Human Rights Education/Democracy Studies/Citizenship Studies
Biokinetics	Industrial Art (Metal- and Woodwork)
Biochemistry	Instrumental Music
Biology/Biological Science	Islamic Studies/Biblical Studies/Hindu Studies/Jewish Studies/ Religious Studies
Botany	Italian
Building	Jewish Studies/Biblical Studies/Hindu Studies/Islamic Studies/ Religious Studies
Business Economics/Business Administration/Business Management	Labour Relations
Business Law/Company Law/Commercial Law/ Mercantile Law	Learning Materials Development
Chemistry	Latin
Class Music/Music Education/School Music	Librarianship/Library Science/Information Science/ Applied Information Science/Media Centre Science/ Book Education
Clothing/ (Protection/Needlework and Dressmaking)	Linguistics/Linguistics and Literary Theory /Literary Theory/ Linguistics and English Language/Applied Linguistics
Commerce	Logic/Logic and Language/Critical Thinking
Commercial Law/Mercantile Law/Company Law/ Business Law	Machine Design/Technical Drawing
Comparative Religion	Mathematics/Mathematics Education
Computer Science/Computer Education Science/ Informatics/Information Systems	Mathematical Statistics/Applied Mathematics
Cookery (Food and Nutrition)	Mercantile Law/Commercial Law/Business Law/ Company Law
Criminology	Microbiology
Curriculum Design/Development	Music (Practical)
Development Studies	Natural Science/Biology/Botany/Zoology/Physical Science/ Chemistry/Physics
Dietetics	Ndebele
Design (Art)	Pasture Science
Economics/(Mathematical Economics)/Economic Education/Entrepreneurship	Philosophy/Applied Philosophy
Engineering Science (Technika)	Philosophy of Religion
English	Physical Education/Human Movement Studies
Ethics/Comparative Ethics/Applied Ethics	Physical Science/Physics or Chemistry
Ethnology/Anthropology	Physical Education/Human Movement Studies
Environmental Science/Environmental Studies/ Environmental Education	Physics/Physical Science
Field Husbandry/Pasture Science/Pasture Management	Physiology
Fluid Mechanics (Technika)	Political Studies
Food Science (Science of Nutrition)	
French/French Studies	
Guidance and Counseling	
Genetics/Animal Production/Plant Production	

Portuguese	Statistics
Psychology/Guidance and Counseling Psychology/ Applied Psychology	Tamil
Public Administration/State Administration	Technika (Electrical)
Quantity Surveying (Technika)	Technika (Electronical)/Digital Electronics/Industrial Electronics
Religious Studies/Biblical Studies/Hindu Studies/Islamic Studies/Jewish Studies	Technika (Mechanical)/Mechanotechnics/Power Machines
Science of Religion	Technika (Civil)/Strength of Materials and Structures/ Building and Structure Construction
Science Education/Natural Science/Physical Science/ Physics or Chemistry	Technology
School Guidance and Counseling Psychology/Guidance Sepedi	Technical Drawing/Machine Design/Mechanical Drawing and Design
Shorthand	Telegu
Sociology	Theological Ethics
Social Work	Theory of Music
Soil Science	Travel and Tourism
Sesotho	Tsonga
Spanish	Tswana
Special Education Needs ¹⁵	Typing/Computer Typing
Speech Training and Dramatic Art/Speech and Drama/Drama and Dramatic Art/Drama	Urdu
Sport Science	Venda
Sport and Recreation	Wild Life Management
Swati	Xhosa
Systematic Theology	Zoology
State Administration/Public Administration	Zulu

APPENDIX 4

THE TWELVE ORGANISING FIELDS OF THE NQF

- 01 Agriculture and Nature Conservation
- 02 Culture and Arts
- 03 Business, Commerce and Management Studies
- 04 Communication Studies and Languages
- 05 Education, Training and Development
- 06 Manufacturing, Engineering and Technology
- 07 Human and Social Studies
- 08 Law, Military Science and Security
- 09 Health Sciences and Social Services
- 10 Physical, Mathematical, Computer and Life Sciences
- 11 Services
- 12 Physical Planning and Construction

APPENDIX 5

THE EIGHT LEARNING AREAS FOR THE GENERAL EDUCATION AND TRAINING BAND

- 01 Language, Literacy and Communication
- 02 Human and Social Sciences
- 03 Technology
- 04 Mathematical Literacy, Mathematics and Mathematical Sciences
- 05 Natural Sciences
- 06 Arts and Culture
- 07 Economics and Management Science
- 08 Life Orientation

¹⁵ Physical, sensory, intellectual, social or multiple impairments, for example mobility, fine motor skills, expressive and receptive communication, hearing, vision, cognitive skills, sign language, braille, HIV/AIDS, abuse, crime vandalism, gangsterism, teenage pregnancy

APPENDIX 6

LEARNING PROGRAMMES FOR THE DIFFERENT PHASES OF SCHOOLING IN THE GENERAL EDUCATION AND TRAINING BAND

1. Foundation Phase (Grades 1 to 3)

- Literacy
- Numeracy
- Life Skills

2. Intermediate Phase (Grades 4 to 6)

- Language, Literacy and Communication
- Mathematical Literacy, Mathematics and Mathematical Sciences
- Natural Sciences and Technology
- Human, Social, Economic and Management Sciences
- Arts, Culture and Life Orientation

3. Senior Phase (Grades 7 to 9)

- Language, Literacy and Communication
- Human and Social Sciences
- Technology
- Mathematical Literacy, Mathematics and Mathematical Sciences
- Natural Sciences
- Arts and Culture
- Economics and Management Science
- Life Orientation

NATIONAL POLICY FOR DESIGNING SCHOOL CALENDARS FOR ORDINARY PUBLIC SCHOOLS IN SOUTH AFRICA

G.N. 207 of 2000 published in *Government Gazette* No. 20945 dated 1 March 2000

NATIONAL POLICY FOR DESIGNING SCHOOL CALENDARS FOR ORDINARY PUBLIC SCHOOLS IN SOUTH AFRICA

I, Kader Asmal Minister of Education, after consultation with the Council of Education Ministers and with national and provincial stakeholders with a specific interest in school calendars, hereby announce in terms of section 3(4)(k) of the National Education Policy Act, 1996 (No. 27 of 1996), the national policy for designing school calendars for ordinary public schools in South Africa.

Prof. Kader Asmal, MP
Minister of Education

Glossary

Allocated time means the amount of time learners attend school in years, days or hours.

Breaking time means the amount of time taken during the school day for recreation and meals.

Cluster means an organisational unit consisting of two or more provinces that all share the same school calendar.

Curriculum according to Lawton (1975) is defined as “essentially a selection from the culture of a society: certain aspects of our way of life, certain kinds of knowledge, certain attitudes and values regarded as so important that their transmission to the next generation is not left to chance”.

Instructional time means instructional time is the amount of allocated time when instruction is provided in the essential learning areas.

School calendar means the annual plan that allocates the total number of days in a school year in a specific pattern, in accordance with the published regulations.

School day is defined by a specific number of hours

School holiday means time allocated for learners and teachers to recuperate and also to engage in education related activities such as conferences and sport competitions.

School term means the basic sub-unit of time into which the school year is sub-divided. In the four-term system, this amounts to approximately 50 days.

School year is defined by a specific number of days.

School governing body means [sic]

Staggering refers to the planning technique of ensuring that the closing and opening dates of school terms of provinces in different clusters are separated by three or more days.

Time on task is the amount of instructional time when a student or group of students is attending to an appropriate task or is engaged in learning. (Also referred to as engaged time)

Some of the definitions are adapted from: Lorin W. Anderson and Herbert J. Walberg (1993) *Timepiece: Extending and Enhancing Learning Time* National Association of Secondary School Principals, Virginia, United States.

1. Background to the development of this policy

The school calendar structures the total number of days allocated for teaching and learning in a school year according to a unique pattern. It lays down the dates of commencement and termination of the school terms and the length of school holidays. The process of constructing the school calendar is guided by general principles and a set of specifications. In South Africa, the amalgamation of a number of different education departments and sub-departments after 1994, necessitated the consolidation of the various approaches to designing the calendar for application within the nine new provinces that formed the sub-national units of educational provision and management. Consequently, the document, “Criteria for the Compilation of School Calendars” was developed and utilised in the co-ordination of the school calendars from 1995 to 2000. The current document; “National Policy for Designing School Calendar for Ordinary Public Schools in South Africa” was drawn up as

part of an investigation into the school calendar, conducted in 1999 by the Human Science Research Council (HSRC).

This document contains:

- the broad principles that should be taken into account in the school calendar design process;
- specific criteria that need to be taken into account in constructing the calendar for any specific year;
- definition of some key terms;
- a sample time-frame for the construction of the calendar for any particular year; and
- legislation which has application to aspects related to calendar construction.

2. Principles according to which the school calendar should be designed

2.1 Educational requirements

The construction of the school calendar involves taking into account the sometimes conflicting needs and interests of various stakeholders and interest groups. It will not be possible always to accommodate the needs of all stakeholders. Educational requirements must be satisfied/given priority. This means that the interests of the learners should receive priority. The interests of teachers and other education personnel who serve the immediate needs of learners must also be taken into account.

2.2 Culture of learning and teaching

Planning of the school terms should where possible ensure that the allocation of holidays minimises interruptions to the learning/teaching cycle.

2.3 Consultation and participation

Wide consultation must take place with stakeholders and role-players at the district, provincial and national levels.

The involvement of the organised teaching profession and other personnel engaged in education on planning related to the school calendar is important.

The Provincial Education Departments should maximise the levels of participation from stakeholders and role players at the provincial level meetings. At the national level, provinces should be required to ensure that they are represented at all duly convened meetings of the HEDCOM Sub-Committee for School Calendars.

2.4 Co-operation

The provinces in each cluster must ensure high levels of co-operation between each other.

2.5 Transport and travel infrastructure

The school calendar must take into account the effect that the timing of school holidays could have on the flow of traffic and the potential road safety implications of the calendar. Similarly, congestion of other transport infrastructure such as rail, air and related facilities needs to be taken into account. This is an important consideration as the numbers of South Africans able to engage in domestic tourism is increasing rapidly.

In planning the dates on which school terms will close especially at the end of the year, cognisance should be taken of the dates on which factories and the building and allied industries shut down for their holidays. It should be borne in mind that the school holidays during the end-of-year period are primarily determined by the closing dates adhered to in the private sector and not vice-versa.

Even though road safety is of great concern to the Departments of Education, the Department of Transport should take responsibility for managing road traffic flows and reducing loss of life on the roads during school and public holidays.

2.6 Consistency

The school holiday schedule of each Provincial Education Department should be kept reasonably constant in order to facilitate planning for holiday seasons by the tourism industry, the private sector, the road traffic authorities and parents of learners.

2.7 Uniform application of criteria

The same criteria must be applied uniformly to the calendars for every cluster and province.

2.8 Advance planning for calendar design

The calendar for a particular year must be designed sufficiently far in advance of the year it pertains to so as to facilitate planning by all affected parties and stakeholders. The calendar must be available a minimum of eighteen (18) months in advance of the year it pertains to.

Delayed changes to the compilation of the calendar or late changes to the calendar must be avoided. Provinces with proportionally higher numbers of rural schools expressed concern over any late changes to the calendar. Communication with outlying schools is difficult and changes will sow confusion.

2.9 Process of communicating calendar design options

When the draft calendar is sent out for consultation it should be accompanied by a rationale for its composition.

3. Specifications according to which school calendars must be designed

3.1 Allocation of time in the calendar

3.1.1 Required number of school days per year

The number of school days must provide sufficient time to enable the educational programs to be completed. Approximately 195–200 school days per year are considered sufficient for the purposes of teaching and learning.

Educators and learners in each province should as far as possible be allocated the same number of days.

3.1.2 Number of terms

The South African school calendar assumes a four-term structure.

3.1.3 Length of terms

The length of terms should as far as possible be of equal length. It is however, desirable for educational reasons that the third term should be longer than the fourth term.

3.1.4 Length of school holidays

School holidays should provide learners and educators with sufficient opportunity to rest. At the same time, holidays should not be so long as to adversely affect learning retention.

3.1.5 Number of hours per day for teaching and learning

According to the terms and conditions of employment of educators as determined in terms of Section 4 of the Employment of Education Act, 1998 (*Government Gazette*, Notice 222 of 18 February 1999, Chapter A Number 3), the workload of educators should meet the following requirements:

Section 3.1(d) The expectation that every educator must be able to account for 1800 actual working hours per annum.

Section 3.2(a) *Workload of Educators* – All educators should be at school during the formal school day which should not be less than 7 hours per day.

3.1.6 Days for administration and planning

At the beginning of the year, teachers should start work at least one day before the pupils start school and at the end of the year; teachers should stay on for at least three days for administration and planning.

3.1.7 Religious holidays

In accordance with Item 15 of the Bill of Rights, the South African Schools Act (SASA), No. 84 of 1996 states that with regard to "Freedom of conscience and religion at public schools" (Para. 7, p.8) "subject to the constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary". The SASA does not take into account the possibility of temporary closure of a school for reasons of religious observance. However, consonant with the spirit of the Constitution, School Governing Bodies may exercise the right to close for religious commemorations only where the majority of pupils are members of the faith in question.

Closure of schools for religious observance is subject to the following conditions. The number of days may not exceed two days, and must be taken in lieu of the two days allocated for Sport and Culture in paragraph 3.1.8, following. Schools must prioritise their activities in making choices about which school days to take off, which may not be recovered. The School Governing Body must make application to the Head of Department to exercise this option and must give details with respect to: the size (in percent and numbers) of the religious majority in the school; the day(s) being applied for; and how the school days taken off for such religious observances will be made up, if more than two school days have been taken off. Individual schools that make provision for closure on religious grounds should under no circumstances be open for fewer days than the rest of the province.

Simultaneously, the prescription of the Constitution that cultural, linguistic or linguistic communities should also respect the rights of others, must also be affirmed through ensuring that minority religious groups within a school community are not disadvantaged in any way. Members of world religions that form a minority of learners in schools may be given permission to take two recognised religious days off school. Learners of minority religious groups who do not attend school on such school day(s) should not be marked absent for the day(s) in question. Learners should not be academically disadvantaged as a result of their absence. For example, assessments such as examinations or tests should not be administered on days that they are absent.

In terms of regulations, educators are obliged to request to take leave should they wish to celebrate published religious days that fall in term time, except where the school is closed on the basis of an application from the SGB as provided for above.

3.1.8 *Sporting and cultural days*

A maximum of two days per year may be allocated to schools for this purpose. School Governing Bodies should apply to the Head of Department or his/her representative at the District level to utilise such days for school sporting and cultural events. Records will be kept of the allocation of such days with regard to numbers of applications, reasons given for applications and number of applications granted.

3.2 **Clusters and staggering**

3.2.1 *Clusters*

Within the South African education system, the provision of school education is a provincial competence. The nine provinces have agreed to be allocated into two "Clusters". A cluster refers to a set of provincial education departments that conform to the same school calendar.

3.2.2 *Cluster grouping*

Grouping of clusters takes into account the principle that in high population density areas neighbouring provinces should be allocated to the same cluster where possible. The grouping also takes into account peak season traffic flows, and the requirements of the tourism and hospitality industries. The agreed clusters are:

Inland Provinces: *Free State, Gauteng, Mpumalanga, North-West Province and Northern Province*
Coastal Provinces: *Eastern Cape, KwaZulu-Natal, Northern Cape and Western Cape*

3.2.3 *Staggered closing and opening times*

Clusters should not open their schools on the same date as other clusters. Nor should clusters close their schools on the same date as other clusters. Dates should, where possible, be staggered by three to seven days. There are three considerations that must be taken into consideration in the staggering of school opening and closing times.

First, the structure of the school calendar has to take into account traffic flows. In particular, the aim is to allocate different dates to clusters so that peak traffic density after school closing and before opening is kept within acceptable levels

Second, staggered term closing and opening times is required in order to reduce the load on establishments offering accommodation on the main road traffic routes.

Third, staggering of holidays promotes optimal utilisation of holiday facilities by spreading demand over a longer period in provinces. In this way shortages associated with peak demand are avoided and provincial economies with developed tourism and hospitality industries can sustain higher levels of growth and employment.

3.2.4 *Holiday overlap with all clusters/provinces*

The mid-year holidays for all provinces should have an overlap of at least one week. This is required to enable the scheduling of events such as sports code national tournaments and teacher union national congresses.

For similar reasons five days, which may include a weekend, should overlap from province to province during the September/October holiday.

3.3 **Scheduling of school terms**

3.3.1 *Avoid early start in January*

A very early start to the school term in January should be avoided as this will shorten the holidays of parents who are only able to take leave from Christmas.

3.3.2 *First day of a school term*

If possible, school terms for learners should not begin on a Monday. This reduces traffic flows on a Sunday. Opening on a Monday does not provide time for school hostel staff to prepare for the return of learners. With the agreement of teacher unions, Monday can be scheduled for educators to engage in planning for the new term.

3.3.3 *Examinations*

The fourth school term should not end too late in December, as late closure affects the final publication of the Senior Certificate results (Preferably not later than 8 December). A late start at the beginning of the year should also be avoided as this pushes back all the terms, thus producing delays in marking and the publication of results.

3.4 **Scheduling of school terms with reference to public holidays**

3.4.1 *Easter holidays*

Since the dates of the Easter weekend differ from year to year, an effort should be made where possible, to have the Easter weekend fall in the school holiday in order to prevent unnecessary travelling and disrupting of the teaching program.

3.4.2 *Scheduling dates of school holidays in relation to public holidays*

If a long weekend begins on a public holiday that falls on a Friday, and this weekend coincides with the beginning of a school holiday, schools should close on the Wednesday and not the Thursday. If a public holiday falls on the first Monday of a school holiday, schools should close not later than the previous Thursday.

3.4.3 *Scheduling dates of school terms in relation to public holidays*

Especially at the beginning and end of the school year, an effort should be made to have a gap between the opening and the closing day of a school term and any public holiday falling in the period concerned.

There should preferably be no public holiday in the first week of a school term. Such a holiday prevents a proper start to the new term, as it tends to disrupt the academic work of the school.

3.4.4 *Public holidays falling on Tuesdays and Thursdays*

Where public holidays fall on Tuesdays and Thursdays, the intervening Monday or Friday should not be declared as a school holiday unless the public holiday falls in conjunction with another public holiday that creates a long weekend eg 27 April and 1 May.

3.5 **Additional specifications**

3.5.1 *Climate*

Extreme climatic conditions that make school attendance unproductive, uncomfortable, even possibly injurious to health need to be taken into account. Conditions of extreme heat that are experienced in parts of Southern African summer can only to a limited extent be avoided by scheduling the start of school terms later in January. Of greater relevance is the relationship between temperature and humidity. High heat and humidity is a seasonal feature of tropical coastal regions such as along the Kwazulu-Natal seaboard. Principals of schools which are located in areas where high heat and humidity conditions occur should be aware of the conditions that could put children/learners at risk and on what basis to the decision to close their school can be made.

3.5.2 *Discretion of the Head of the Provincial Education Department*

Certain types of schools under the jurisdiction of Provincial Education Departments such as schools for children with Special Education Needs may require slightly different calendar arrangements to be made from the majority of ordinary schools (eg: on account of transport and accommodation problems).

5. **Table A: Time frame for the construction of the school calendar:**

1998

Mar	National Department develops a draft Calendar Proposal and sends to provinces Teleconference between cluster members
Apr	*HEDCOM Sub-Committee:Cluster meeting on Calendar Proposal Full meeting discussion of the Calendar Proposal
May	Consultation in Provinces
June	Consultation in Provinces Teleconference between cluster members
July	*HEDCOM Sub-Committee:Cluster meeting on the Calendar Proposal Negotiate Calendar Proposal
Aug	Consultation in Provinces
Sep	Teleconference between cluster members Submission of comments/suggestions. Amendments to Calendar administratively if there is consensus and submit to HEDCOM OR *HEDCOM Sub-committee:Cluster meeting on Calendar Proposal Committee Full meeting to negotiate Calendar Proposal
Oct	Submit to HEDCOM for consideration (Approval OR request for amendment and re-submission with further consultation)
Nov	Submit to Council of Education Ministers (CEM) for approval
Dec	Publication by Department and Minister
1999	Continue with process for 2001 school calendar

2000 Continue with process for 2002 – 2004 school calendars

2001 Implement first school calendar (2001) compiled in accordance with this national policy.

6. National legislation that has bearing on matters relating to the school calendar

6.1 South African Schools Act, 1996 (No. 84 of 1996)

Section 4(1): *Exemption from Compulsory Attendance* – A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

Section 7: *Freedom of conscience and religion at public schools* – Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under the rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary

Section 20(1)(f): *Functions of school governing bodies* – Subject to this Act, the governing body of a public school must determine the times of the school day consistent with any applicable conditions of employment of staff at the school

Section

21(1)(b) & (e): *Allocated functions of governing bodies* – Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions (b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy; and (e) other functions consistent with this Act and any applicable provincial law

6.2 Constitution of the Republic of South Africa, Act 108 of 1996 as amended on 11 October 1996 by the Constitutional Assembly

Chapter 2: Bill of Rights

Item 15

(1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.

(2) Religious observances may be conducted at state or state-aided institutions provided that –

(a) those observances follow rules made by the appropriate public authorities,

(b) they are conducted on an equitable basis, and

(c) attendance at them is free and voluntary.

Item 28

(1) Every child has the right –

(e) to be protected from exploitative labour practices

(f) not to be required or permitted to perform work or provide services that (i) are inappropriate for a person of that child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual or moral or social development;

(2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section "child" means a person under the age of 18 years.

6.3 Mines and Works Act, Act 27 of 1956 prior to Act 13 of 1991

Section 11(1): *Restriction upon employment of juveniles and females* – No male person under the age of sixteen years and no female shall work, and no person shall cause or permit any male person apparently under the age of sixteen years or any female to work underground in any mine.

6.4 Terms and conditions of employment of educators determined in terms of section 4 of the Employment of Educators Act, 1998 (Government Gazette, Notice 222 of 18 February 1999)

Section 3.1(d): The expectation is that every educator must be able to account for 1800 actual working hours per annum.

Section 3.2(a): *Workload per educator* – All educators should be at school during the formal school day which should not be less than 7 hours per day, except for reasons and with the prior permission of the principal. The principal will exercise his/her discretion in this regard in terms of provincial policy.

The 7 hours per day includes the breaks and the period that the learners are not at school.

NATIONAL POLICY IN THE MANAGEMENT OF DRUG ABUSE BY LEARNERS IN PUBLIC AND INDEPENDENT SCHOOLS AND FURTHER EDUCATION AND TRAINING INSTITUTIONS

G.N. 3427 of 2002 published in *Government Gazette* No. 24172 dated 13 December 2002

NATIONAL POLICY ON THE MANAGEMENT OF DRUG ABUSE BY LEARNERS IN PUBLIC AND INDEPENDENT SCHOOLS AND FURTHER EDUCATION AND TRAINING INSTITUTIONS

I, Kader Asmal, as Minister of Education, after consultation with the council of education ministers, hereby gives notice in terms of the National Education Policy Act, (Act 27 of 1996), section 3(4)(N) promulgate National Policy on the Management of Drug Abuse by Learners in Public and Independent Schools and Further Education and Training Institutions as contained in the schedule hereunder.

PROFESSOR, KADER ASMAL, MP
Minister of Education

Policy Framework For The Management Of Drug Abuse By Learners In Schools And In Public Further Education And Training Institutions

Introduction

1. This policy is in response to a decision by the Council of Education Ministers to increase the capacity of educational institutions to manage drug abuse by learners, on a nationally consistent basis. It is being developed in the context of our increasing understanding of drug usage in schools.
2. The Ministry of Education considers a safe and disciplined learning environment one of the critical elements to the successful delivery of quality education and recognizes the role played by drugs in seriously undermining this.
3. The Ministry differentiates between habitual abuse of drugs and drug dealing, which should be condemned and punished, and experimentation or peer-group led abuse which should be dealt with in the context of restorative justice.
4. Studies on drug usage in the country point to an increase in drug abuse across all communities, irrespective of wealth, although usage rates and drugs of choice vary between communities, based on access and cost. Evidence indicates that school communities are particularly vulnerable and drug use by learners is on the increase in both rural and urban schools, including primary schools. These reports also indicate a high correlation between drug abuse and other anti-social and high-risk behaviour typical of countercultures such as violence, sexual violence, gangsterism and theft. Equally reports link drug abuse with prevalence levels of HIV/AIDS and hence early death.
5. This policy does not attempt to regulate drug use and abuse by educators, which is dealt with in the Educator's Employment Act (1998) which calls for mandatory dismissal for an educator found in possession of any intoxicating, illegal or stupefying substance while at work.
6. The key thrust of the policy is to help and support not only those learners who abuse drugs, but also the majority of learners and staff who do not use drugs but who may be affected by the usage of drugs by others, while assisting and supporting learners with a drug problem, as long as they are prepared to co-operate with educators and other professionals involved in the treatment and rehabilitation process.
7. It complements related policies and legislation on the control and management of drug abuse in schools, in particular the Regulations for Safety Measures at Public Schools, *Government Gazette* No. 22754 of 12 October 2001.
8. The Ministry believes that punitive approaches to drug abuse, while necessary, can only produce part of the solution, and takes the view that drug abuse is detrimental to humans on social, physical, emotional and psychological levels. It recognizes that drug use can result from experimentation and peer pressure, but also that misuse can lead to dependency, which is a primary, chronic and progressive health condition and essentially an issue of public health.
9. In recognition of the health and social underpinnings of drug abuse and dependency, it is the Ministry's intention not to condemn learners, but to ensure that those who require help for drug related problems are supported.

10. This policy framework therefore seeks to contribute towards effective prevention, management and treatment of drug use, misuse and dependence in public or independent schools and Further Education and Training Institutions. It is consistent with and complementary to the National Drug Master Plan 1999 – 2004 (Department of Welfare 1999) and has been formulated to give effect to the South African Constitution in terms of its provision for the right to a basic education, the right not to be unfairly discriminated against, the right to life, the right to privacy as well as bodily and psychological integrity. These rights can, however not be misused to protect illegal and destructive behaviour, which undermines the learning process.
11. This policy takes cognizance of principles contained in various relevant instruments and policies such as the United Nations Convention on the Rights of the Child as well as the Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners.
12. In all instances, it should be interpreted to ensure a supportive environment, ever mindful of the rights of learners and students with drug, abuse or dependency problems, as well as the rights of other learners, students, educators and members of the school community.

Guiding Principles

13. The possession, use or distribution of illegal drugs, and the inappropriate possession, use or distribution of legal drugs, including alcohol and tobacco, is prohibited in South African Schools and this message should be delivered clearly and consistently within our school communities.
14. It is the Ministry's intention that all South African schools should become tobacco, alcohol and illicit drug-free zones.
15. All learning institutions should have clear policies on both prevention and intervention, underpinned by a restorative supportive orientation. These policies and procedures should be clearly communicated and disseminated to the school community in a culturally appropriate and inclusive way and should give priority to:
 - a. Developing safe and supportive school environments that value human dignity and celebrate innocence;
 - b. Educating the entire school community regarding drugs and the abuse thereof;
 - c. Developing a range of responses, for managing drug related incidents within the school, taking into account confidentiality, the nature of the incident, the circumstances of the learners involved, and the needs and safety of the school community;
 - d. Building capacity by giving educators, particularly those working with drug related incidents, access to professional development opportunities, provided by Provincial Departments of Education, other government departments or private providers;
 - e. Regular monitoring and evaluation of policies and procedures for managing drug related incidents in schools.
16. All information relating to drug use, misuse or dependency by a learner, should be treated as confidential. In the case of a learner, parents/guardians should be informed and involved at the earliest possible opportunity in any attempts to assist the learner. Where reports are required by the school, institution, or Department of Education from the treatment team as part of a relapse prevention programme, these should be furnished, with the learner's written permission, solicited in the presence of a parent/guardian in the case of a minor, to a designated and trained person. Where the learner refuses to co-operate school disciplinary procedures should be invoked.
17. The need for confidentiality cannot and should not prevent identification and prosecution of drug dealers and pushers.
18. In case of disclosure, educators and learners should be given support to handle confidentiality issues and be prepared to handle such disclosures. In certain circumstances where the safety of the learner or educator may be at risk, limited disclosure is acceptable to a specific educator. This is specifically in institutions where the learner is operating machines or other potentially dangerous apparatus.

Drug Screening/Testing

19. By its very nature, drug testing is an invasion of privacy and may infringe the constitutional and personal rights of learners. It should therefore not be the first point of intervention.
20. Random drug testing is prohibited. There is no empirical evidence or justification for routine random testing of learners, to reduce usage. Drug testing should be used where there is reasonable suspicion that a child is using drugs. Testing must be implemented as part of a structured intervention or relapse prevention programme in an environment that is committed to safeguarding personal rights relating to privacy, dignity and bodily integrity according to school policy, medical/treatment procedures and ethical guidelines. The results of the testing cannot be made public but can be shared with the child's parent or guardian.

Searches

21. Random searches of individuals are prohibited. Searches of learners can only be carried out by persons of the same gender as part of a structured intervention in a decent and orderly manner, if there is reasonable suspicion that the learner is in possession of a prohibited substance. Should a search be necessary, it should take place in the presence of the learner concerned, a person of their choice to support them and a second adult witness of the same gender.

Education and Prevention

Learners

22. The objective of preventive education is to negate, counteract or delay the likelihood experimentation with drugs by providing information about the dangers of their use and misuse, as well as to encourage those who are experiencing problems to get the help they need.
23. Drug education, included in the Learning Area of Life Orientation in the Revised National Curriculum Statement for Grades R to 9 and the National Curriculum for FET, will ensure that learners and students acquire age- and context-appropriate knowledge and skills, in order for them to adopt and maintain life skills and behaviour that will protect them from drug use, misuse and dependency.
24. Schools and institutions should, as far as possible, involve outside organizations specialising in drug education and intervention and other associated programmes to augment the education provided by the school-based educators.

Parents/Guardians

25. Education and information on drug use, misuse and dependency as well as the policy of the school or institution concerning drug abuse should be made available to all parents/guardians of learners, as well as learners themselves, upon first registration at a school. Schools need to regularly interact with parents/guardians on drug abuse through workshops and information sharing sessions.

Educators

26. Training should be provided for all educators on drug use, misuse and dependency management, and support provided where appropriate.
27. Appropriate course content should be developed for the pre-service and in-service training of educators to cope with drug related incidents within the schools.

Intervention

28. Each case will be considered on its individual merits taking into account:
 - The nature of the incident
 - The learner / student's school and family history
 - Cultural background
 - Mental Health and intellectual ability
 - Any other relevant information
29. The Ministry of Education will support learners who want or need help, through an approach that is both restorative and supportive.
30. Learners and students who have experienced or are experiencing problems as a result of alcohol and drug use, misuse or dependency and accept treatment, will be entitled to appropriate assistance, and should not be denied the opportunity to receive an education or the right to reintegration into the same school community. However if such reintegration is deemed by the SGB and school management to be detrimental to the safety and discipline of the school the learner should be assisted in finding an alternative school.
31. In cases where the learner does not wish to make use of such help offered to him or her, or is found guilty of dealing in drugs the Provincial Departments of Education will have no choice but to take the necessary disciplinary action, which may include suspension or expulsion, as determined by relevant legislation. These measures should be integrated into a structured intervention involving the learner and the parents/guardian to encourage compliance, allowing the learner to be suspended pending enrollment in an appropriate rehabilitation or relapse prevention programme.

School and Institution Management Plan

33. In order to meet the demands of the wide variety of circumstances posed by the South African context and to acknowledge the importance of governing bodies; learner representative councils as well as parents in the education partnership, it is envisaged that the Governing Body of a school, acting within its functions under the South African Schools Act (1996) and the Council of Further Education and Training Act (1998), or any provincial law, will give operational effect to the national policy framework working with other role-players in developing and adopting a drug use, misuse and dependency management plan that reflects the needs, ethos and values of the school or institution and its community.
34. The Code of Conduct adopted for learners at a school or students at an institution should include adequate provision regarding school or institution policy and procedure on drug use, misuse and dependency.
35. Major role players in the wider school community (NGOs, health care and medical professionals, SAPS and the Government Departments of Health, Social Development and Justice) should be involved in developing supportive management plans and procedures, and can assist in developing School and Institutional Management Plans.

Implementation of this National Framework Policy on Drug Use, Misuse and Dependency

36. The implementation of this policy will be in accordance with the National Drug Master Plan and will cascade through the various levels within the education system.

Regular Review

37. This policy will be reviewed regularly and adapted when and if necessary, to reflect changed circumstances.

Definitions/Glossary

Drug: A substance that produces a psychoactive effect. In this policy the term drug is used generically to include tobacco and herbal cigarettes, alcohol, pharmaceutical drugs (prescribed and over the counter), illicit drugs, image and performance enhancing substances and inhalants and other volatile substances.

Illicit/Illegal Drug: A range of drugs which the production, sale, possession and use of is prohibited. These drugs include but are not limited to amphetamine, cocaine, dagga, ecstasy, heroin, LSD, mandrax.

Inhalants: Substances inhaled for their effect such as glue, thinners, petrol, aerosol sprays, paint, solvents etc.

Image & Performance Enhancing Drugs: A range of substances, some illicit others not, used to enhance sporting or athletic performance or body image, such as anabolic steroids.

Pharmaceuticals: Prescription and over the counter drugs available from a pharmacy. It is illegal to possess or use some of these drugs without a prescription.

Psychoactive Substance: A psychoactive substance alters the way in which the body and/or mind functions. It alters the way a person normally thinks, feels and behaves.

Structured Intervention: A controlled crisis where the user is confronted with the desperate reality of his or her situation and offered treatment.

Reintegration into the school community: Procedures for (re)engaging and supporting learners and educators in school attendance following a drug related interruption to their education/career.

Relapse: When a person has been abstinent for a period and starts using drugs again.

Relapse prevention: Procedures to help a person in recovery from dependency to remain abstinent.

School community: Learners, educators and other school staff including Governing Bodies and parents/guardians.

Random drug testing/screening: Picking people at random to be tested (usually urine) for the presence of drugs in the body.

Experimentation: First time or infrequent use.

Use/occasional use: Infrequent/occasional use
Misuse/Problematic use: Regular, if infrequent, use with damaging consequences

Dependency/Addiction: Loss of control. Continuing to use despite the harmful consequences.

SECTION 2: SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

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SOUTH AFRICAN SCHOOLS ACT 84 of 1996

[ASSENTED TO 6 NOVEMBER, 1996]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

as amended by

Education Laws Amendment Act, No. 100 of 1997

Education Laws Amendment Act, No. 48 of 1999

Education Laws Amendment Act, No. 53 of 2000

Education Laws Amendment Act, No. 57 of 2001

Education Laws Amendment Act, No. 50 of 2002

ACT

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To provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.

Preamble

WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

WHEREAS this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation

for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State; and

WHEREAS it is necessary to set uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa;

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

Chapter 1 DEFINITIONS AND APPLICATION OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise –

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
[Definition of “Constitution” substituted by s. 1(b) of Act No. 100 of 1997.]

“Council of Education Ministers” means the Council of Education Ministers established by the National Education Policy Act, 1996 (Act No. 27 of 1996);

“education department” means the department established by section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a province;

“educator” means any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school;
[Definition of “educator” substituted by s. 6(a) of Act No. 48 of 1999.]

“governing body” means a governing body contemplated in section 16(1);

“grade” means that part of an educational programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem to be equivalent thereto;

“Head of Department” means the head of an education department;

“independent school” means a school registered or deemed to be registered in terms of section 46;

“learner” means any person receiving education or obliged to receive education in terms of this Act;

“member of staff” means a person employed at a school;

“Member of the Executive Council” means the Member of the Executive Council of a province who is responsible for education in that province;

“Minister” means the Minister of Education;

“officer” means an employee of an education department appointed in terms of the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), or the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“parent” means –

- (a) the parent or guardian of a learner;
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school;

“principal” means an educator appointed or acting as the head of a school;

“province” means a province established by section 124 of the Constitution;

“provincial legislature” means a provincial legislature contemplated in section 125 of the Constitution;

“public school” means a school contemplated in Chapter 3;

“Registrar of deeds” means the registrar of deeds referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[Definition of “Registrar of deeds” inserted by s. 1(a) of Act No. 100 of 1997.]

“school” means a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve;

[Definition of “school” substituted by s. 1(c) of Act No. 100 of 1997 and by s. 6(b) of Act No. 48 of 1999.]

“**this Act**” means this Act and all regulations promulgated under this Act.

[Sub-s. (1), previously s. 1, amended by s. 1 of Act No. 50 of 2002.]

(2) Footnotes appearing in this Act must not be used in the interpretation of any provision of this Act.

[Sub-s. (2) added by s.1 of Act No. 50 of 2002.]

Application of Act

2. (1) This Act applies to school education in the Republic of South Africa.
- (2) A Member of the Executive Council and a Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).
- (3) Nothing in this Act prevents a provincial legislature from enacting legislation for school education in a province in accordance with the Constitution and this Act.

[Sub-s. (3) amended by s. 2 of Act No. 100 of 1997.]

Chapter 2 LEARNERS

Compulsory attendance

3. (1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.
- (2) The Minister must, by notice in the *Government Gazette*, determine the ages of compulsory attendance at school for learners with special education needs.
- (3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2).
- (4) If a Member of the Executive Council cannot comply with subsection (3) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.
- (5) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may –
- (a) investigate the circumstances of the learner's absence from school;
 - (b) take appropriate measures to remedy the situation; and
 - (c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).
- (6) Subject to this Act and any other applicable law –
- (a) any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or
 - (b) any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending a school, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Exemption from compulsory attendance

4. (1) A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.
- (2) Every Head of Department must maintain a register of all learners exempted from compulsory school attendance.

Admission to public schools

5. (1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.
- (2) The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.
- (3) No learner may be refused admission to a public school on the grounds that his or her parent –
- (a) is unable to pay or has not paid the school fees determined by the governing body under section 39;
 - (b) does not subscribe to the mission statement of the school; or

- (c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.
- (4) (a) The admission age of a learner to a public school to –
 - (i) grade R is age four turning five by 30 June in the year of admission;
 - (ii) grade 1 is age five turning six by 30 June in the year of admission.
- (b) Subject to the availability of suitable school places and other educational resources, the Head of Department may admit a learner who –
 - (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c).
- (c) The Minister may, by regulation, prescribe –
 - (i) criteria for the admission to a public school, at an age lower than the admission age, of an underage learner who complies with the criteria;¹
 - (ii) age requirements for different grades at a public school.
- (d) For the purpose of paragraph (b)(i), good cause shown means that –
 - (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in his or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.

[Sub-s. (4) amended by s. 5 of Act 50 of 2002. Sub-s. (4) will come into operation on 1 January 2004.]
- (5) Subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school.
- (6) In determining the placement of a learner with special education needs, the Head of Department and principal must take into account the rights and wishes of the parents of such learner.
- (7) An application for the admission of a learner to a public school must be made to the education department in a manner determined by the Head of Department.
- (8) If an application in terms of subsection (7) is refused, the Head of Department must inform the parent in writing of such refusal and the reason therefor.
- (9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council.

Language policy of public schools

- 6. (1) Subject to the Constitution and this Act, the Minister may, by notice in the *Government Gazette*, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.
- (2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.
- (3) No form of racial discrimination may be practised in implementing policy determined under this section.
- (4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

Curriculum and assessment

- 6A (1) The Minister must, by notice in the *Government Gazette*, determine –
 - (a) a national curriculum statement indicating the minimum outcomes or standards; and
 - (b) a national process and procedures for the assessment of learner achievement.
- (2) The curriculum and the process for the assessment of learner achievement contemplated in subsection (1) must be applicable to public and independent schools.

[S. 6A inserted by s. 3 of Act No.50 of 2002.]

¹ It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that –

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

Freedom of conscience and religion at public schools

- 7 Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

Code of conduct

- 8 (1) Subject to any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.
- (2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.
- (3) The Minister may, after consultation with the Council of Education Ministers, determine guidelines for the consideration of governing bodies in adopting a code of conduct for learners.
- (4) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.
- (5) 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.
- (6) A learner must be accompanied by his or her parent or a person designated by the parent at disciplinary proceedings, unless good cause is shown by the governing body for the continuation of the proceedings in the absence of the parent or the person designated by the parent.

[Sub-s. (6) added by s. 4 of Act No. 50 of 2002.]

- (7) Whenever disciplinary proceedings are pending before any governing body, and it appears to such governing body that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the governing body may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

[Sub-s. (7) added by s. 4 of Act No. 50 of 2002.]

- (8) (a) An examination, cross-examination or re-examination of a witness in respect of whom a governing body has appointed an intermediary under subsection (7), except examination by the governing body, must not take place in any manner other than through that intermediary.
- (b) Such intermediary may, unless the governing body directs otherwise, convey the general purport of any question to the relevant witness.

[Sub-s. (8) added by s. 4 of Act No. 50 of 2002.]

- (9) If a governing body appoints an intermediary under subsection (7), the governing body may direct that the relevant witness must give his or her evidence at any place which –
- (a) is informally arranged to put that witness at ease;
- (b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) enables the governing body and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-s. (9) added by s. 4 of Act No. 50 of 2002.]

Suspension and expulsion from public school

- 9 (1) Subject to this Act and any applicable provincial law, the governing body of a public school may, after a fair hearing, suspend a learner from attending the school –
- (a) as a correctional measure for a period not longer than one week; or
- (b) in consultation with the Head of Department, pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

[Para. (b) substituted by s. 7 of Act No. 48 of 1999.]

- (2) Subject to any applicable provincial law, a learner at a public school may be expelled only –
- (a) by the Head of Department; and
- (b) if found guilty of serious misconduct after a fair hearing.
- (3) The Member of the Executive Council must determine by notice in the *Provincial Gazette* –
- (a) the behaviour by a learner at a public school which may constitute serious misconduct;
- (b) disciplinary proceedings to be followed in such cases;
- (c) provisions of due process safe-guarding the interests of the learner and any other party involved in disciplinary proceedings.

- (4) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Department to the Member of the Executive Council.
- (5) If a learner who is subject to compulsory attendance in terms of section 3(1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

Prohibition of corporal punishment

- 10** (1) No person may administer corporal punishment at a school to a learner.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

Prohibition of initiation practices

- 10A** (1) A person may not conduct or participate in any initiation practices against a learner at a school or in a hostel accommodating learners of a school.
- (2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of this Act and Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- (b) In addition to paragraph (a), a learner may institute civil action against a person or a group who manipulated and forced that learner to conduct or participate in any initiation practices.
- (3) For the purposes of this Act, "initiation practices" means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a school, a group, intramural or extramural activities, interschools sports team, or organisation –
- (a) endangers the mental or physical health or safety of a person;
 - (b) undermines 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.
- (4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (3), the relevant disciplinary authority referred to in subsection (2)(a) must take into account the right of the learner not to be subjected to such practices.

[S. 10A inserted by s. 5 of Act No. 50 of 2002.]

Representative council of learners

- 11** (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.
- [Sub-s. (1) substituted by s. 3 of Act No. 100 of 1997 and by s. 1(a) of Act No. 57 of 2001.]
- (2) 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 must, by notice in the *Provincial Gazette*, determine the functions and the procedures for the establishment and election of representative councils of learners.
- [Sub-s. (2) substituted by s. 1(b) of Act No. 57 of 2001.]
- (3) The Member of the Executive Council may, by notice in the *Provincial Gazette*, exempt a public school for learners with special education needs from complying with subsection (1) if it is not practically possible for a representative council of learners to be established at the school.

Chapter 3 PUBLIC SCHOOLS

Provision of public schools

- 12** (1) The Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature.
- (2) The provision of public schools referred to in subsection (1) may include the provision of hostels for the residential accommodation of learners.
- (3) A public school may be an ordinary public school or a public school for learners with special education needs.

- (4) The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.
- (5) The Member of the Executive Council must take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.
- (6) Nothing in this Act prohibits the provision of gender-specific public schools.

Merger of public schools

- 12A** (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public schools into a single school.
- (2) Before merging two or more public schools the Member of the Executive Council must –
- (a) give written notice to the schools in question of the intention to merge them;
 - (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
 - (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
 - (d) consider such representations; and
 - (e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law.
- (3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also –
- (a) notify the owner of the private property of his or her intention to merge the schools in question;
 - (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
 - (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
 - (d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.
- (4) The single school contemplated in subsection (1) must be regarded as a public school.
- (5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school.
- (6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.
- (b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.
- (7) The governing body of a public school to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).

[S. 12A inserted by s. 8 of Act No. 48 of 1999.]

Public schools on State property

- 13** (1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.
- (2) Subject to section 20(1)(k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.
- (3) The right referred to in subsection (2) may only be restricted –
- (a) by the Member of the Executive Council; and
 - (b) if the immovable property is not utilised by the school in the interests of education.
- (4) The Member of the Executive Council may not act under subsection (3) unless he or she has –
- (a) informed the governing body of the school of his or her intention so to act and the reasons therefor;
 - (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
 - (c) duly considered any such representations received.
- (5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

- (6) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 14 has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.
- (7) The Registrar of deeds may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the Registrar of deeds with proof of the agreement contemplated in subsection (6).

[Sub-s. (7) substituted by s. 4(a) of Act No. 100 of 1997.]

- (8) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (2).
- (9) On application by the owner and on production of the owner's copy of the title deed, the Registrar of deeds must endorse on the title deed and in his or her records the fact that a public school has been established on the land in terms of this Act.

[Sub-s. (9) added by s. 4(c) of Act No. 100 of 1997.]

Public schools on private property

- 14** (1) Subject to the Constitution and an expropriation in terms of section 58 of land or 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.

[Sub-s. (1) substituted by s. 2 of Act No. 53 of 2000.]

- (2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for –
 - (a) the provision of education and the performance of the normal functions of a public school;
 - (b) governance of the school, including the relationship between the governing body of the school and the owner;
 - (c) access by all interested parties to the property on which the school stands;
 - (d) security of occupation and use of the property by the school;
 - (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;
 - (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.
- (3) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.
- (4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.
- (5) Despite subsection (3), a Registrar of deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the Registrar of deeds receives –
 - (a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
 - (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

[Sub-s. (5) amended by s. 5(a) of Act No. 100 of 1997.]

- (6) The Minister must, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements of an agreement contemplated in this section.
- (7) The Registrar of deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms of section 33.

[Sub-s. (7) inserted by s. 5(b) of Act No. 100 of 1997.]

- (8) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

[Sub-s. (8) renumbered by s. 5(b) of Act No. 100 of 1997.]

Status of public schools

- 15** Every public school is a juristic person, with legal capacity to perform its functions in terms of this Act.

Governance and professional management of public schools

- 16 (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.
[Sub-s. (1) substituted by s. 2 of Act No. 57 of 2001.]
- (2) A governing body stands in a position of trust towards the school.
- (3) Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the Head of Department.
- (4) The Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.
[Sub-s. (4) added by s. 9 of Act No. 48 of 1999.]
- (5) When the Head of Department decides that the school should be re-opened, he or she must inform the governing body and the principal of the date on which the school must re-open.
[Sub-s. (5) added by s. 9 of Act No. 48 of 1999.]
- (6) The principal or a person designated by the Head of Department must inform the educators and parents of the date contemplated in subsection (5).
[Sub-s. (6) added by s. 9 of Act No. 48 of 1999.]
- (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.
[Sub-s. (7) added by s. 3 of Act No. 53 of 2000.]

Governing body serving two or more schools

- 17 (1) The Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the best interests of education at the schools in question.
- (2) The Member of the Executive Council may not act under subsection (1) unless he or she has –
- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
 - (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
 - (c) considered all such submissions.

Constitution of governing body

- 18 (1) Subject to this Act and any applicable provincial law, the governing body of a public school must function in terms of a Constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the *Provincial Gazette*.
- (2) A Constitution contemplated in subsection (1) must provide for –
- (a) a meeting of the governing body at least once every school term;
 - (b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;
 - (c) recording and keeping of minutes of governing body meetings;
 - (d) making available such minutes for inspection by the Head of Department; and
 - (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.
- (3) The governing body must submit a copy of its Constitution to the Head of Department within 90 days of its election.

Code of conduct of governing body

- 18A (1) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine a code of conduct for the members of the governing body of a public school after consultation with associations of governing bodies in that province, if applicable.
- (2) The code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at a public school.
- (3) All members of a governing body must adhere to the code of conduct.
- (4) The code of conduct must contain provisions of due process, safeguarding the interests of the members of the governing body in disciplinary proceedings.
- (5) The Head of Department may suspend or terminate the membership of a governing body member for a breach of the code of conduct after due process.

- (6) A member of the governing body may appeal to the Member of the Executive Council against a decision of a Head of Department regarding the suspension or termination of his or her membership as a governing body member.

[S. 18A inserted by s. 6 of Act No. 50 of 2002.]

Enhancement of capacity of governing bodies

- 19 (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to –
- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
 - (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.
- (2) The Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

Functions of all governing bodies

- 20 (1) Subject to this Act, the governing body of a public school must –
- (a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;
 - (b) adopt a Constitution;
 - (c) develop the mission statement of the school;
 - (d) adopt a code of conduct for learners at the school;
 - (e) support the principal, educators and other staff of the school in the performance of their professional functions;
 - (f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;
 - (g) administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
 - (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;
 - (i) recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- [Para. (i) substituted by s. 3 of Act No. 57 of 2001.]
- (j) recommend to the Head of Department the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (k) at the request of the Head of Department, allow the reasonable use under fair conditions determined by the Head of Department of the facilities of the school for educational programmes not conducted by the school;
- [Para. (k) substituted by s. 4 of Act No. 53 of 2000.]
- (l) discharge all other functions imposed upon the governing body by or under this Act; and
 - (m) discharge other functions consistent with this Act as determined by the Minister by notice in the *Government Gazette*, or by the Member of the Executive Council by notice in the *Provincial Gazette*.
- (2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school.
- (3) The governing body may join a voluntary association representing governing bodies of public schools.
- (4) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 3(1) of the Educators' Employment Act, 1994.

[Sub-s. (4) added by s. 6 of Act No. 100 of 1997.]

- (5) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[Sub-s. (5) added by s. 6 of Act No. 100 of 1997.]

- (6) An educator and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in public schools in terms of this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.
[Sub-s. (6) added by s. 6 of Act No. 100 of 1997.]
- (7) A public school may only employ an educator in a post established in terms of subsection (4) if such educator is registered as an educator with the South African Council of Educators.
[Sub-s. (7) added by s. 6 of Act No. 100 of 1997.]
- (8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to –
- (a) the ability of the candidate;
 - (b) the principle of equity;
 - (c) the need to redress past injustices; and
 - (d) the need for representivity.
- [Sub-s. (8) added by s. 6 of Act No. 100 of 1997.]
- (9) When presenting the annual budget contemplated in section 38, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.
[Sub-s. (9) added by s. 6 of Act No. 100 of 1997.]
- (10) Despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).
[Sub-s. (10) added by s. 6 of Act No. 100 of 1997.]
- (11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.
[Sub-s. (11) added by s. 6 of Act No. 100 of 1997.]

Allocated functions of governing bodies

- 21** (1) Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:
- (a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
 - (b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;
 - (c) to purchase textbooks, educational materials or equipment for the school;
 - (d) to pay for services to the school;
 - (dA) to provide an adult basic education and training class or centre subject to any applicable law; or
[Para. (dA) inserted by s. 10(b) of Act No. 48 of 1999.]
 - (e) other functions consistent with this Act and any applicable provincial law.
- (2) The Head of Department may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.
- (3) The Head of Department may approve such application unconditionally or subject to conditions.
- (4) The decision of the Head of Department on such application must be conveyed in writing to the governing body concerned, giving reasons.
- (5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal to the Member of the Executive Council.
- (6) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if –
- (a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and
 - (b) there is a reasonable and equitable basis for doing so.

Withdrawal of functions from governing bodies

- 22** (1) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.

- (2) The Head of Department may not take action under subsection (1) unless he or she has –
 - (a) informed the governing body of his or her intention so to act and the reasons therefor;
 - (b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
 - (c) given due consideration to any such representations received.
- (3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter –
 - (a) furnishes the governing body with reasons for his or her actions;
 - (b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
 - (c) duly considers any such representations received.
- (4) The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).
- (5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.

Membership of governing body of ordinary public school

- 23** (1) Subject to this Act, the membership of the governing body of an ordinary public school comprises –
- (a) elected members;
 - (b) the principal, in his or her official capacity;
 - (c) co-opted members.
- (2) Elected members of the governing body shall comprise a member or members of each of the following categories:
- (a) Parents of learners at the school;
 - (b) educators at the school;
 - (c) members of staff at the school who are not educators; and
 - (d) learners in the eighth grade or higher at the school.
- (3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2)(a).
- (4) The representative council of learners referred to in section 11(1) must elect the learner or learners referred to in subsection (2)(d).
- (5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.
- (6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.
- (7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.
- (8) Subject to subsection (10), co-opted members do not have voting rights on the governing body.
[Sub-s. (8) substituted by s. 11(a) of Act No. 48 of 1999.]
- (9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.
- (10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.
[Sub-s. (10) added by s. 11(b) of Act No. 48 of 1999.]
- (11) If a parent is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28(d) within 90 days after the vacancy has occurred.
[Sub-s. (11) added by s. 11(b) of Act No. 48 of 1999.]
- (12) If a person elected as a member of a governing body as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the governing body.
[Sub-s. (12) added by s. 11(b) of Act No. 48 of 1999.]

Membership of governing body of public school for learners with special education needs

- 24** (1) The following categories of persons must be represented on a governing body of a public school for learners with special education needs, in each case by a member or members of the respective category:

- (a) Parents of learners at the school, if reasonably practicable;
- (b) educators at the school;
- (c) *members of staff at the school who are not educators*;
- (d) learners attending the eighth grade or higher, if reasonably practicable;
- (e) representatives of sponsoring bodies, if applicable;
- (f) representatives of organisations of parents of learners with special education needs, if applicable;
- (g) representatives of organisations of disabled persons, if applicable;
- (h) disabled persons, if applicable; and
- (i) experts in appropriate fields of special needs education.
- (j) the principal in his or her official capacity.

[Para. (j) added by s. 7 of Act No. 100 of 1997.]

- (2) Subject to this Act, the Member of the Executive Council must, by notice in the Provincial Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs within his or her province.
- (3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.
- (4) The Member of the Executive Council must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

Failure by governing body to perform functions

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

[Sub-s. (1) substituted by s. 4(a) of Act No. 57 of 2001.]

- (2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.
- (3) 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).

[Sub-s. (3) substituted by s. 4(b) of Act No. 57 of 2001.]

- (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.

[Sub-s. (4) added by s. 4(c) of Act No. 57 of 2001.]

Recusal by members of governing body

- 26** A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

Reimbursement of members of governing body

- 27** (1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.
- (2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

Election of members of governing body

- 28** Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the *Provincial Gazette*, determine –

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;

- (f) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 23(2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public schools; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

Office-bearers of governing bodies

- 29** (1) A governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.
- (2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.
 - (3) In the case of a public school for learners with special education needs any member of the governing body elected from the categories of persons referred to in section 24(1)(a), (e), (f), (g), (h) and (i) may serve as the chairperson of that governing body.

[Sub-s. (3) added by s. 12 of Act No. 48 of 1999.]

Committees of governing body

- 30** (1) A governing body may –
- (a) establish committees, including an executive committee; and
 - (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.
- (2) A governing body of an ordinary public school which provides education to learners with special education needs must establish a committee on special education needs.

Term of office of members and office-bearers of governing bodies

- 31** (1) The term of office of a member of a governing body other than a learner may not exceed three years.
- (2) The term of office of a member of a governing body who is a learner may not exceed one year.
 - (3) The term of office of an office-bearer of a governing body may not exceed one year.
 - (4) A member or office-bearer of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

Status of minors on governing bodies of public schools

- 32** (1) A member of a governing body who is a minor may not contract on behalf of a public school.
- (2) A member of a governing body who is a minor may not vote on resolutions of a governing body which impose liabilities on third parties or on the school.
 - (3) A member of a governing body who is a minor incurs no personal liability for any consequence of his or her membership of the governing body.

Closure of public schools

- 33** (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public school.
- (2) The Member of the Executive Council may not act under subsection (1) unless he or she has –
 - (a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;
 - (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
 - (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
 - (d) given due consideration to any such representations received.
 - (3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

Chapter 4
FUNDING OF PUBLIC SCHOOLS

Responsibility of State

- 34** (1) The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.
- (2) The State must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) to enable public schools to prepare their budgets for the next financial year.

Norms and standards for funding of public schools

- 35** Subject to the Constitution and this Act, the Minister must determine norms and minimum standards for the funding of public schools after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance.

Responsibility of governing body

- 36** (1) A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.
- (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.
[Sub-s. (2) added by s. 5 of Act No. 57 of 2001.]
- (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.
[Sub-s. (3) added by s. 5 of Act No. 57 of 2001.]

School funds and assets of public schools

- 37** (1) The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department.
- (2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.
- (3) The governing body of a public school must open and maintain 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.
[Sub-s. (3) substituted by s. 6(a) of Act No. 57 of 2001.]
- (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.
- (5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.
- (6) The school fund, all proceeds thereof and any other assets of the public school must be used only for –
- (a) educational purposes, at or in connection with such school;
 - (b) educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;
 - (c) the performance of the functions of the governing body; or
 - (d) another educational purpose agreed between the governing body and the Head of Department.
- (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.
- (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.
[Sub-s. (7) inserted by s. 6(b) of Act No. 57 of 2001.]

Annual budget of public school

- 38** (1) A governing body of a public school must prepare a budget each year according to 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.
[Sub-s. (1) substituted by s. 7 of Act No. 57 of 2001.]
- (2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.
- (3) The notice contemplated in subsection (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting.
[Sub-s. (3) added by s. 7 of Act No. 50 of 2002.]

School fees at public schools

- 39** (1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the meeting referred to in section 38(2).
- (2) A resolution contemplated in subsection (1) must provide for –
- (a) the amount of fees to be charged; and
 - (b) equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.
- (3) The governing body must implement a resolution adopted at the meeting contemplated in subsection (1).
- (4) The Minister must, after consultation with the Council of Education Ministers and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2)(b).

Parent's liability for payment of school fees

- 40** (1) A parent is liable to pay the school fees determined in terms of section 39 unless or to the extent that he or she has been exempted from payment in terms of this Act.
- (2) A parent may appeal to the Head of Department against a decision of a governing body regarding the exemption of such parent from payment of school fees.
- (3) In deciding an appeal referred to in subsection (2), the Head of Department must follow due process which safeguards the interests of the parent and the governing body.

Enforcement of payment of school fees

- 41** The governing body of a public school may by process of law enforce the payment of school fees by parents who are liable to pay in terms of section 40.

Financial records and statements of public schools

- 42** The governing body of a public school must –
- (a) keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions; and
 - (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the Member of the Executive Council.

Audit or examination of financial records and statements

- 43** (1) The governing body of a public school must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), to audit the records and financial statements referred to in section 42.
- (2) If the audit referred to in subsection (1) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42, who –
- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or
 - (b) is approved by the Member of the Executive Council for this purpose.
- (3) No person who has a financial interest in the affairs of the public school may be appointed under this section.
- (4) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public school.
- (5) A governing body must submit to the Head of Department, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.

- (6) At the request of an interested person, the governing body must make the records referred to in section 42, and the audited or examined financial statements referred to in this section, available for inspection.

Financial year of public school

- 44 The financial year of a public school commences on the first day of January and ends on the last day of December of each year.

Chapter 5 INDEPENDENT SCHOOLS

Establishment of independent school

- 45 Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school.

Admission age to independent school

- 45A (a) The admission age of a learner to an independent school to –
- (i) grade R is age four turning five by 30 June in the year of admission;
 - (ii) grade 1 is age five turning six by 30 June in the year of admission.
- (b) An independent school may admit a learner who –
- (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c).
- (c) The Minister may, by regulation, prescribe –
- (i) criteria² for the admission to an independent school at an age lower than the admission age of an underage learner who complies with the criteria;
 - (ii) age requirements for different grades at an independent school.
- (d) For the purpose of paragraph (b)(i), good cause shown means that –
- (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in her or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.
- [S. 45A inserted by s. 8 of Act 50 of 2002. S. 45A will come into operation on 1 January 2004.]

Registration of independent school

- 46 (1) No person may establish or maintain an independent school unless it is registered by the Head of Department.
- (2) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.
- (3) A Head of Department must register an independent school if he or she is satisfied that –
- (a) the standards to be maintained by such school will not be inferior to the standards in comparable public schools;
 - (b) the admission policy of the school does not discriminate on the grounds of race; and
 - (c) the school complies with the grounds for registration contemplated in subsection (2).
- (4) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

Withdrawal of registration of independent school

- 47 (1) No withdrawal of the registration of an independent school is valid unless –
- (a) the owner of such independent school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

2 It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that –

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

- (b) the owner of such independent school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school should not be withdrawn; and
 - (c) any such representations received have been duly considered.
- (2) The owner of an independent school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school.

Subsidies to registered independent schools

- 48** (1) The Minister may, by notice in the *Government Gazette*, determine norms and minimum standards for the granting of subsidies to independent schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.
- (2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school.
- (3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.
- (4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless –
- (a) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
 - (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
 - (c) any such representations received have been duly considered.
- (5) The owner of an independent school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school.

Declaration of independent school as public school

- 49** (1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an independent school in terms whereof such independent school is declared to be a public school.
- (2) Notice of the change of status contemplated in subsection (1) must be published in the *Provincial Gazette*.

Duties of Member of Executive Council relating to independent schools

- 50** (1) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine requirements for –
- (a) the admission of learners of an independent school to examinations conducted by or under the supervision of the education department;
 - (b) the keeping of registers and other documents by an independent school;
 - (c) criteria of eligibility, conditions and manner of payment of any subsidy to an independent school; and
 - (d) any other matter relating to an independent school which must or may be prescribed in terms of this Act.
- (2) Different requirements may be made under subsection (1) in respect of different independent schools.
- (3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

Registration of learner for education at home

- 51** (1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner's home.
- (2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that –
- (a) the registration is in the interests of the learner;
 - (b) the education likely to be received by the learner at home –
 - (i) will meet the minimum requirements of the curriculum at public schools; and
 - (ii) will be of a standard not inferior to the standard of education provided at public schools; and
 - (c) the parent will comply with any other reasonable conditions set by the Head of Department.
- (3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).
- (4) The Head of Department may not withdraw the registration until he or she –
- (a) has informed the parent of his or her intention so to act and the reasons therefor;

- (b) has granted the parent an opportunity to make representations to him or her in relation to such action; and
 - (c) has duly considered any such representations received.
- (5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.

Chapter 6 TRANSITIONAL PROVISIONS

Transitional provisions relating to schools other than private schools

- 52** (1) Any school which was established or was deemed to have been established in terms of any law governing school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school referred to in section 53 is deemed to be a public school.
- (2) The assets and liabilities which vested in a school contemplated in subsection (1) immediately prior to the commencement of this Act, vest in the public school in question.
- (3) Funds and other moveable assets used by, or held for or on behalf of, a public school contemplated in subsection (1) and which in law are the property of the State, remain at the disposal of the school, and devolve on the school on a date and subject to conditions determined by the Minister by notice in the *Government Gazette*, after consultation with the Council of Education Ministers.
- (4) Any transaction entered into prior to the commencement of this Act by a school contemplated in subsection (1), which had the effect of transferring funds or other assets of such school to another person or body without value, is invalid.

Transitional provisions relating to private schools

- 53** A private school which was registered or deemed to have been registered under the provisions of a law regulating school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, is deemed to be an independent school.

Transitional provisions relating to governing bodies

- 54** (1) The Minister must, after consultation with the Member of the Executive Council and by notice in the *Government Gazette*, determine dates –
- (a) by which the election of members of governing bodies at all public schools in a province must be finalised in terms of this Act; and
 - (b) from which the governing bodies referred to in subsection (1)(a) must function in terms of this Act.
- (2) Different dates may be determined in terms of subsection (1)(b) in respect of governing bodies in the different provinces.
- (3) Any governing body, management council or similar authority of a public school, which existed immediately prior to the commencement of this Act, continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act.
- (4) Until a governing body begins to function in terms of subsection (1)(b), such governing body of a school deemed to be a public school in terms of section 52(1) must perform the functions lawfully performed by its predecessor which are capable of being performed by a governing body in terms of this Act.

Transitional provisions relating to immovable property of certain schools

- 55** (1) The immovable property of a school which was declared to be a state-aided school under section 29(2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State on a date determined by the Minister by notice in the *Government Gazette*.
- (2) The Minister may determine different dates in respect of different schools under subsection (1).
- (3) Any notice determining a date or dates referred to in subsection (1) or (2) must grant all interested parties a period of not less than 30 days in which to make written submissions.
- (4) The Minister must consider all such submissions received, and thereafter may alter any notice referred to in subsection (1).
- (5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full or in part from funds appropriated by Parliament for that purpose.
- (6) The Minister may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in subsection (5) be paid in respect of a particular transfer under this section.

- (7) The rights of third parties with claims against the school in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and –
- (a) a third party acquires no right of execution against the immovable property as a result of such transfer alone;
 - (b) a third party is obliged to excuse the school in question if the school fails to meet its commitments to the third party; and
 - (c) the State indemnifies such a third party in its claims against the school which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the school prior to the transfer.
- (8) The fact that compensation for any land and real rights in or over land expropriated in terms of subsection (1) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State.
- (9) Until the date contemplated in subsection (1), a public school referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the Member of the Executive Council.
- (10) Any claim for compensation arising from subsection (1) must be determined as contemplated in the Constitution.
- (11) The officer in charge of the deeds office or other office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.
[Sub-s. (11) added by s. 9 of Act No. 100 of 1997 and substituted by s. 13 of Act No. 48 of 1999.]
- (12) Any immovable property belonging to the State which was used by a school and not transferred or endorsed into the name of the school contemplated in subsection (1) remains the property of the State.
[Sub-s. (12) added by s. 9 of Act No. 100 of 1997.]
- (13) Any immovable property which was transferred into the name of a school contemplated in subsection (1) must, if such school is subsequently closed in terms of this Act or any other applicable law, devolve upon the State.
[Sub-s. (13) added by s. 9 of Act No. 100 of 1997.]

Transitional provisions relating to public schools on private property

- 56** If an agreement contemplated in section 14 does not exist at the commencement of this Act in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52(1), the Member of the Executive Council must take reasonable measures to conclude such an agreement within six months of the commencement of this Act.

Transitional provisions relating to private property owned by religious organisation

- 57** If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in section 14 must recognise, in an appropriate manner consistent with this Act, the distinctive religious character of the school.

Chapter 7 GENERAL PROVISIONS

Expropriation

- 58** (1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to school education in a province.
- (2) The Member of the Executive Council must give notice in the Provincial Gazette of his or her intention to expropriate in terms of subsection (1).
- (3) A notice contemplated in subsection (2) must –
- (a) identify the land or any real right in or over the land;
 - (b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and
 - (c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Member of the Executive Council in that regard, and draw attention to the provisions of subsection (5).
- (4) The Member of the Executive Council may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in subsection (3) by notice in the *Provincial Gazette*.
- (5) Any expropriation contemplated in subsection (4) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

- (6) If the Member of the Executive Council and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.
- (7) The arbitrator determines the time, venue and procedures which apply in the arbitration.
- (8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.
- (9) The arbitrator may not make an award of costs.
- (10) The arbitrator is paid, out of moneys appropriated for this purpose by the provincial legislature, such fees and allowances as the Member of the Executive Council may determine, with the concurrence of the Member of the Executive Council responsible for finance.
- (11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in subsection (1) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose.
- (12) Any claim to compensation arising from the expropriation contemplated in subsection (4) must be determined as contemplated in the Constitution and this section.

Duty of schools to provide information

- 59** (1) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.
- (2) Every school must provide such information about the school as is reasonably required by the Head of Department or the Director-General of the national Department of Education in consultation with the Head of Department.

[Sub-s. (2) substituted by s. 10 of Act No. 100 of 1997.]

Liability of State

- 60** (1) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.
- (2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1).
- (3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned.

[Sub-s. (3) added by s. 14 of Act No. 48 of 1999.]

- (4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

[Sub-s. (4) added by s. 14 of Act No. 48 of 1999.]

- (5) Any legal proceedings against a public school for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20(10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the Head of Department for his or her information.

[Sub-s. (5) added by s. 14 of Act No. 48 of 1999.]

Regulations

- 61** The Minister may make regulations –
- (a) to provide for safety measures at public and independent schools;
 - (b) on any matter which must or may be prescribed by regulation under this Act;
 - (c) to prescribe a national curriculum statement applicable to public and independent schools;
 - (d) to prescribe a national process and procedures for the assessment of learner achievement in public and independent schools;
 - (e) to prescribe a national process for the assessment, monitoring and evaluation of education in public and independent schools;
 - (f) on initiation practices at public and independent schools;
 - (g) to prescribe the age norm per grade in public and independent schools;
 - (h) to provide for norms and minimum standards for school funding; and
 - (i) on any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

[S. 61 substituted by s. 5 of Act No. 53 of 2000 and by s. 9 of Act No. 50 of 2002.]

Delegation of powers

- 62** (1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Department or an officer, except the power to publish a notice and the power to decide an appeal lodged with him or her in terms of this Act.
- (2) The Head of Department may, subject to such conditions as he or she may determine, delegate to an officer any of his or her powers in terms of this Act or delegated to him or her in terms of subsection (1).
- (3) A delegation under subsection (1) or (2) does not prevent the Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such duty.

Repeal and amendment of laws

- 63** (1) The laws listed in the first column of Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.
- (2) The Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), is hereby amended to the extent set out in Schedule 2.

Short title and commencement

- 64** This Act is the South African Schools Act, 1996, and comes into operation on a date fixed by the President by proclamation in the *Government Gazette*.

Schedule 1

<i>Number and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
Act No. 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20, 26 and 28 to 31
Act No. 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20, 26, 28, 29, 31 and 33(1)(g)
Act No. 90 of 1979	Education and Training Act, 1979	Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44(1)(h)
Act No. 104 of 1986	Private <i>Schools</i> Act (House of Assembly), 1986	Section 1A
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

Schedule 2

Amendment of Educators Employment Act, 1994, by Section 63

The Educators' Employment Act 1994 was repealed and replaced by the Employment of Educators Act 76 of 1998 and hence the amendments are no longer applicable.

MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF A PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

G.N. 1738 of 1997 published in *Government Gazette* No. 18566 dated 19 December 1997

REGULATIONS RELATING TO THE MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF THE PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with the Council of Education Ministers, and with organisations representing the owners of private properties on which public schools are provided, hereby make the regulations in the Schedule in terms of sections 14(6), read with section 61 of the South African Schools Act, 1996, relating to the minimum requirements of an agreement contemplated in section 14.

SME BENGU
Minister of Education
November 1997

REGULATIONS RELATING TO THE MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF THE PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

1. Definitions

In these regulations any word or expression to which a meaning has been assigned by the Act, shall have the same meaning assigned to it in the Act, and unless the context indicates otherwise –

“**agreement**” means the agreement between the Member of the Executive Council and the owner as contemplated in section 14 of the Act and all amendments thereto;

“**owner**” means the owner of a private property on which a public school is or will be situated;

“**property**” means that portion of the private property on which a public school is or will be situated which is referred to in regulation 5(1);

“**the Act**” means the South African Schools Act, 1996 (Act No. 84 of 1996), and/or regulations promulgated in terms of the Act.

2. The nature and status of the agreement

- (1) In terms of section 14(1) of the Act a public school may be provided on private property only in terms of an agreement.
- (2) An agreement between the State and the owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and may be amended by agreement between the Member of the Executive Council and the owner.
- (3) The Member of the Executive Council must invite the governing body to make a written submission on the terms of the proposed agreement, and the Member of the Executive Council and the owner must take the views of the governing body into account before concluding the agreement.
- (4) An agreement must be reached before a new public school is established on private property in which case the provision of subclause (3) will not apply.
- (5) An agreement and all amendments thereto must be in writing and signed by both the Member of the Executive Council and the owner.
- (6) An agreement remains valid as long as the public school exists. A school can only be closed in terms of section 33 of the Act after prior consultation between the owner and the Member of the Executive Council.
- (7) The governing body must make a copy of the agreement available on request, and must inform its members and learners, educators, parents and workers at the school, of the content of the agreement and any amendments thereto.

- (8) A learner, educator, parent and worker at the school, member of the governing body, an official and a member of the public who has an interest in the educational activities of the school must honour the agreement.
- (9) A *pro forma* agreement, ANNEXURE 1, is given as a guideline to assist the parties to the agreement.

3. Provision of education and performance of the normal functions of a public school

- (1) Education must be provided in accordance with the prescribed curriculum for public schools and the applicable administrative directives and as otherwise provided for in the agreement.
- (2) The owner may not interfere with the normal educational activities of the public school.

4. Governance of the public school

- (1) A public school situated on the property must be governed in accordance with the Act and any agreement contemplated in subsection 14(1) of the Act or these regulations.
- (2) The governing body must enter into an agreement with the owner if, in exercising any of its functions in terms of the Act, a right of the owner regarding the immovable or movable property of the owner or the religious character of the school is affected.
- (3) If a religious organisation exercises its rights as contemplated in section 57 of the Act, the agreement between the Member of the Executive Council and the religious organisation must record the recognised distinctive religious character of the school and the manner in which such distinctive character will be maintained. The recognised distinctive religious character of the school and the manner in which it will be maintained, must be consistent with the provisions of the Act.
- (4) Subject to the agreement contemplated in subregulation (3) the governing body must enter into an agreement with the religious organisation to ensure the preservation of the distinctive religious character of such a public school.
- (5) A written record must be kept of all meetings between the governing body and the owner, and must be signed by the owner and the authorised signatory of the governing body.

5. Access by all interested parties to the school

- (1) An accurate description of the property and all access roads to the school must be provided for in the agreement.
- (2) Clear road signs giving directions to the public school must be erected on access roads to the school where access to the school is by way of private roads.
- (3) The owner may not limit access to the school by a learner, educator, parent, worker at the school, member of the governing body, officer or member of the public who has a reasonable interest in the activities of the school.
- (4) The owner has the right of access to the property.

6. Security of occupation and use of the property by the school

- (1) The public school may not be deprived of the occupation or use of the property for purposes related to the Act.
- (2) The property and access roads to the school must be adequately fenced.

7. Maintenance and improvement of the school buildings and property and supply of the necessary services

- (1) Potable water and toilets must be provided and secured.
- (2) The supply of electricity to the school must comply with national safety standards.
- (3) The erection of new buildings and improvements to existing buildings may only be undertaken in terms of an agreement between the owner and the education department, or the governing body, if the governing body has been allocated such function in terms of section 21(1)(a) of the Act.
- (4) The agreement must provide for the maintenance of the property.
- (5) Provision must be made in the agreement for compensation for improvements to the immovable property, if any, when the school is closed.

8. Protection of owner's rights

- (1) If payment is due to the owner by the education department or the governing body for the use of the property or services supplied to the school, the agreement must provide for the terms and conditions of such payment.
- (2) The governing body may enter into an agreement with the owner to perform its functions with respect to the Act after consultation with the owner.

9. Breach of agreement and dispute resolution

- (1) The agreement must provide for the procedure to be followed in the case of a breach of the agreement.

(2) The agreement must provide for a mechanism to resolve a dispute arising from a breach of the agreement or from any act or omission by any person who incurs a responsibility or obligation in terms of the agreement.

10. Determination of responsibilities

The agreement must specify which person, body or authority is responsible for any function or obligation as contemplated in these regulations.

ANNEXURE 1

PRO FORMA AGREEMENT

AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

The Member of the Executive Council (hereinafter referred to as "the MEC") of
(name of Province) herein represented by:
(name and rank), duly authorised by the MEC

AND

..... (name of owner, hereafter referred to "the owner")

Postal address:

.....
.....
.....

Physical Address:

.....
.....
.....

I.D. Number.....

Telephone.....

PREAMBLE

WHEREAS

..... is the Owner of the immovable property on which
..... (name of school, hereafter referred to as "the school") is situated

Postal address:

.....
.....
.....

Physical Address:

.....
.....
.....

Telephone.....

WHEREAS the school is a public school offering education from Grade to Grade; and

WHEREAS the MEC and the Owner have agreed to enter into this agreement pursuant to sections 14(1) and 57 of the South African Schools Act (Act No. 84 of 1996) (hereafter referred to as "the Act"), whereby the school is established/deemed to be established as a public school on private property.

IT IS HEREBY AGREED THAT:

Definitions

1. In this agreement any word or expression to which a meaning has been assigned by the Act or Regulations Relating to the Minimum Requirements for an Agreement between the Member of the Executive Council and the

Owner of the Private Property on which a Public School is situated (hereafter referred to as “the Regulations”), has the same meaning assigned to it in the Act or Regulations, unless the context indicates otherwise.

The status and description of the school

2. The school is a public school on private property in terms of section 52(1) of the Act or established in terms of section of (Provincial Education Law).
3. A description of the site and buildings and access roads to the school is as set out in Schedule 1.

Proprietary rights held by the school

4. The Owner declares himself or herself willing to give the right of use of the property referred to in paragraph 2 for the sole purpose of education in a public school on the property.
5. The Owner gives the right of use to the school free of charge.

OR

The Owner lets the property referred to in paragraph 2 to the MEC for the amount of R..... per month/year which payment must be paid into the Owner’s bank account No., (Bank) (Town) not later than the first day of each month/first day of January each year.

6. An agreement between the State and the Owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and is only amended to the extent that it is in conflict with this agreement, in which case this agreement prevails.
7. The agreement is valid as long as the school exists. The school can only be closed in terms of section 33 of the Act and after a reasonable period of notice has been given to the Owner by the MEC. A lease agreement, if it is in existence, terminates on the date on which the school is closed. All the improvements to the immovable property will become the property of the Owner free of charge

OR

after payment by the Owner to the State of an agreed sum of money calculated on the day of the closure of the school.

8. All reasonable maintenance, including insurance and security to the buildings and fixed assets and improvements, is done by [if such maintenance is the responsibility of the school an agreement must be entered into between the school and the Owner on the date such allocated function in terms of section 21(1) of the Act is allocated to such school.] The extent of such maintenance is set out in Schedule 2.

General

9. The MEC undertakes to provide a copy of this agreement to the school and ensure that the school makes it available to the parents, learners and any third person if requested by them as contemplated in Regulation 2(7).
10. must erect clear road signs giving directions to the public school on access roads to the school where access to the school is by way of private roads.
11. The curriculum offered at such public school is in accordance with the prescribed curriculum for public schools and the applicable administrative directives.
12. must ensure that a fresh drinking water supply is available at all times at such school.
13. may erect new buildings or effect improvements to the existing buildings. Such new buildings or improvements may only be effected after a separate agreement is concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes.
14. must ensure that the supply of electricity to the school complies with the national safety standards.
15. must ensure that the property on which the school is situated and all access roads are safe for school purposes and all dangerous areas on the property referred to in paragraph 2 are safeguarded.
16. The Owner guarantees access to the school by the public, school community and officials referred to in Regulation 5(3) in relation to educational purposes.
17. The State indemnifies the Owner for any damage or loss claimed against such Owner as a result of the property being owned by the Owner and provided that such claim is related to any educational activity conducted by the school for which the Owner would have been liable.

Recognition of the religious character

18. This clause is applicable only in respect of an owner of private property who has exercised his or her rights as contemplated in Section 57 of the Act.

18.1 The Member of the Executive Council recognises the distinctive religious character of the school as

18.2 The recognised distinctive religious character of the school referred to in subclause 18.1 will be maintained in the following manner:

.....
.....
.....

Dispute

- 19. Any dispute arising under this agreement must, as a first step, be resolved amicably through conciliation between the MEC and the Owner, or by any other manner mutually agreed upon by them.
- 20. If any dispute arises (including a breach of contract) the aggrieved party must notify in writing the other party and any other party affected by the dispute, within 14 school days, stating the nature and extent of his or her complaint.
- 21. A conciliation meeting between the parties to the dispute must take place within 7 school days of the notice referred to in paragraph 20.
- 22. If a dispute is referred to a Magistrate's court then the applicable cost structures must be agreed to.

Selling of the immovable property

- 23. If the Owner sells the property on which the school is situated, he or she must notify –
 - (a) the buyer of the existence of such school in writing before entering into an agreement with such buyer; and
 - (b) the school and the MEC of such sale and attach the letter referred to in subparagraph (a) within 7 days of such sale.

Amendments

- 24. This agreement comprises the agreement and all amendments and annexures thereto.
- 25. This agreement may only be amended, varied or changed if both parties agree to such amendment, variation or change in writing and it is signed by both parties.

Domicilium

26. The Owner chooses the following address as his or her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

.....
.....
.....

Thus done and signed at on this day of 19

.....
OWNER

AS WITNESSES:

- 1.
- 2.

Thus done and signed at on this day of 19

MEC FOR EDUCATION OF (PROVINCE) or

.....
DELEGATE OF THE MEC

AS WITNESSES:

- 1.
- 2.

SCHEDULE 1

DESCRIPTION OF THE SITE, BUILDINGS AND ACCESS ROADS TO THE SCHOOLS

To be provided by the Owner in terms of paragraph 3 of the Agreement.

SCHEDULE 2

DESCRIPTION OF MAINTENANCE

In terms of paragraph 8 of the Agreement.

NORMS AND STANDARDS FOR LANGUAGE POLICY IN PUBLIC SCHOOLS

G.N. R1701 of 1997 published in *Government Gazette* No. 18546 dated 19 December 1997

NORMS AND STANDARDS FOR LANGUAGE POLICY IN PUBLIC SCHOOLS

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with the Council of Education Ministers, hereby determine norms and standards for language policy in public schools, in terms of section 6(1) of the South African Schools Act, 1996 (Act No. 84 of 1996). The norms and standards for language policy in public schools is as published in the following Schedule.

SME BENGU
Minister of Education
November 1997

- I. The language in education policy documents which follow have been the subject of discussions and debate with a wide range of education stakeholders and role-players. They have also been the subject of formal public comment following their publication on 9 May 1997 (Government Notice No. 383, *Government Gazette* 17997).
- II. Two policies are announced herewith, namely, the LANGUAGE IN EDUCATION POLICY IN TERMS OF SECTION 3(4)(m) OF THE NATIONAL EDUCATION POLICY ACT, 1996 (ACT 27 OF 1996), and the NORMS AND STANDARDS REGARDING LANGUAGE POLICY PUBLISHED IN TERMS OF SECTION 6(1) OF THE SOUTH AFRICAN SCHOOLS ACT, 1996. While these two policies have different objectives, they complement each other and should at all times be read together rather than separately.
- III. Section 4.4 of the Language in Education Policy relates to the current situation. The new curriculum, which will be implemented from 1998, onwards, will necessitate new measures which will be announced in due course.
- IV. **LANGUAGE IN EDUCATION POLICY IN TERMS OF SECTION 3(4)(m) OF THE NATIONAL EDUCATION POLICY ACT, 1996 (ACT 27 OF 1996)**

A. Preamble

This Language-in-Education Policy Document should be seen as part of a continuous process by which policy for language in education is being developed as part of a national language plan encompassing all sectors of society, including the deaf community. As such, it operates within the following paradigm:

1. In terms of the new Constitution of the Republic of South Africa, the government, and thus the Department of Education, recognises that our cultural diversity is a valuable national asset and hence is tasked, amongst other things, to promote multilingualism, the development of the official languages, and respect for all languages used in the country, including South African Sign Language and the languages referred to in the South African Constitution.
2. The inherited language-in-education policy in South Africa has been fraught with tensions, contradictions and sensitivities, and underpinned by racial and linguistic discrimination. A number of these discriminatory policies have affected either the access of the learners to the education system or their success within it.
3. The new language in education policy is conceived of as an integral and necessary aspect of the new government's strategy of building a non-racial nation in South Africa. It is meant to facilitate communication across the barriers of colour, language and region, while at the same time creating an environment in which respect for languages other than one's own would be encouraged.
4. This approach is in line with the fact that both societal and individual multilingualism are the global norm today, especially on the African continent. As such, it assumes that the learning of more than one language should be general practice and principle in our society. That is to say, being multilingual should be a defining characteristic of being South African. It is constructed also to counter any particularistic ethnic chauvinism or separatism through mutual understanding.
5. A wide spectrum of opinions exists as to the locally viable approaches towards multilingual education, ranging from arguments in favour of the cognitive benefits and cost-effectiveness of teaching through one medium (home language) and learning additional language(s) as subjects, to those drawing on comparative international experience demonstrating that, under appropriate conditions, most learners benefit cognitively and emotionally from the type of structured bilingual education found in dual-medium (also known as two-way immersion) programmes. Whichever route is followed, the underlying principle is to maintain home language(s) while providing access to and the effective acquisition of additional language(s). Hence, the Department's position that an additive approach to bilingualism is to be seen as the normal orientation of our language-in-education policy. With regard to the delivery system, policy will progressively be guided by the results of comparative research, both locally and internationally.

6. The right to choose the language of learning and teaching is vested in the individual. This right has, however, to be exercised within the overall framework of the obligation on the education system to promote multilingualism.

B. This paradigm also presupposes a more fluid relationship between languages and culture than is generally understood in the Eurocentric model which we have inherited in South Africa. It accepts *a priori* that there is no contradiction in a multicultural society between a core of common cultural traits, beliefs, practices, etc., and particular sectional or communal cultures. Indeed, the relationship between the two can and should be mutually reinforcing and, if properly managed, should give rise to and sustain genuine respect for the variability of the communities that constitute our emerging nation.

C. Aims

The main aims of the Ministry of Education's policy for language in education are:

1. to promote full participation in society and the economy through equitable and meaningful access to education;
2. to pursue the language policy most supportive of general conceptual growth amongst learners, and hence to establish additive multilingualism as an approach to language in education;
3. to promote and develop all the official languages;
4. to support the teaching and learning of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade and communication, and South African Sign Language, as well as Alternative and Augmentative Communication;¹
5. to counter disadvantages resulting from different kinds of mismatches between home languages and languages of learning and teaching;
6. to develop programmes for the redress of previously disadvantaged languages.

D. Policy: Languages as subjects

1. All learners shall offer at least one approved language as a subject in grade 1 and grade 2.
2. From grade 3 (Std 1) onwards, all learners shall offer their language of learning and teaching and at least one additional approved² language as subjects.
3. All language subjects shall receive equitable time and resource allocation.
4. The following promotion requirements apply to language subjects:
 - (a) In grade 1 to grade 4 (Std 2) promotion is based on performance in one language and Mathematics.
 - (b) From grade 5 (Std 3) onwards, one language must be passed.
 - (c) From grade 10 to grade 12 two languages must be passed, one on first language level, and the other on at least second language level. At least one of these languages must be an official language.
 - (d) Subject to national norms and standards as determined by the Minister of Education, the level of achievement required for promotion shall be determined by the provincial education departments.

E. Policy: Language of learning and teaching

The language(s) of learning and teaching in a public school must be (an) official language(s).

V. NORMS AND STANDARDS REGARDING LANGUAGE POLICY PUBLISHED IN TERMS OF SECTION 6(1) OF THE SOUTH AFRICAN SCHOOLS ACT, 1996

A. Introduction

1. Aim of these norms and standards

- (a) Recognising that diversity is a valuable asset, which the state is required to respect, the aim of these norms and standards is the promotion, fulfilment and development of the state's overarching language goals in school education in compliance with the Constitution, namely:
 1. the protection, promotion, fulfilment and extension of the individual's language rights and means of communication in education; and
 2. the facilitation of national and international communication through promotion of bi- or multilingualism through cost-efficient and effective mechanisms;
 3. to redress the neglect of the historically disadvantaged languages in school education.

¹ Alternative and Augmentative Communication facilitate communication for learners with limited or no speaking skills.

² The term "approved languages" indicates that valid syllabuses at first or second language level have been submitted, and have been approved by the Minister as national policy. All official languages are "approved" languages, while German First Language is also an "approved" language for non-immigrant candidates. A syllabus at first or second language level for any language, may be submitted for approval by the Minister.

2. Definitions

In these norms and standards, unless the context otherwise indicates, words and expressions contained in the definitions in the Act shall have corresponding meanings; and the following words and phrases shall have the following meanings:

- (a) **“the Act”** means the South African Schools Act, Act 84 of 1996
- (b) **“the Constitution”** means the Constitution of the Republic of South Africa, Act 108 of 1996
- (c) **“school district”** means a geographical unit as determined by the relevant provincial legislation, or prevailing provincial practice
- (d) **“language”** means all official languages recognised in the Constitution, and also South African Sign Language, as well as Alternative and Augmentative Communication.

B. The protection of individual rights

- 1. The parent exercises the minor learner’s language rights on behalf of the minor learner. Learners who come of age, are hereafter referred to as the learner, which concept will include also the parent in the case of minor learners.
- 2. The learner must choose the language of teaching upon application for admission to a particular school.
- 3. Where a school uses the language of learning and teaching chosen by the learner, and where there is a place available in the relevant grade, the school must admit the learner.
- 4. Where no school in a school district offers the desired language as a medium of learning and teaching, the learner may request the provincial education department to make provision for instruction in the chosen language, and section 5.3.2 must apply. The provincial education department must make copies of the request available to all schools in the relevant school district.

C. The rights and duties of the school

- 1. Subject to any law dealing with language in education and the Constitutional rights of learners, in determining the language policy of the school, the governing body must stipulate how the school will promote multilingualism through using more than one language of learning and teaching, and/or by offering additional languages as fully-fledged subjects, and/or applying special immersion or language maintenance programmes, or through other means approved by the head of the provincial education department. (This does not apply to learners who are seriously challenged with regard to language development, intellectual development, as determined by the provincial department of education.)
- 2. Where there are less than 40³ requests in grades 1 to 6, or less than 35 requests in grades 7 to 12 for instruction in a language in a given grade not already offered by a school in a particular school district, the head of the provincial department of education will determine how the needs of those learners will be met, taking into account:
 - (a) the duty of the state and the right of the learners in terms of the Constitution, including
 - (b) the need to achieve equity,
 - (c) the need to redress the results of past racially discriminatory laws and practices,
 - (d) practicability, and
 - (e) the advice of the governing bodies and principals of the public schools concerned.

D. The rights and duties of the Provincial Education Departments

- 1. The provincial education department must keep a register of requests by learners for teaching in a language medium which cannot be accommodated by schools.
- 2. In the case of a new school, the governing body of the school in consultation with the relevant provincial authority determines the language policy of the new school in accordance with the regulations promulgated in terms of section 6(1) of the South African Schools Act, 1996.
- 3. It is reasonably practicable to provide education in a particular language of learning and teaching if at least 40 in grades 1 to 6 or 35 in grades 7 to 12 learners in a particular grade request it in a particular school.
- 4. The provincial department must explore ways and means of sharing scarce human resources. It must also explore ways and means of providing alternative language maintenance programmes in schools and or school districts which cannot be provided with and or offer additional languages of teaching in the home language(s) of learners.

3 The numbers 40 and 35 are informed by *inter alia* the following:
The learner teacher ratio;
the cost effective use of education funds.

E. Further steps

1. Any interested learner, or governing body that is dissatisfied with any decision by the head of the provincial department of education, may appeal to the MEC within a period of 60 days.
 2. Any interested learner, or governing body that is dissatisfied with any decision by the MEC, may approach the Pan South African Language Board to give advice on the constitutionality and/or legality of the decision taken, or may dispute the MEC's decision by referring the matter to the Arbitration Foundation of South Africa.
 3. A dispute to the Arbitration Foundation of South Africa must be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.
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GUIDELINES FOR THE CONSIDERATION OF GOVERNING BODIES IN ADOPTING A CODE OF CONDUCT FOR LEARNERS

G.N. 776 of 1998 published in *Government Gazette* No. 18900 dated 15 May 1998

GUIDELINES FOR THE CONSIDERATION OF GOVERNING BODIES IN ADOPTING A CODE OF CONDUCT FOR LEARNERS

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with each member of the Council of Education Ministers, hereby give notice in terms of section 8(3) of the South African Schools Act, 1996 of guidelines in the Schedule which governing bodies may consider in adopting a Code of Conduct for Learners.

SME BENGU
Minister of Education
April 1998

SCHEDULE GUIDELINES FOR A CODE OF CONDUCT FOR LEARNERS

1. Introduction

- 1.1 Section 8 of the South African Schools Act provides that a governing body of a public school must adopt a Code of Conduct. The Code of Conduct must aim at establishing a disciplined and purposeful environment to facilitate effective education and learning in schools.
- 1.2 This document sets out guidelines for consideration by governing bodies of public schools in adopting a Code of Conduct for learners to ensure that there is order and discipline in schools.
- 1.3 The Code of Conduct must be subject to the Constitution of the Republic of South Africa, 1996, the South African Schools Act, 1996 and provincial legislation. It must reflect the constitutional democracy, human rights and transparent communication which underpin South African society.
- 1.4 The Code of Conduct must inform the learners of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. It must set a standard of moral behaviour for learners and equip them with the expertise, knowledge and skills they would be expected to evince as worthy and responsible citizens. It must promote the civic responsibilities of the school and it must develop leadership. The main focus of the Code of Conduct must be positive discipline; it must not be punitive and punishment oriented but facilitate constructive learning.
- 1.5 Each school must develop its own Code of Conduct. In formulating a Code of Conduct as a consensus document and before adopting it, the governing body must involve the parents, learners, educators, and non-educators at that school. After the adoption of the Code of Conduct, each stakeholder must receive a copy thereof. The above stakeholders must also be consulted when the Code of Conduct is reviewed annually or when any amendments are made.
- 1.6 The purpose of a code of conduct is to promote positive discipline, self-discipline and exemplary conduct, as learners learn by observation and experience.
- 1.7 All key stakeholders should be committed to the Code of Conduct despite its being directed specifically at learners.
- 1.8 The Code of Conduct must suit the development of the learners and be appropriate to the different school levels. The language used must be easily understandable to make the content accessible. The format should be user-friendly.
- 1.9 The Code of Conduct must contain a set of moral values, norms and principles which the school community should uphold. However, the Code of Conduct is only enforceable against learners – no other person.
- 1.10 The Code of Conduct should clarify and promote the roles and responsibilities of various stakeholders in the creation of a proper learning environment in schools.
- 1.11 The Code of Conduct should contain the components discussed below (paragraphs 2 – 14) which aim at providing appropriate mechanisms and avenues for stakeholders to air their grievances, and also provide for legitimate disciplinary measures.

2. The preamble to a Code of Conduct

- 2.1 The preamble to a Code of Conduct should contain the principles, philosophy and ethos contained in the preamble to the South African Schools Act.
- 2.2 Reference should be made to the fact that, while the State has the obligation to make education available and accessible, this must be complemented by the commitment and acceptance of responsibility by the other partners in education, inter alia, learners, educators and parents.
- 2.3 The preamble should direct the Code of Conduct towards a culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace in all schools.

3. The legal authority for the control and discipline of learners

- 3.1 In terms of section 3(n), of the National Education Policy Act, Act No. 27 of 1996, the Minister of Education must determine national education policy for the control and discipline of learners at education institutions.
- 3.2 This policy shall be directed at the advancement and protection of the fundamental rights of every person guaranteed in the Bill of Rights in the Constitution of the Republic of South Africa 1996, Act No. 108 of 1996.
- 3.3 The South African Schools Act, Act No. 84 of 1996, section 8(1) empowers a governing body of a school to maintain discipline in a school. The Code of Conduct must prescribe behaviour that respects the rights of learners and educators.
- 3.4 The Code of Conduct of a public school must be displayed at the school and as far as possible be given to each learner in the official language of teaching of the learner when he/she enrolls at a school. As learners are compelled to comply with the Code of Conduct of the school they attend they must be informed about its contents, which must list, in positive terms, the things learners may not do, or should do, as well as communication channels, grievance procedures and due process in conducting a fair hearing.
- 3.5 Learners must understand that action may be taken against them if they contravene the Code of Conduct. When action is taken against learners they should be informed why their conduct is considered as misbehaviour or misconduct and why they are to be disciplined or punished. The punishment must suit the offence.
- 3.6 Nothing shall exempt a learner from complying with the Code of Conduct of the school.
- 3.7 An educator at the school shall have the same rights as a parent to control and discipline the learner according to the Code of Conduct during the time the learner is in attendance at the school, any classroom, school function or school excursion or school related activities.
- 3.8 The principal or an educator, upon reasonable suspicion (sufficient information), has the legal authority to conduct a search of any learner or property in possession of the learner for a dangerous weapon, firearm, drugs, or harmful dangerous substance, stolen property, or pornographic material brought on to the school property. (A search may be performed in terms of the following Acts of general application: Control of Access to Public Premises and Vehicles Act, Act No. 53 of 1985; Drugs and Drug Trafficking Act 140 of 1992; Arms and Ammunition Act, Act No. 75 of 1969). During a search human dignity shall be observed and learners shall be searched in private by persons of their own gender, preferably in the presence of at least one other person. A record must be kept of the search proceedings and the outcome.
- 3.9 A learner who falls pregnant may not be prevented from attending school. A pregnant girl may be referred to a hospital school for pregnant girls.

4. Principles and values: the rights of learners

4.1 Democracy

The Bill of Rights in the Constitution of the Republic of South Africa, Act No. 108 of 1996, enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. The school must protect, promote and fulfil the rights identified in the Bill of Rights. All learners and partners at a school have the democratic right to due process and to participate in decision-making about matters affecting them at the school. They also have the right to have their views heard about these matters.

4.2 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

4.3 Privacy, respect and dignity

Every learner has inherent dignity and has the right to have his/her human dignity respected. That implies mutual respect including respect for one another's convictions and cultural traditions. Every learner also has the right to privacy, which includes the right not to have his/her person or property searched or his/her possession seized. However, the principal or an educator may search learners based on his/her reasonable suspicion followed by the use of search methods that are reasonable in scope.

4.4 Non-violence and the freedom and security of a person

- 4.4.1 Every learner has the right not to be treated or punished in a cruel, inhuman or degrading manner. Corporal punishment has been abolished. Educators and learners have to learn the importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict and differences and to make use of due process of law.
- 4.4.2 Learners have the right not to be locked up in solitary confinement or detention.
- 4.4.3 The philosophy of the disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault.

4.5 Freedom of expression and right to demonstrate and present petitions

- 4.5.1 Freedom of expression is more than freedom of speech. The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, learners' rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited as the disruption of schools is unacceptable.
- 4.5.2 Learners have the right to agreed procedures with the governing body for expressing and resolving school-related grievances, including due process, a method of appeal and a right to assemble peacefully on the school property at a time and place designated by the principal. Problems or issues should, as far as possible, be resolved at the school. However, the disruption of schools is unacceptable.

4.6 School environment

Learners have the right to a clean and safe environment that is conducive to education. Security of property, well-cared for school facilities, school furniture and equipment, clean toilet facilities, water and a green environment, absence of harassment in attending classes and writing tests and examinations, all create an atmosphere that is conducive for education and training.

4.7 Education

- 4.7.1 The Constitution enshrines the right of every one to education and to further education which the State must make progressively available and accessible;
- 4.7.2 The South African Schools Act provides that education is compulsory for learners from the year in which such learners reach the age of 7 years until the last school day of the year in which such learners turn 15 years or the ninth grade, whichever comes first. It also makes provision for due process before a learner may be removed or expelled from a school. The right of a learner to education cannot be taken away when the learner is expelled from school. Therefore, in the case of expulsion, the Head of Department must find a school place for an expelled learner who is of school-going age,
- 4.7.3 In cases of suspension and expulsion, placement in an alternative school setting, e.g. reassignment to another class, correctional education under supervision after school hours, a special school for learners with behavioural disorders, etc., are options which could be considered in conjunction with a school psychologist or a social worker. Suspension with the intent to expel a learner is part of a process to be decided by the Head of Department. The governing body may suspend a learner as a punitive measure if due process has been followed.
- 4.7.4 Education and learning can be successful if the learners are committed to self-development, education and learning, and the educators are dedicated to education and teaching.
- 4.7.5 The right to education includes the right to attend all classes, to learn and be taught in all approved subjects, to be informed regularly about school progress, to make use of all school facilities, and to have the potential of all learners fully developed.

5. Rights and responsibilities of learners

5.1 School and classroom rules

- (a) School rules are designed to regulate the general organisation of the school, and relationships between the principal, educators and learners. Classroom rules are designed to give effect specifically to the relationship between educators and learners in the classroom, and may include classroom interactions and management;
- (b) learners must be involved in the formulation of school and classroom rules and must conform to such rules;
- (c) all rules are to be consistent with the overall Code of Conduct, be clear and understandable and make provision for fair warning;
- (d) each learner should be provided with a copy of the school rules at the beginning of each school year; younger learners at primary schools should be informed verbally of school rules;

- (e) classroom rules should be posted in the classroom. The consequence for breaking the rules should also be included. The punishment must fit the offence and be graded to make provision for repeated offences. These rules should make provision for fundamental fairness and fair warning; and
- (f) learners must be expected to know and to adhere to school and classroom rules. Ignorance of these rules is not an acceptable excuse.

5.2 Learning and school work

Learners must commit themselves to do their school work during classes, complete assigned homework and catch up on work missed because of absence. Disruption of schools is unacceptable.

5.3 Security and care of school property

As the school has been developed for the use of all the learners attending the school, it is the privilege and obligation of every learner to protect and carefully use all the facilities and equipment so that others that come after them can also enjoy the privilege. The parent or legal guardian of anyone who intentionally misuses, damages or defaces any school property should replace it or pay for the property so damaged. Destruction of property is a punishable offence.

5.4 School attendance

The right of learners to basic education places the obligation on them to attend school regularly during school hours. Should a learner be absent his/her parent or legal guardian must notify the school to explain the absence.

- 5.5 Learners have the responsibility to learn and develop their full potential, i.e. academic, occupational, social, sport, spiritual, art and cultural potential. They should actively participate in the learning process and decision making and have the opportunity to talk about their problems.
- 5.6 Learners can expect educators to maintain a high standard of professional ethics and to be present to teach their classes, assist them with their learning difficulties, report on their progress and to look after their well-being. There should be a relationship of mutual trust and respect between learners and educators. Victimisation of the one by the other is unacceptable.
- 5.7 The Learner Representative Council should represent the interests and views of the learners within the school. They should also promote proper conduct of learners but do not have the authority or right to punish other learners.
- 5.8 A school may establish a liaison mechanism between learners and educators.

6. Responsibilities of parents with respect to the Code of Conduct

- 6.1 The ultimate responsibility for learners' behaviour rests with their parents or guardians. It is expected that parents will –
 - (a) support the school, and require learners to observe all school rules and regulations and accept responsibility for any misbehaviour on their part; and
 - (b) take an active interest in their children's schoolwork and make it possible for the children to complete assigned homework.
- 6.2 Parents should attend meetings that the governing body convenes for them.
- 6.3 Parents have the right to take legal action against any educator, learner or person who unlawfully violates the constitutional rights of their children by, e.g. corporal punishment, injury to a child, etc.

7. Discipline

- 7.1 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. Its goal is to teach and lead learners to self discipline.
- 7.2 The disciplinary process must be expeditious, fair, just, corrective, consistent and educative. Where possible the parent should be informed and involved in the correction of the learner's behaviour. Learners should be protected from abuse by adults or other learners.
- 7.3 Restraint is the act of controlling the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators may use reasonable measures where necessary to prevent a learner from harming him/herself or others.
- 7.4 The South African Schools Act, 1996, empowers school authorities to discipline learners, but it is beyond the law to delegate this authority to fellow learners. Learners are partners with other members of the school and are not in charge of the school.
- 7.5 Every educator is responsible for discipline at all times at the school and at school related activities. Educators have full authority and responsibility to correct the behaviour of learners whenever such correction is necessary at the school. Serious misconduct must be referred to the principal of the school. However, a mechanism must be created at schools to handle disciplinary problems to reduce the load of the principal.
- 7.6 Any corrective measures or disciplinary action must be commensurate with the offence/infraction. Corrective measures may become more severe with subsequent repeated infractions. Suspension or expulsion may follow. Learners should not think that they cannot be suspended or expelled simply because

it is their first offence or infraction of a rule or policy, but such decision should be taken by the right authority.

7.7 In cases where a learner cannot adjust to the school and where his/her behaviour is objectionable in that it violates the rights of others, he/she will be referred to the principal. Through consultation with his/her educators, and the site of learning based team in consultation with the parents or guardians every effort should be made to assist him/her to adjust. This will include referral to the education support services for treatment. If all these efforts fail, the principal will refer the matter to the governing body, which may make a decision in the best interest of the learner and the other learners at the school.

8. Punishment

8.1 Punishment is a corrective measure or a penalty inflicted on an offender who has to suffer the consequences of misconduct in order to maintain the orderly society of the school.

8.2 Corporal punishment shall not be administered.

9. Dispute resolution

Educators as disciplinarians must resolve disciplinary problems which are not serious enough to be referred to the principal. A liaison mechanism, or objective and impartial adjudicator between learners and educators, should be set up to resolve disputes. In cases where learners are involved in gangs, the principal should not confront them but the governing body should set up a negotiation mechanism.

10. Prevention, proactive advice, counselling, penalties and corrective measures

10.1 In case of minor offences corrective measures may be applied. These measures could include one or more of the following:

- (a) verbal warning or written reprimand by an educator or a principal;
- (b) supervised school work that will contribute to the learner's progress at school, the improvement of the school environment, provided that the parents are timeously informed and the security of the child is assured;
- (c) performing tasks that would assist the offended person;
- (d) agreed affordable compensation;
- (e) replacement of damaged property; and
- (f) suspension from some school activities, e.g. sport, cultural activities.

10.2 Suspension should only be considered after every effort has been made to correct the behaviour of the learner.

11. Offences that may lead to suspension

Provincial regulations must be consulted in the compilation of a list of offences which may lead to suspension of a learner. Offences that may lead to such suspension include, but are not limited to the following:

- (a) conduct which endangers the safety and violates the rights of others;
- (b) possession, threat or use of a dangerous weapon;
- (c) possession, use, transmission or visible evidence of narcotic or unauthorised drugs, alcohol or intoxicants of any kind;
- (d) fighting, assault or battery;
- (e) immoral behaviour or profanity;
- (f) falsely identifying oneself;
- (g) harmful graffiti, hate speech, sexism, racism;
- (h) theft or possession of stolen property including test or examination papers prior to the writing of tests or examinations;
- (i) unlawful action, vandalism, or destroying or defacing school property,
- (j) disrespect, objectionable behaviour and verbal abuse directed at educators or other school employees or learners;
- (k) repeated violations of school rules or the Code of Conduct;
- (l) criminal and oppressive behaviour such as rape and gender based harassment;
- (m) victimisation, bullying and intimidation of other learners;
- (n) infringement of examination rules; and
- (o) knowingly and wilfully supplying false information or falsifying documentation to gain an unfair advantage at school.

12. Suspension and expulsion

12.1 A governing body may, after a fair hearing, suspend any learner who has been found guilty of contravening stipulations of the Code of Conduct:

- (a) for a period of one week; or
- (b) for a reasonable period not exceeding one week, pending a decision by the Head of Department on the recommendation of the governing body as to whether or not the learner is to be expelled from the school.

12.2 A learner who has been expelled, or his/her parent, may appeal against the decision of the Head of Department to the Member of the Executive Council, within seven days of the decision so to expel him/her.

12.3 In cases of disciplinary transfer, the Head of Department must find a school place for a learner until the learner is beyond compulsory school-going age, as the right of a learner to basic education cannot be violated.

12.4 All decisions leading to suspension or expulsion must take cognisance of applicable laws, e.g. a learner whose parent is unable to pay the school fees determined by the governing body may not be suspended from classes or expelled from the school.

13. Due process

13.1 The South African Schools Act makes provision for due process including a fair hearing before a learner may be suspended from the school by the governing body. Due process guarantees a learner a fair hearing before a learner may be suspended for a period of one week or be expelled from the school by the Head of the Department.

13.2 Any learner alleged to have violated any rule that may require suspension or expulsion, must be brought to the principal. The principal shall hear the evidence and then decide on the action to be taken. Such action must include that the principal must inform the parents in writing of the proposed action and arrange for a fair hearing by a small disciplinary committee (tribunal) consisting of members designated by the governing body. This tribunal must not be intimidating to the learner. In the case of very young learners special arrangements must be made for the hearing and the parents or guardians could represent the learners.

13.3 The disciplinary committee so appointed must conduct the hearing in accordance with the provincial regulations laid down by the Member of the Executive Council.

13.4 For the hearing the learner must –

- (a) be informed of and understand the charges of which written notice should be given at least five days before the time also indicating the date, time and place of the hearing;
- (b) receive such particulars on the charges as he/she may be entitled to according to law, if he/she so requests;
- (c) get the opportunity to be heard and tell his/her side of the story and to present the relevant facts;
- (d) not be prohibited from being represented by legal counsel, in which case written explanation of the charges must be given, or, in less serious cases the learner may be represented by a member of the LRC, parent, guardian or educator;
- (e) be heard by an impartial person(s);
- (f) be treated with dignity during the process;
- (g) be informed in writing of the decision of the governing body on whether or not he/she is guilty of misconduct, and the penalty to be imposed in the case of suspension or expulsion; and
- (h) have the right to appeal to the MEC if he/she is aggrieved by the decision of the governing body.

13.5 The governing body must keep a record of the proceedings of the hearing, and

- (a) may inform, in writing, the Head of Department of its decision to suspend a learner; or
- (b) must inform the Head of Department within twenty-four hours of its recommendation for expulsion of the learner.

13.6 Subject to any provincial law a learner may only be expelled by the Head of Department.

14. Serious misconduct and the law

Serious misconduct which may include offences according to the law, must be investigated by the police and referred to the Court if necessary. Serious misconduct must be handled in terms of the government notice and regulations promulgated by the Member of Executive Council in the *Provincial Gazette* of the province concerned.

Should a governing body have difficulty to interpret these guidelines they must please contact the Head of Department of the province in which their school is situated.

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

G.N. 2362 of 1998 published in *Government Gazette* No. 19347 dated 12 October 1998

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

The Minister of Education, after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance, hereby give notice in terms of section 35 of the South African Schools Act, 1996 (No. 84 of 1996), and section 3(4)(g) of the National Education Policy Act, 1996 (No. 27 of 1996) of the national norms and standards for school funding, as set out in the Schedule.

SME BENGU
Minister of Education
October 1998

SCHEDULE

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

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Abbreviations

CEM	Council of Education Ministers
DoE	National Department of Education
EMIS	Education Management Information System
FFC	Financial and Fiscal Commission
HEDCOM	Heads of Education Departments Committee
HOD or Head of Department	Head of a Provincial Education Department
MEC	Member of the Executive Council for Education
MTEF	Medium Term Expenditure Framework
PED	Provincial Education Department
SASA	South African Schools Act, 1996
Section 21	Section 21 of the South African Schools Act, 1996
SGB	school governing body

1 Introduction

This document

1. This document sets out the national norms and minimum standards for school funding in terms of the South African Schools Act, 1996 (No. 84 of 1996). It also deals with the procedures to be adopted by provincial education departments (PEDs) in determining resource allocation to their schools.
2. These norms and minimum standards deal with –
 - (a) the public funding of public schools, in terms of section 35 of the Act.
 - (b) the exemption of parents who are unable to pay school fees, in terms of section 39(4) of the Act.¹
 - (c) Public subsidies to independent schools in terms of section 48(1) of the Act.
3. The norms deal only with school-level expenditure, and do not cover a provincial education department's school-related administrative and developmental expenditure. However, such provincial funding allocations are expected to be consistent with the equity and efficiency principles underlying the public school funding norms and standards. In particular, allocations for management capacity development should be made by provincial authorities, and should target schools and governing bodies with weaker management.
4. The funding policy relating to learners with special educational needs will be prepared after the joint report of the National Commission on Special Needs in Education and Training and the National Committee on Education Support Services has been fully considered by the Ministry.² The funding policy for learners with special education needs who are enrolled in ordinary public schools is unlikely to contradict the principles underlying the present document, even if adjustments are eventually required.
5. The national Department of Education (DoE) prepared this document after consultation with the Standing Committee on Finance of the Heads of Education Departments Committee (HEDCOM). The standing committee includes representatives of the DoE and PEDs, the Departments of Finance and State Expenditure, the FFC, and the national educator organisations.
6. The DoE carefully analysed about 450 written public comments on the published draft of these norms. Consultations have been held with key stakeholder bodies representing the organised educators, public school governing bodies, and representatives of the independent schools. The document was then revised in collaboration with the HEDCOM Standing Committee on Finance. Further meetings were conducted with the organisations representing independent schools and public school governing bodies.
7. A formal consultation on the revised draft was held with officials of the Departments of Finance and State Expenditure, and the FFC Secretariat.
8. A subsequent draft was workshopped with the HEDCOM and discussed with the Council of Education Ministers (CEM). As required by the Act, the Minister has formally consulted with the CEM, the FFC and the Minister of Finance. Cabinet has endorsed the document.

1 The Regulations relating to the Exemption of Parents from the Payment of School Fees published as G.N. 1293 of 1998 are included in this publication.

2 *Quality Education for All: Overcoming Barriers to Learning and Development* (Pretoria: Department of Education 1997).

Interpretation

9. In this document –
- (a) unless the context indicates otherwise, any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 84 of 1996), has that meaning;
 - (b) “**Regulations**” means the Exemption of Parents from the Payment of School Fees Regulations, 1998, determined in terms of the Act;
 - (c) “**the Act**” means the South African Schools Act, 1996 (No. 84 of 1996).

Application of the norms

10. The norms and minimum standards in this document apply –
- (a) uniformly in all provinces, and are intended to prevail in terms of section 146(2) of the Constitution;
 - (b) only to ordinary public schools.
11. The norms do not apply to funds raised by ordinary public schools through their own efforts in terms of sections 36 – 37 and 39 of the Act.

When the norms come into effect

12. These norms become national policy on 1 April 1999.
13. Some norms will apply to the public school financial year (January to December) and others to the state financial year (April to March). Norms pertaining to the school year come into effect at the beginning of the first school year after the norms become policy, namely the school year starting in January 2000.
14. Pre-conditions for full and efficient implementation of the norms are described later in this document, with suggestions for a sequence of activities that would enable PEDs to prepare themselves to put the norms into effect.

Monitoring of implementation

15. The national Department of Education is responsible for monitoring the implementation of the norms in terms of section 8 of the National Education Policy Act, 1996 (No. 27 of 1996). The DoE is required to undertake its monitoring and evaluation role
- “in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.”* (section 8(4)).
16. Each Head of Department will be expected to verify that the national norms are being complied with in allocating funds, or that acceptable alternatives are being implemented after consultation with the DoE. If the PED is unable to comply with the norms because of a lack of expertise or for any other reason, the DoE must be informed without undue delay, so that the problem can be examined and remedies sought.

2 Policy framework

The right to education and the financial responsibility of the state

17. The Bill of Rights in the Constitution of the Republic of South Africa, 1996 (No. 108 of 1996) establishes the right to education in these terms:
- “Everyone has the right –
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible” (section 29(1)).
18. The South African Schools Act, 1996 came into effect on 1 January 1997. The principal objective of the Act is “to provide for a uniform system for the organisation, governance and funding of schools”. In terms of the Act, schools cover learning programmes between grade O (better known as grade R, for “Reception”) through to grade 12.
19. The SASA (section 3) provides for compulsory attendance of learners at school between the ages of seven and 15 (or the completion of grade 9). This is known as the compulsory or General Education phase. Every provincial Member of the Executive Council for Education (MEC) is required to provide sufficient school places for every child in the compulsory attendance bracket. If this cannot be done because of a lack of capacity, the MEC must take steps to remedy the lack as soon as possible.
20. The Act imposes other important responsibilities on the state with respect to the funding of public schools. The basic principles of state funding of public schools derive from the constitutional guarantee of equality and recognition of the right of redress. The Act provides that:
- “The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in educational provision”* (section 34(1)).

21. These principles therefore underlie the national norms and minimum standards for public school funding which the Minister is required to determine (section 35).
22. The SASA follows the Constitution (section 29(3)) in establishing the right of any person to establish and maintain an independent school at his or her own cost, and sets out the grounds on which a PED must register an independent school. The Constitution does not preclude state subsidies for independent education institutions. The Act empowers the Minister of Education to determine norms and minimum standards for the granting of subsidies to independent schools. Such subsidies may be granted by the MEC in a province (sections 46, 48).

Personnel costs in provincial education departments

23. Except in this section, this document does not deal with personnel costs in provincial education departments.

Policy targets

24. The Ministry of Education's personnel policy for schools embodies these key principles:
 - (a) schools must be supplied with an adequate number of educator and non-educator personnel
 - (b) such staff members must be equitably distributed according to the pedagogical requirements of the schools, and
 - (c) the cost of personnel establishments must also be sustainable within provincial budgets.
25. In recent years, personnel expenditure has increased as a proportion of total expenditure by PEDs.³ In 1998/99, the national average of personnel to total costs in PED budgets is 90 per cent. The result is that per learner spending on non-personnel costs has seriously declined. It may continue to do so unless the rate of personnel cost rises is arrested, since the Medium Term Expenditure Framework (MTEF) target expenditure levels indicate very small real increases in public spending on education.
26. Unless the relative proportion of personnel costs to total provincial education spending is managed down, provinces will continue to be unable to finance essential non-personnel education services, whose distribution at present is both inadequate and highly inequitable. As a policy target, based on both local and international evidence, the Ministry of Education has determined that personnel:non-personnel spending in ordinary public schools should be of the order of 80:20.
27. These matters have been the subject of detailed analysis by the MTEF Education Sectoral Review Teams, both in 1997 and 1998. Given realistic assumptions, the Review Team's 1998 report demonstrates that the Ministry of Education's policy target may take many years to achieve.⁴ The team's recommendations are based on achieving a personnel:non-personnel cost ratio of 85:15 by the year 2005.
28. Progress toward meeting the personnel:non-personnel target must be assessed by provincial education departments in the course of preparing each year's updated MTEF. A reduction in the proportion of the education budget spent on personnel must result in an actual increase in budgeted expenditure on pedagogically critical non-personnel items (such as new school construction, provision of essential services, supply of books and other learning support materials, and educator development).
29. Within the total personnel allocation in PEDs, teaching personnel costs should be targeted at 85%, to allow for the appointment and proper distribution of administrative and support staff in provincial education departments.
30. The national Department of Education (DoE) will work with provincial education departments, using existing databases, to ensure that they can track the number and location of personnel engaged in teaching and non-teaching activities, in order to assist planning towards this target.

Educator personnel

31. Aside from the above general policy targets, this document does not norm the allocation of educator personnel, either in a province generally, or in teaching posts at or in connection with schools. Such matters, among others, are dealt with in important agreements that were negotiated in 1998 between the Ministry of Education and the national teacher unions.
32. The Minister of Education determines national policy in respect of educator post provisioning, in terms of the National Education Policy Act, 1996 (No. 27 of 1996). The educator post establishment in each province is determined by the MEC, subject to national norms prescribed for the provisioning of posts (Employment of Educators Act, 1998 (No. 76 of 1998), section 5(1)).
33. The Minister determines norms in respect of posts to be allocated to public schools, in relation to their curriculum and other circumstances, which the Head of Department must follow in distributing the available posts within the approved education establishment of a PED.
34. The Ministry's personnel and funding policies aim to remove inequities in the distribution of public resources for education, both across provinces and within provinces. The logical direction of policy is that

³ Personnel expenditure refers to the costs associated with personnel salaries and benefits. It does not include the cost of pre-service or in-service education and training and the professional development of teachers and other staff.

⁴ 1998 *Medium Term Expenditure Review – Education* (Pretoria: Budget Office, Department of Finance 1998).

personnel allocation costs to schools should be funded, eventually, on the basis of an equitable cost per learner, in order to address more efficiently the aim of redress and equity in the provision of quality education. However, these norms and the funding practices of PEDs are not yet based on a strict equitable cost per learner.

Non-teaching personnel at school level

- 35. The allocation of non-teaching staff to schools, including administrative and support staff, is extremely uneven. The provision of such personnel has been severely lacking in historically disadvantaged and small schools. Inequalities in the provision of such staff members is almost certainly associated with major inefficiencies in schools which serve poor communities.
- 36. The Minister of Education does not have responsibility for determining norms for the provision of non-educator personnel, including non-teaching personnel at school level. At present, such responsibility lies with provincial governments.
- 37. Nevertheless, the Ministry of Education is of the view that there is a clear case for norms to be established that will regulate the post provision of school-based non-teaching personnel on an equitable basis. The present inequalities must be phased out. The level of provision of non-teaching personnel at schools should, over time, approximate to educationally defensible and cost-effective per learner ratios for different categories of schools and staff members.
- 38. The Ministry will undertake further work on this matter, in consultation with PEDs, other state departments, and labour unions.

Targeting expenditure for redress, equity and quality

- 39. Effecting redress and equity in school funding, with a view to progressively improving the quality of school education, within a framework of greater efficiency in organising and providing education services, are matters of urgent priority for the Ministry of Education. The Preamble to the South African Schools Act, 1996 states that:

“ . . . this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people’s talents and capabilities . . . ”
- 40. To achieve these objectives in a systematic manner requires new systems of budgeting and spending for schools.
- 41. In terms of our Constitution and the government’s budgeting procedure, the national Ministry of Education does not decide on the amounts to be allocated annually for provincial education departments. This is the responsibility of provincial governments and legislatures, which must make appropriations to their education departments from the total revenue resources available to their provinces. Thus, each province determines its own level of spending on education, in relation to its overall assessment of needs and resources.
- 42. It follows that national norms for funding schools cannot prescribe actual minimum amounts in Rands to be spent per learner, however desirable that might be.
- 43. From the 1998/99 financial year, the national and provincial budgets have been prepared within the MTEF, which enables government outlays to be planned on a three-year rolling basis.
- 44. An important assumption underlying these national norms is that the national and provincial levels of government will honour the state’s duty, in terms of the Constitution and the SASA, to progressively provide resources to safeguard the right to education of all South Africans. However, educational needs are always greater than the budgetary provision for education. To effect redress and improve equity, therefore, public spending on schools must be specifically targeted to the needs of the poorest. This will apply to both the General Education (grades 1 – 9) and the Further Education and Training (grades 10 – 12) phases.

Fee charging and exemption policy in public schools

School fees and equity

- 45. The SASA imposes a responsibility on all public school governing bodies to do their utmost to improve the quality of education in their schools by raising additional resources to supplement those which the state provides from public funds (section 36). All parents, but particularly those who are less poor or who have good incomes, are thereby encouraged to increase their own direct financial and other contributions to the quality of their children’s education in public schools. The Act does not interfere unreasonably with parents’ discretion under the law as to how to spend their own resources on their children’s education.
- 46. Ironically, given the emphasis on redress and equity, the funding provisions of the Act appear to have worked thus far to the advantage of public schools patronised by middle-class and wealthy parents. The apartheid regime favoured such communities with high-quality facilities, equipment and resources. Vigorous fund-raising by parent bodies, including commercial sponsorships and fee income, have enabled many such schools to add to their facilities, equipment and learning resources, and expand their range of cultural and sporting activities. Since 1995, when such schools have been required to down-size their staff establishments, many have been able to recruit additional staff on governing body contracts, paid from the school fund.

47. Poor people, on the other hand, especially in former homeland areas, have contributed a disproportionate share of their incomes over many decades to the building, upkeep and improvement of schools, through school funds and other contributions, including physical labour. All too many schools in poor rural and urban working-class communities still suffer the legacy of large classes, deplorable physical conditions, and absence of learning resources, despite a major RDP National School Building Programme, and many other projects paid directly from provincial budgets. Yet the educators and learners in poor schools are expected to achieve the same levels of learning and teaching as their compatriots.
48. Such contradictions within the same public school system reflect past discriminatory investment in schooling, and vast current disparities in the personal income of parents. The present document addresses these inequalities by establishing a sharply progressive state funding policy for ordinary public schools, which favours poor communities.

Parents' responsibility

49. All public school governing bodies are obliged by the Act to support their schools financially as best they can. The Act provides that a governing body must
"take all reasonable measures within its means to supplement the resources provided by the State in order to improve the quality of education provided by the school to all learners at the school" (section 36).
50. However, in fulfilling their obligation to raise supplementary resources, governing bodies are not required to charge school fees. Whether or not to charge school fees is a matter for the parents of the schools.⁵ The Act links the question of fees to the budget of the school, which the governing body must present to a general meeting of parents for approval. The intention is that the governing body will give the parents all necessary information about the school's income, from the state and other sources, and its educational needs. Parents will then decide what additional revenue the school needs for educational purposes, and how that revenue is to be raised, including whether or not fees are to be charged.
51. At the parents' general meeting, any resolution that proposes fee payment must include the amount of fees to be charged, and "equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay" the fees (section 39(2)). In making its decisions, therefore, the parent body must take into account, as far as is practicable, the financial circumstances of all the parents, taken as a whole. The Ministry expects that more affluent, or less poor, parent communities will contribute proportionally more, because state funding per learner in their schools will be less than in schools serving poorer communities.
52. A parent body, taking into account its circumstances, may decide to charge no fees at all, in which case the question of exemptions does not arise. Another parent body may decide to set a small fee, so that no parent needs to be exempted. In most public schools where parents decide to charge fees, parents' ability to pay fees may vary considerably. In such cases, difficult decisions must be taken about the level of fees, and an equitable threshold for exemption from fee-paying.
53. Parents of learners at a public school, therefore, carry serious responsibilities with respect to the determination of a school's budget, its sources of revenue, and (if fees are charged) the level of fees and the conditions for exemption of parents from fee paying. Furthermore, if a majority of parents vote in favour of school fees, each parent is responsible for paying the required fee, unless an exemption has been granted. But no learner can be denied admission, or otherwise discriminated against, on grounds of the parent's inability or failure to pay fees.
54. The Ministry of Education monitors all aspects of the implementation of the South African Schools Act, 1996, in order to assess to what extent its objectives are being met. In particular, the effect of the new budget allocation policy on the current inequalities in school provision, the levels of fee charging by public schools, and the uses to which such income is put, are all important matters of legitimate concern to the Ministry and the public, which must be kept under review.

State subsidies to independent schools

The independent school sector

55. Independent schools vary substantially in age, size, location, socio-economic status, facilities, staff, mission, governance, representivity, religious or secular identity, community service, cost structure, endowments, financial viability, rates of fees, and quality of teaching and learning. It is impossible to generalise about them. Many deliver valuable educational services and have loyal clienteles. Others deliver services of low quality and exploit the ignorance of parents. Some pride themselves on conservative principles of governance and teaching. Others value innovation. Some have an inward focus. Others have a deliberate mission of social concern and professional co-operation with public schools serving the poor.
56. Independent school enrolment amounts to about two percent of total school enrolment nation-wide. This percentage may be increasing. Within provinces, independent school enrolments vary from a fraction of a

5 Section 1(xiv) of the Act defines "parent" as –

- (a) the parent or guardian of a learner;
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) or (b) towards the learner's education at school.

percent of total school enrolment, to several times the national average. If all learners were to transfer to public schools, the cost of public education in certain provinces might increase by as much as five percent.

57. The practice of granting state subsidies to registered independent schools (previously known as private schools) is well established in South Africa. Subsidies have typically been calculated as a defined fraction of the cost per learner in the public school system. Before 1994, independent schools were required to register with the respective education departments of the apartheid state, among which the cost per learner was grossly unequal. Therefore, state subsidies to independent schools reflected the pattern of race-based inequality in the public (state and state-aided) school systems under apartheid.
58. Race-based inequalities in subsidies to independent schools have been eliminated since 1994. Since then, subsidy levels have differed somewhat by province. But extreme pressure on the non-salary components of provincial education budgets, especially in 1997/98 and 1998/99, has resulted in a sharp decline in the per learner value of independent school subsidies, and considerable uncertainty as to the future trend of independent school funding by provincial education authorities.
59. Fees in independent schools have tended to rise in response to subsidy cuts. Some independent school proprietors have applied for schools to be taken over by provincial education departments, as public schools on private property, in terms of section 14 of the Act. PEDs have been slow to comply.
60. The Government is grappling with the necessity to stabilise and reprioritise provincial education budgets, in terms of the Medium Term Expenditure Framework. The serious reality underlying the new policy for school funding is that, for the foreseeable future, provincial education budgets will be extremely constrained, especially with respect to non-personnel allocations, out of which subsidies are paid.

Subsidy policy

61. The national Ministry of Education cannot determine subsidy levels in monetary (Rand) terms because, under our Constitution, budget decisions of that kind are made within provincial governments. For this reason, the national norms for independent school subsidies are expressed as criteria of eligibility for subsidy, and principles of allocation. These criteria and principles are consistent with the values underlying the Constitution and the Act.
62. The Ministry of Education bases its subsidy policy on the fiscal argument, and on social grounds. The fiscal argument is as follows. The state has a constitutional and statutory responsibility to provide school education to all learners. However, the right of reputable, registered independent schools to exist is protected by the Constitution, and the payment of subsidies to them is not precluded. Such independent schools perform a service to their learners that would otherwise have to be performed by the provincial education departments. Public subsidies to such schools cost the state considerably less per learner than if the same learners enrolled in public schools. It is, therefore, cost efficient for the state to provide a subsidy.
63. In South Africa, the fiscal argument is an important but not a sufficient basis for national policy. Given the extreme inequalities and backlogs in the provision of public education and the pressure on public education budget allocations, the national policy on public subsidies to independent schools must serve explicit social purposes.
64. Subsidy allocations, therefore, must show preference for independent schools that are well managed, provide good education, serve poor communities and individuals, and are not operated for profit. Such criteria must be capable of measurement according to objective, transparent, and verifiable criteria.

3 Implementation

Developing capacity for intensive data use

Data needs

65. Most PEDs manage budgets of many billions of Rands. Targeting redress, and improving equity in public funding of public schools in an efficient manner, requires the DoE and PEDs to undertake serious budgetary and financial analysis, and to use information intensively.
66. In order to make progress towards equity in school funding, each provincial education department must –
 - (a) use relevant provincial data much more intensively in budgeting and planning decisions;
 - (b) develop the necessary data systems to guide planning and allocations; and
 - (c) be able to demonstrate to the DoE that progress is being made.
67. The SASA provides that all public schools are budget and cost centres (sections 37, 38 and 42). These norms and standards therefore require the use of certain data that have not previously been necessary in budgeting for public schools.
68. Schools must provide information to provincial education departments (section 59 of the Act). On their part, departments must ensure that information is received on time from schools, so that the necessary analysis can be undertaken, and resource allocation decisions made on time.
69. PEDs must annually provide public schools with sufficient information so that the schools' governing bodies can develop their budgets as required by section 34 of the Act. The recommended date for the provision of such information to public schools is 30 September each year.
70. Initially, the budget information provided to schools by PEDs may be indicative, rather than fully detailed. In time, such information should include the current year's expenditures at each school, and the guideline

amount of the total allocation by the provincial education department to the school for the coming school year, including all guideline personnel costs. Such costs should be expressed both in absolute and per learner terms. This is necessary so that schools become accustomed to thinking about their *total* costs per learner. The aim is to improve each PED's accounting and information processing systems so that each school's costs for personnel and non-personnel can be identified by item.

71. Comprehensive data on schools have been created through the national School Register of Needs survey, whose databases have been incorporated in provincial data systems, and the new, provincially-based national Education Management Information System (EMIS). The 1996 national Census reports will provide reliable and up-to-date demographic information. Provincial education departments may have access to other data sources, and the national Department will augment these wherever possible.
72. The MTEF provides a co-operative mechanism for improving the accuracy of budget-related data, and undertaking relevant analytic studies. The DoE and PEDs are active participants in these processes.

Skill requirements

73. To attempt to accomplish the new tasks without high-level skills is absolutely unrealistic, especially given the size of provincial education budgets. Each provincial education department must, therefore, acquire the services of:
 - (a) At least one, and preferably several, highly-skilled strategic financial analysts who understand the use of data-intensive planning and analysis techniques in public financial management. If not already deeply familiar with education issues and policies, they must be willing to make a careful study and acquire the necessary knowledge.
 - (b) Several high-level accounting experts who understand the national computerised public financial and management information systems. Both accounting expertise and strategic financial management expertise are necessary if PEDs are to apply the norms satisfactorily.
 - (c) Several highly-skilled information systems experts to improve the functioning of the education databases (including the EMIS). This will include the decentralisation or devolution of such functions and the training of regional and district officers.
 - (d) At least one senior statistician or applied numerical analyst.
 - (e) At least one person skilled in educational planning and forecasting techniques.
 - (f) Computer systems and databases.
74. Provinces that have difficulty making the necessary appointments should explore:
 - (a) the use of existing donor-funded arrangements with consulting firms and NGOs;
 - (b) secondments from other public sector organisations (e.g., financial or scientific);
 - (c) secondments from the private sector;
 - (d) consultancies or other contracted services; and
 - (e) the use of national DoE personnel with financial and EMIS expertise, to assist with the induction of the new, high-level analysts.
75. Each provincial education department should plan the work of such specialists as follows:
 - (a) Assess the tasks that must be accomplished, taking into account financial regulations, sound financial management procedures, and the national funding norms described in this document.
 - (b) Proceed to appoint, or cause to be seconded, or out-source with own or donor funds, persons with the skills listed above to undertake the tasks identified in step (a).
 - (c) Clarify the relationship of the new specialists to existing work units. Lines of accountability and working relationships must be very clear.
 - (d) Ensure that the new specialists have the necessary operating budget, status, and support personnel, such as data entry personnel, to get the work done.
 - (e) Ensure that they interact with colleagues in similar posts in other provinces and with national DoE officials working on these tasks, as a means of assisting with their familiarisation with the policy environment.
 - (f) Ensure that they have a written Scope of Work or task description. Draft lists of technical tasks consistent with the funding norms and other ongoing financial management tasks are available from the national DoE.
 - (g) The Scope of Work must include budgeted plans for financial capacity building in provincial, district and other offices of the PED (depending on their actual responsibilities), school management teams and SGBs.
76. A provincial education department that is not technically ready to apply the norms in full, will be expected to present to the national DoE a detailed management plan for the acquisition of the necessary capacity to implement. This plan must be consistent with paragraphs 73 – 75 of this document. The national DoE will assist PEDs to develop the capacity they need.
77. It will take some time for each PED to achieve the required capacity, and to enable their specialists to become fully conversant with the new requirements. This means that the national norms must be applied in

a progressive manner while provincial education departments are developing their data systems, and their capacity to apply them.

Implementing the norms

78. Certain tasks have priority, and must be undertaken or continued even before the norms and minimum standards come into effect. These are:
- (a) creating a computerised method of tracking and documenting the targeted allocations and subsidies, according to the norms;
 - (b) creating appropriate accounting and financial mechanisms to allocate and track funds in terms of the norms, and to inform schools of their allocations as required by section 34 of the Act;
 - (c) helping SGBs to understand how to advise parents on whether to set fees, to calculate the level of fees, to determine exemption criteria and procedures, and to handle appeals (SASA, sections 38 – 40).
79. Analytical and budgetary preparation for January 2000 must start not later than the beginning of the school year 1999. Figure 1 outlines key aspects or functions of the norms that pertain to the school and fiscal years, or that are ongoing. The entries are presented in approximate chronological order during the year, except for the “ongoing” column. There is no time-wise correspondence across the three lists. Details and explanations of the activities listed in Figure 1 may be found in Part 2 of this document.

Figure 1. Sequencing the application of the norms during the school and state financial years

<i>School Financial Year</i>	<i>State Financial Year</i>	<i>Ongoing</i>
1. Determination of Rand value of subsidies to independent schools (term by term) for current school year	1. Availability of guideline preliminary and final budgetary information which can be used to determine school-level budgets and inform schools.	1. Ensure that personnel, teams and systems needed to accomplish the task in this table and in these norms are available.
2. Determination of which public schools will be able to receive direct transfer payments for certain items for next school year.	2. Availability of budgeted funds.	2. Improve data bases for targeting of public schools according to poverty and school conditions criteria.
3. Targeting of public schools according to targeting criteria for next school year and development of master targeting list.		3. Improve criteria for determining which public schools receive direct transfer payments for certain items.
4. Provide guideline budget information to public schools on their level of financial support for next year, including personnel, other directly-provided items, and transfer payments.		4. Improve financial and physical planning for new construction requirements, including analysis for targeting priorities.
5. Determination of percentage subsidy levels for independent schools for next school year.		5. Improve accounting, financial, and EMIS tracking methods to ensure that individual school costs and personnel allocations can be tracked, cross-indexed and made more accurate.
6. Fee determination and exemptions at public schools for next school year. (The PED is not necessarily directly involved in these processes, but bears a responsibility of supervision and ensuring that governing bodies are well prepared.)		6. Provide financial management training to governing bodies and school leadership.
		7. Ensure audited status of public schools.
		8. Ensure well-functioning process of appeal from parents over school fee exemptions.

PART 2

4 The public funding of public schools

Cost allocation categories

80. These norms apply to:

Capital cost allocations

- (1) new classroom and other construction

Recurrent cost allocations

- (2) immovable capital improvements and repairs
 - (3) recurrent costs easily separated from other costs
 - (4) other recurrent and minor capital equipment costs, and
 - (5) hostel costs.
81. In the discussion below, each cost allocation category is linked to the current categories under which costs are reported to the national DoE. In this way, budgeting, planning, and cost-reporting categories will correspond with one another.

How the norms should be applied

82. The norms should be applied as follows:
- (a) All the categories below should be budgeted and analysed separately for an initial estimate, since they must all fit within an overall provincial education budget.
 - (b) After initial estimates for the separate categories have been achieved, their overall educational coherence needs to be assessed, within the total allocation.
 - (c) Some of the categories may need to be cut and others increased. In that case, however, the procedure for budgeting within each of the five items must be respected.
83. If a provincial education department wishes to use a different methodology that serves the same purposes, the HOD must be able to demonstrate to the national DoE's satisfaction that it will have an equivalent effect.

Capital cost allocations

(1) *New classroom and other construction allocations*

(This cost category includes the items currently reported to the national DoE under "Land Acquisition" and "New buildings and other land improvements".)

Scenario planning for new school construction

84. "New classroom and other construction allocations" includes provision for water, electricity, sewage and telephone services on site, and connections to mains services where these are provided to the school site.
85. Provincial education departments must budget for this category in terms of their overall budget for education and for schools, and the relative flexibility or rigidity of other budget items.
86. The MEC for Education of each province must ensure that there are enough school places to enable each child living in the province to attend school during the compulsory phase (section 3(3) of the Act). If an MEC cannot comply with this mandate, he or she must take steps to remedy the situation and must report annually to the Minister of Education on progress made (section 3(4) of the Act).
87. In recent years, all PEDs have provided less funds for capital development, which reflects the severe pressure on their non-personnel allocations. The School Register of Needs survey has documented the extent of the backlogs of physical facilities in all provinces. These are particularly acute in provinces that carry the legacy of former homelands and so-called independent states. The 1998 MTEF Education Sectoral Review Team report acknowledges that such provinces are unable to provide sufficient funds to make inroads in their accumulated school construction needs. The team recommends that further work on this matter must be undertaken as a priority. The Departments of Education and Finance are working on the problem.
88. Despite the current shortage of funds for capital development, as an aid to planning and decision-making, each PED must:
- (a) maintain an accurate, prioritised, annually updated database of school construction needs, and
 - (b) undertake annually updated long-term projections of new school construction targets and funding requirements, based on these norms.
89. Part of the physical planning framework should include an analysis of the cost and educational need for schools that are smaller than is normally desirable. If they are very close to each other, and there are no economic or educational grounds for their separate existence, the options of merger or closure (in terms of section 33 of the Act) should be considered. In the event of a merger or closure, the provincial education department must ensure that all affected learners have access, on a reasonable basis, to alternative public school accommodation.
90. The scenario planning should initially estimate the requirements to eliminate backlogs and provide sufficient school places by the target year 2008. This must form part of the analytical work required for the MTEF, and should be adjusted annually in the light of new data and performance in new school construction. Depending on the availability of funds each year, and construction performance, the plan may require acceleration or deceleration.

Target list

91. The construction of new schools or additional classrooms and learning facilities should be targeted to the neediest population. In this expenditure category, "need" is defined in terms of –
 - (a) lack of current schools, or
 - (b) overcrowding of existing ones.
92. No national norm for "crowding" is given in this document. Each PED must objectively determine where to site new schools and classrooms based on provincial norms and verifiable crowding and distance indicators (need indicators) developed from available data, including the School Register of Needs, Census data, and the department's own EMIS.
93. Need indicators should refer to the proportion of children who are out of school or are in over-crowded schools. Preference should be given to areas where –
 - (a) children are out of school and there is no uncrowded local or nearby school; or
 - (b) all eligible children are enrolled in school but the local or nearby schools are crowded; and
 - (c) an analysis of population movements demonstrates that the population concerned is resident and permanent.
94. Using these criteria, the PEDs must develop a ranking of geographical areas from neediest to least needy, based on the numbers of children out of school or in existing crowded schools. Backlogs must be eliminated by starting with the neediest, most crowded areas, and proceeding as quickly as possible down the list of priorities.
95. In the allocation of new school construction funds, preference must be given to –
 - (a) facilities serving the compulsory education grades (grades 1–9) in order to ensure that all eligible learners have school places as soon as possible, and
 - (b) extensions to existing schools, rather than new schools, except where extensions would result in schools that are too large to be pedagogically sound, or would otherwise be uneconomical, impractical, or undesirable on educational grounds.

Hostel facilities

96. New hostel facilities may be built if the following criteria are satisfied:
 - (a) the crowding criteria in paragraphs 91–93, for construction of new schools or extensions; and
 - (b) the transport time and poverty criteria in paragraph 122.
97. Other criteria may be used, provided that they give the same results in terms of equity and efficiency. Provincial education departments may be required to verify such results, in order to demonstrate that they have complied with this national norm for hostel construction.

Recurrent cost allocations

Targeting schools on the basis of need

98. In principle, it would be desirable for all recurrent funding of ordinary public schools, including personnel allocations, to be driven by a simple per learner formula that favours the poor. This would be consistent with equity, efficiency, and the vision of schooling implicit in the SASA and Education White Papers 1 and 2.⁶ However, another approach is necessary because social conditions and school conditions are massively unequal, provincial administrations and school governing bodies have widely varying capacities, and provincial governments have different fiscal competencies.
99. Allocations for recurrent cost items must be targeted as far as possible on the basis of need, determined according to the condition of the school and the relative poverty of the school community, using the "Resource Targeting Table" (Figure 2 below).
100. Each PED is required to produce a "resource targeting list" of all schools in its province, sorted on the conditions at the school and the poverty of the community served by the school, so as to produce five groups of schools. These will correspond to the "school quintiles, from poorest to least poor" in column 1 of the table. Resource allocation will be based on this list.
101. The resource targeting list will comprise all ordinary public schools in the province sorted by "need" or "poverty". Two equally weighted factors will be used to rank the schools:
 - (a) *The physical condition, facilities and crowding of the school.* Using the School Register of Needs data, provincial education departments may create indices based on the range of physical facilities at the school, learner:classroom ratio, the overall condition and need for repairs, availability of basic services. This factor is weighted 50%.
 - (b) *The relative poverty of the community around the school.* Using Census, household survey or other data, provincial education departments may create indices based on, for example, the proportion of households with electricity and piped water in the community served by the school, the level of education of the parents served by the school, and other similar criteria. This factor is weighted 50%.

⁶ *Education and Training in a Democratic South Africa: First steps to develop a new system* Education White Paper 1 (Pretoria: Department of Education, February 1995), Notice 195 of 1995, and *The Organisation, Governance and Funding of Schools* Education White Paper 2 (Pretoria: Department of Education, February 1996) .Notice 130 of 1996.

Figure 2. Resource targeting table based on condition of schools and poverty of communities

School quintiles, from poorest to least poor	Expenditure allocation	Cumulative percentage of schools	Cumulative percentage of non-personnel and non-capital recurrent expenditure	Per learner expenditure indexed to average of 100
Poorest 20%	35% of the resources	20%	35%	175
Next 20%	25% of the resources	40%	60%	125
Next 20%	20% of the resources	60%	80%	100
Next 20%	15% of the resources	80%	95%	75
Least poor 20%	5% of the resources	100%	100%	25

102. Having listed the schools in rank order, PEDs must then divide the list in five quintiles, from poorest to least poor. The distribution by quintile will determine the per learner allocation, in terms of the Resource Targeting Table above. Thus, allocations will be made on a variable per learner basis that favours the poorer segments of the population. The neediest and largest schools will get priority in funding.
103. The same Resource Targeting Table is to be used by all PEDs. However, each PED's resource targeting list need not be used mechanically. There are four ways in which variations to the list may be made:
- Naturally-occurring breaks.* PEDs (must) [sic] are urged to take advantage of naturally-occurring breaks in the distribution that are close to, but do not exactly coincide with, the quintile break-points (20%, 40%, etc.). For example, if schools in the 17th percentile are distinctly poorer than those in the 18th, the break-point need not be the 20th percentile, but may be the 17th. The same might apply to any break points around the 40th, 60th, and 80th percentiles. If slightly different break points are used, the relative expenditures per learner in the various quintiles may differ somewhat from those shown in the last column of the table.
 - Homogeneous conditions.* If the distribution makes it practically impossible to distinguish between two quintiles, the provincial education department is encouraged to consider making the same per learner allocations to the two quintiles. However, the general progressivity of the table must be respected.
 - Special circumstances.* It is inevitable that special circumstances will apply in a number of schools, which will warrant their being reassigned to another quintile. Governing bodies may also apply for such a reassignment and provincial education departments must establish a fair and objective administrative mechanism for considering such requests and deciding upon them.
 - Further subdivisions.* It is unlikely that enough information will exist to enable a PED to create further subdivisions, particularly in the poorest two quintiles. However, if sufficient information is available, a provincial education department may proceed to create further subdivisions, as long as the overall progressivity of the table is respected.

Responsibility of school governing bodies for managing recurrent allocations

104. The SASA makes provision for public school governing bodies to become progressively more responsible for managing aspects of recurrent expenditure. Section 21 provides that, subject to the Act, a school governing body may apply in writing to the Head of Department to be allocated any of the following functions:
- maintain and improve the school's property, buildings, grounds, and hostel
 - determine the extra-mural curriculum and the choice of subject options in terms of provincial curriculum policy
 - purchase textbooks, educational materials or equipment for the school
 - pay for services to the school, or
 - other functions consistent with the Act or applicable provincial legislation.
105. The HOD must approve a governing body's application for section 21 functions, conditionally or unconditionally, unless the SOB does not have sufficient capacity to undertake the functions effectively.
106. An MEC may determine that some governing bodies may exercise one or more functions under section 21, even if they have not applied for them. This is permitted only if the governing bodies have the capacity to perform the functions effectively, and there is a reasonable and equitable basis for allocating the functions to them (section 21(6) of the Act).
107. In order to guide the actions of the MEC, the HOD and an affected SGB, it is necessary to establish an objective test of governing body capacity in terms of section 21 of the Act. Provincial education departments must, therefore, devise a managerial capacity checklist, for approval by the HOD. The checklist will include items relating to the capacity to handle and account for public funds, the capacity to meet ongoing contractual obligations to suppliers of goods and services, and the ability to make financial decisions that are educationally sound. The criteria used in developing such a list must be transparent and public.
108. Each provincial education department must develop a "section 21 list" of schools that have been allocated functions and may carry out their own procurements in this manner, and a list of schools that are not yet

section 21 schools. The lists must be revised each year. The section 21 list is expected to grow as more schools acquire the requisite capacity. However, a school may be removed from the list if the governing body proves unable to undertake the additional functions, as provided in section 22 of the Act.

109. *Schools on section 21 list.* Schools on the section 21 list will receive a lump-sum, per-learner transfer for the payments for which they have responsibility, in accordance with the Resource Targeting Table. Such transfers will be smaller for better-off schools than for poorer schools. If a school's bills for these services or items are lower than the lump-sum transfer, the SGB may allocate the transferred amount to the purchase of other education-related items. In general, such SGBs may vary the proportion of the funding devoted to such goods and services according to their own perception of education needs, taking provincial policy into account. Such expenditure must of course be accounted for.
110. School governing bodies that are on the section 21 list may deal directly with suppliers and contractors for the relevant budgeted items in accordance with standard procurement procedures. They must keep documents as evidence of correct dealing with such suppliers and contractors, and records of how the materials and services were used, and produce such documents or records at the request of officials from the PED and for audit purposes.
111. *Schools not yet on section 21 list.* Schools that are not on the section 21 list, and have therefore not been granted approval to procure their own goods and services, must procure their goods and services according to existing departmental arrangements. However, the PED will exercise administrative controls to ensure that the cost per-learner is maintained at a level consistent with these norms, the Resource Targeting Table at Figure 2, and the budgeted allocation for each applicable item.
112. Such schools must be informed of their school's budget, even if it is a "paper" budget, as explained in this document. This will prepare them to understand actual costs of running their school, and improve their capacity to join the section 21 list in due course.
113. In the light of the foregoing, PEDs must allocate recurrent funds to the following cost items, on the basis of the Resource Targeting Table, with the provisos indicated below. Schools on the section 21 list must receive their per learner allocations for each cost item, and be accountable in terms of the Act for their expenditures on goods and services in terms of these items.

(2) Immovable capital improvement and repair costs

(This cost category is currently reported to the national DoE under "Maintenance of Buildings")

114. Allocation of this category of costs must be made according to the Resource Targeting Table and the section 21 list, where applicable. The following exceptions to the general allocation rules apply:
 - (a) *Emergency repairs.* Emergency repairs which endanger the health or safety of persons at or associated with the school, or which might imply large future expenditures if not corrected immediately, must be prioritised in terms of their relative danger or future cost. The Resource Targeting Table will not apply. In general, the section 21 list will not apply.
 - (b) *Routine maintenance and cleanliness.* Functions such as cleaning, removal of litter, maintenance of grounds, minor painting and repairs, and replacement of light-bulbs, will be the responsibility of the school community, regardless of the level of poverty of the community.
115. Thus, non-routine and non-emergency capital improvements and repairs will be allocated according to the section 21 list and the Resource Targeting Table. These will probably constitute the majority of the allocations in this category.

(3) Easily separable recurrent costs

(This cost category is part of what is currently reported to the national DoE under "Supplies and Services – Other")

116. Allocation of these items must be made according to the Resource Targeting Table and the section 21 list, where applicable.

(4) Other recurrent and small capital equipment costs

(This cost category is currently reported to the national DoE under "School Books", "Stationery", "Equipment," and "Media Collections")

117. The purpose of this allocation is to provide all learners with a minimum package of learning materials (books and stationery) equivalent to at least R100 per learner. However, if the total provincial budgetary allocation for this item is insufficient, the PED must ensure that priority is given to poorer learners according to the Resource Targeting Table. In this case, the funding per learner remains as per the cost of the basic package, but priority is given to schools highest in the poverty rank order.
118. The allocation per learner of R100 should be allowed to increase with the national Consumer Price Index or the "reading matter" component of this index, whichever is higher.
119. The norms relating to schools on the section 21 list, also apply to this category of recurrent expenditure.

(5) Hostel costs

(This cost category is currently reported to the national DoE under "Supplies and Services – Other")

120. **Records.** Schools with hostels must keep a separate account for all recurrent costs associated with hostels, and a record of the number of learners staying at each hostel. Such accounts and records will be subject to unannounced audits by officials of the PED.
121. **Hostel fee.** The school must charge each learner staying in the hostel a hostel fee equal to the average running cost per learner in the hostel. No blanket cross-subsidisation of hostel costs from fee income is permitted. However, if the SGB wishes to exempt particular learners from hostel fees, it may do so by recording the necessary book-keeping transfer.
122. **Hostel subsidy.** The PED must, in turn, set aside a budget item for hostel subsidies. Schools with hostels will be paid pro rata out of this budget for each of their learners –
- (a) whose transport time to the school is greater than 1.5 hours;
 - (b) if there are no available school places near the learner's parents' place of residence; and
 - (c) whose parents cannot afford the per-child hostel cost.
123. The PED may adjust these criteria in order to ensure that the subsidy per learner is meaningful, while recognising that this may decrease the number of learners thus covered, requiring a tightening of the targeting criteria.
124. Subsidies for hostel costs incurred by learners with special education needs enrolled in ordinary public schools will be provided by the provincial education department in accordance with the overall funding approach used for such learners.

5 Fee exemptions in public schools

Introduction

125. The SASA requires the Minister of Education to make regulations about the equitable criteria and procedures for exemption of parents who are unable to pay school fees (section 39(4)).⁷ The regulations reflect the national norms in this document, and apply uniformly in all provinces. PEDs are advised to make the regulations available to all public school governing bodies.
126. Governing bodies must notify all parents in writing about the equitable criteria and procedures for exemption, in sufficient time for the general meeting of parents at which the budget is considered. The regulations are to be interpreted within the framework set by chapter 4 of the Act, and with reference to these norms.
127. Since fee revenue is determined both by the fee level and by the number of fee payers, the norms relating to exemption are designed to assist parent bodies to make appropriate and equitable decisions about the fee level and the exemption thresholds.

Exemption criteria

128. If a parent meeting in terms of section 39 of the Act decides to charge annual school fees, the following criteria for exemption from fee paying must be observed, subject to the Regulations.

Full exemption

129. Subject to Regulation 5(4), if the combined annual gross income of the parents is less than 10 times (10X) the annual school fees per learner, the parent qualifies for full exemption.
130. A person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety, qualifies for full exemption.

Partial exemption

131. Subject to Regulation 5(4), if the combined annual gross income of the parents is less than 30 times (30X) but more than 10 times (10X) the annual school fees per learner, the parent qualifies for partial exemption.
132. Partial exemption may be granted on a sliding scale. The criteria for applying the scale of partial exemptions must be determined by the parents at the general meeting referred to in section 38(2) of the Act, or by the governing body of the school if the general meeting of parents so decides. Such criteria could be intermediate income multiples between 30X and 10X. Thus, for example, 50% exemption could apply at the 20X mark.

No exemption

133. Subject to Regulation 5(4), if the combined annual gross income of the parents is more than 30 times (30X) the annual school fees per learner, the parent does not qualify for exemption.

Conditional exemption

134. The criteria for making a conditional exemption must be related to special circumstances affecting a parent's ability to pay the fee, or to the need to acquire relevant information about a parent's circumstances.

⁷ The Exemption of Parents from the Payment of School Fees Regulations, 1998, are published in G.N. 1293 *Government Gazette* dated 12 October 1998.

Other considerations

135. A school governing body must make it possible for parents to pay by instalment.
136. Parents whose circumstances change for the worse during the school year may apply for partial or total exemption at any time during the year, but fees already paid need not be reimbursed.
137. Parents who are partially or totally exempt, must advise the SGB if their circumstances improve to the extent that they are no longer eligible for the exemption granted to them. The SGB may amend or rescind the exemption on the merits of the parent's circumstances.
138. Nothing prevents a parent who is eligible for exemption from freely deciding to waive exemption. Such a decision must be communicated to the chairperson of the governing body in writing.
139. Nothing in these norms prevents a governing body from encouraging all parents, including fee-exempt parents, to render voluntary services to the school or to make voluntary contributions to the school fund in terms of sections 20(1)(h) and 37(2), respectively, of the Act.

Exemption procedures

140. The Regulations on exemption specify the procedures for:
 - (a) making an application for exemption
 - (b) consideration of an application by a school governing body
 - (c) alteration of a decision by a school governing body, and
 - (d) an appeal by a parent who is dissatisfied with a decision relating to exemption.

6 Subsidies to independent schools

Introduction

141. Every person has the right, in terms of the Constitution, to establish and maintain, at their own expense, an independent educational institution that does not discriminate on grounds of race, is registered with the state, and maintains standards that are not inferior to standards in comparable public educational institutions. This provision does not preclude state subsidies for such institutions (section 29(3) and (4)).
142. The SASA provides for the right of persons to establish and maintain an independent school, and for the registration of an independent school by the Head of Department, under conditions consistent with the Constitution. The Act enables the provincial MEC to grant a subsidy to a registered independent school, in terms of norms and minimum standards determined by the Minister of Education (sections 45 – 46, 48).
143. The norms that follow are the first uniform national norms for independent school subsidies. They are intended to provide a stable and principled basis for MECs in all provinces, to decide the eligibility for subsidy and the level of subsidies for registered independent schools.
144. The national norms apply uniformly in all provinces. However, a provincial MEC may vary them, so long as their intent and spirit is maintained. The Head of Department must consult the national DoE on this matter.
145. The following norms embody conditions of eligibility for subsidy, and funding criteria for allocating subsidies.

Conditions of eligibility

146. An independent school may be considered for subsidy if –
 - (a) it is registered by the PED;
 - (b) has made an application to the PED in the prescribed manner;
 - (c) has been operational for one full school year;
 - (d) is not operated for profit;
 - (e) is managed successfully according to a management checklist determined by the PED, as described in paragraph 149;
 - (f) agrees to unannounced inspection visits by officials of the PED; and
 - (g) has not been established in direct competition with a nearby uncrowded public school of equivalent quality.
147. In addition to the conditions in the previous paragraph, the following conditions apply to independent secondary schools. A secondary school may be considered for subsidy if –
 - (a) its grade 12 pass rate is 50% or more of full-time candidates writing the examination in the prior year;
 - (b) the repetition rate in grades 11 or 12 is not more than 20%; and
 - (c) it does not engage in practices that are calculated to artificially increase the school's grade 12 pass rate.
148. The Head of Department may vary conditions (a) or (b) in the previous paragraph, on good cause shown.
149. Each school requesting funding will be subject to a management checklist (which may be the same as, or based on, the checklist referred to in paragraph 107 above), which will be approved by the HOD after consultation with representatives of independent schools. This checklist will determine whether the school

is able to manage public funding responsibly. It must include indicators of sound management, such as whether the school keeps proper admissions and attendance registers, and maintains fee payment and other financial records. To be eligible for funding a school must subscribe to the checklist, and must allow unannounced inspections by officials of the PED, to ensure that the practices in the checklist are up-to-date. Refusal to allow an unannounced visit will result in forfeiture of further funding.

Funding criteria

Subsidies related to fees

150. In what follows, the level of annual non-discounted fees⁸ charged at an independent school as of January 1998 will be taken as an indicator of the socio-economic status of a school's community.
151. The Ministry's policy is to enable subsidies to be granted in relation to the socio-economic circumstances of an eligible school's clientele. The level of school fees charged by an independent school is taken as an objective, publicly-available criterion that correlates well with the socio-economic circumstances of the school's clientele. Subsidy levels are therefore related to fee levels on a five-point progressive scale, as shown in Figure 3 below. Eligible schools charging the lowest fees will qualify for the highest level of subsidy. Schools charging the highest fees, in excess of 2.5 times the provincial average cost per learner in an ordinary public school, are considered to serve a highly affluent clientele, and no subsidy will be paid to them from public funds.

Figure 3. Allocation table for independent school subsidies

Fee level	Subsidy level
1. Up to 0.5 times (50% of) the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 60% of the provincial average cost per learner in ordinary public schools.
2. Higher than 0.5 and up to 1.0 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 40% of the provincial average public cost per learner in ordinary public schools.
3. Higher than 1.0 and up to 1.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 25% of the provincial average public cost per learner in ordinary public schools.
4. Higher than 1.5 and up to 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 15% of the provincial average public cost per learner in ordinary public schools.
5. Higher than 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	No subsidy.

152. PEDs will need to establish a procedure to deal with borderline situations. For example, if the average public school cost in a province is R2000, and an independent school charges fees of R1 050, it will just miss being in the first (highest subsidy) category, even if its clientele is not different from that of a school charging, say, R950. PEDs may use the following criteria, in addition to any other relevant information submitted by the school, to judge whether a school falls into a certain category:
- (a) schools in the first (highest subsidy level) category would typically be located in townships, deep rural areas, or informal settlements.
 - (b) schools in the second category would typically be in inner city or transitional suburban areas, catering largely to township and informal sector clientele or the urban lower middle class.
 - (c) schools in the third and fourth categories would be middle and upper middle class schools with good facilities with a local clientele.
 - (d) schools in the fifth category would be well established schools with excellent facilities and a national or regional clientele and very low learner:educator ratios.
153. Subsidies may be paid only in respect of grades 1 – 12. No other grades are eligible for subsidy for the time being. If the fee structure varies by grade, the enrolment-weighted average of the fees in all relevant grades will be taken as representative of each level.
154. The fee levels applying to primary and secondary schools may differ. For purposes of these norms, "primary" comprises grades 1 to 7, and "secondary" comprises grades 8 to 12. The HOD may recommend

8 For the purpose of this national policy, "fees" means any form of payment for registration and tuition made by a parent in relation to a learner's enrolment or attendance at an independent school. It includes the present annualised value of any past or future once-off payment, using a market rate of interest for investments of equal certainty. It also includes any other form of payment by a parent, or equity in the school taken by a parent, as a form of fee payment equivalent. The highest level of fees normally charged at the school, as opposed to fees discounted for once-off payment, will be taken as representative. Additional costs associated with the normal course of instruction which learners are expected to follow are to be considered fees, even if they are not formally called fees. However, payments for extra items or services, or for school materials that are procured by the school instead of having to be purchased by the parent, are not to be considered fees, as long as the cost of such items is similar to their open-market value.

a subsidy, if it is deemed in the interest of the school and the provincial education department, when a school lowers its fees in order to qualify for the same percentage subsidy in both primary and secondary levels.

Subsidies in relation to PED budgets

155. The Ministry of Education is sensitive to the connection between the total cost of independent school subsidies and the overall budgetary position of a provincial education department. Recent reductions in the overall funds available for independent school subsidies because of urgent budgetary expediency, should not become de facto policy by default. At the same time, PEDs must have latitude to vary budgetary allocations between programme areas, in relation to the total funds at their disposal, and the priorities established in terms of national and provincial policies.
156. A PED may, therefore, alter the fee levels and corresponding percentage subsidies after consultation with the national DoE, if the application of these norms would –
- (a) cause a PED's expenditure on subsidies to independent schools to deviate from a three-year historical moving average by more than 10 percent in real terms in any given year; or
 - (b) contribute to over-expenditure on the PED's budget in the year they are applied; or
 - (c) result in independent schools receiving year-to-year budget cuts (or increases) in any given year that are significantly larger (or smaller) than other programme areas in the PED's budget.

Other deviations

157. Aside from deviations already discussed in this document, a PED may deviate from the subsidy and fee levels in these norms only on good cause shown (see paragraph 144 above).

Date of subsidy payments

158. Subsidies will be calculated on a per learner basis according to the verified enrolment in the school at the beginning of each term.
159. PEDs must ensure that the first term's subsidy is paid no later than 1 April in each school year. Subsequent subsidies must be paid no later than six weeks after the beginning of each school term.

Monitoring and revision

160. The Ministry of Education, in co-operation with PEDs and representatives of independent schools, will monitor the application of these norms in order to:
- (a) monitor fee levels;
 - (b) monitor subsidy levels;
 - (c) ensure that the overall level of subsidy to independent schools is a reasonable percentage of the total education budget in a province, in relation to the relative size of the independent and public school sectors in the province, and other relevant considerations; and
 - (d) ensure that national education policy objectives are being well served by the norms and their application.
161. In the light of an analysis of these matters, the Ministry, after due consultation, may amend or revise the norms.
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EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES, REGULATIONS 1998

G.N. 1293 of 1998 published in *Government Gazette* No. 19347 dated 12 October 1998

The Minister of Education has, under sections 39(4) and 61 of the South African Schools Act, 1996, (No. 84 of 1996), after consultation with the Council of Education Ministers and the Minister of Finance made the regulations in the Schedule.

SME BENGU
Minister of Education
October 1998

SCHEDULE

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context indicates otherwise –

'application' means an application by a parent for exemption;

'combined annual gross income of the parents' means the gross income of all the parents of a learner as defined in the Act calculated together or, if a learner has only one parent, the total gross income of such parent;

'exemption' means the total, partial or conditional exemption of parents who are unable to pay school fees;

'school fees' means school fees determined in terms of section 39 of the Act;

'the Act' means the South African Schools Act, 1996 (Act No. 84 of 1996).

Scope

2. These Regulations must be interpreted within the framework set by Chapter 4 of the Act, and with reference to the National Norms and Standards for School Funding determined in terms of the Act.

Categories for purpose of exemption

3. (1) If annual school fees are determined in terms of section 39 of the Act, the following categories will be applicable for purposes of exemption of a parent from payment of such school fees –
 - (a) if the combined annual gross income of the parents is less than ten times the annual school fees per learner, the parent qualifies for full exemption;
 - (b) if the combined annual gross income of the parents is less than thirty times but more than ten times the annual school fees per learner, the parent qualifies for partial exemption; and
 - (c) if the combined annual gross income of the parents is more than thirty times the annual school fees per learner, the parent does not qualify for exemption.
- (2) A person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety is exempted from payment of any school fees.

Procedures for application

4. (1) The governing body must notify all parents in writing of –
 - (a) the amount of the annual school fees to be paid and the equitable criteria and procedures for exemption determined in terms of section 39 of the Act;
 - (b) the fact that parents are liable to pay such fees in terms of section 40 of the Act unless or to the extent that they have been exempted from payment thereof; and
 - (c) the contents of regulations 3, 4 and 5 and at the request of a parent, make a copy of these Regulations available to him or her.
- (2) A parent who wishes to be exempted from payment of school fees for each individual learner at the particular school, must apply in writing to the chairperson of the governing body on a form similar to the form annexed as annexure A.

- (3) An application referred to in subregulation (2) must contain sufficient particulars to enable the governing body to apply the criteria set out in regulation 5(2) in order to determine in which category referred to in regulation 3, the applicant falls.
- (4) An applicant must furnish such relevant further particulars as requested by the governing body.
- (5) The applicant must prove on a balance of probabilities that the information supplied by him or her on the matters mentioned in regulations 3 and 5(2) is true and correct.
- (6) An applicant must, if he or she so requests, be afforded an opportunity to present his or her application in person, or through a designated representative.

Procedure for consideration of an application by Governing Body

5. (1) The governing body must consider the application subject to these Regulations and make a decision within fourteen days after receipt thereof.
- (2) In considering an application a governing body must take into account
 - (a) the financial position of the applicant including –
 - (i) the total gross annual income of the parents;
 - (ii) the total annual necessary expenses; and
 - (iii) a statement of assets and liabilities;
 - (b) the number of dependants of the applicant;
 - (c) the standard of living of the applicant; and
 - (d) any other relevant information supplied by the applicant.
- (3) If the applicant falls in –
 - (a) the category referred to in regulation 3(1)(a), the applicant is exempted in full;
 - (b) the category referred to in regulation 3(1)(b), the applicant is partially exempted to the extent determined by the governing body having regard to the criteria referred to in subregulation (2); and
 - (c) the category referred to in regulation 3(1)(c), the application is declined.
- (4) A governing body may deviate from the provisions of subregulation (3) if the applicant proves facts which justify such deviation.
- (5) A governing body may attach such conditions to an exemption granted to an applicant as it may deem reasonable.
- (6) Information by the applicant in support of his or her application must be treated in confidence by the governing body and may not be divulged to a third party without the consent of the applicant.
- (7) The governing body must notify each applicant in writing of its decision and the reasons therefor, within seven days after the decision is taken.
- (8) If an application is declined or partially declined, the governing body must notify the applicant of his or her right of appeal in terms of section 40(2) of the Act.

Alteration of decision

6. (1) If a governing body obtains information that the financial position of a parent who was granted exemption, has changed substantially, the governing body may reconsider and rescind, amend, substitute or alter its decision to grant exemption.
- (2) Before taking action in terms of subregulation (1) the governing body must
 - (a) notify the parent concerned of the intended action and of the information on which it will be based; and
 - (b) afford the parent the opportunity to rebut the information and to show cause why the exemption should not be reconsidered.

Procedure for appeal

7. (1) A parent who is dissatisfied with the decision referred to in regulation 5(7) may appeal in writing against the decision to the Head of Department within 30 days after receipt of the notification of that decision.
- (2) The appellant contemplated in subregulation (1) must furnish the Head of Department with –
 - (a) the reasons for the appeal; and
 - (b) all relevant information pertaining to the appeal.
- (3) The Head of Department must within 14 days after receipt of the documentation referred to in subregulation (2) –
 - (a) notify the chairperson of the governing body concerned of the appeal that has been lodged;
 - (b) furnish to the chairperson a copy of the appellant's reasons for appeal; and

- (c) request the chairperson to forward to him or her within 14 days after receipt of the request:
 - (i) the minutes of the meeting of the governing body at which the application was discussed and was decided upon; and
 - (ii) any comments the governing body wishes to make with regard to the appellant's reasons for appeal, and any other information relevant to the appeal.
- (4) After consideration of all information referred to in subregulations (2) and (3), the Head of Department must within 14 days of receipt of the documentation or information contemplated in subregulation (3)(c) –
 - (a) uphold the appeal:
 - (i) in full;
 - (ii) partially; or
 - (iii) conditionally; or
 - (b) dismiss the appeal.
- (5) Within 7 days of deciding the appeal, the Head of Department must notify the appellant and the chairperson of the governing body concerned in writing of his or her decision and the reasons therefor.

Assistance to parents

- 8. (1) A parent who, for whatever reason, needs assistance to apply for exemption or lodge an appeal as contemplated in regulation 7, may request an educator or any other person to assist him or her in making the application or appeal.
- (2) If no assistance is given to the parent after he or she has requested it as contemplated in subregulation (1) the principal must assist the parent in such application or appeal.

Voluntary contributions

- 9. Nothing in these Regulations prevents a parent who is granted exemption from making a voluntary contribution to the school fund.

Short title and commencement

- 10. These Regulations are called the Exemption of Parents from the Payment of School Fees Regulations, 1998 and will come into effect on the date of publication thereof.

ANNEXURE A

APPLICATION FORM FOR EXEMPTION
SOUTH AFRICAN SCHOOLS ACT, 1996 (NO. 84 OF 1996)

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES REGULATIONS, 1998

PARTICULARS OF SCHOOL

Name:

Postal Address:

.....

.....

Physical Address:

.....

.....

Tel:

Fax:

PARTICULARS OF APPLICANT

Name of parent:*

Name/s of learner/s:

Residential address:

.....

.....

Tel:

Fax:

* "parent" means (a) the parent or guardian of a learner; (b) the person legally entitled to custody of a learner; or (c) the person who undertakes to fulfil the obligations of a person referred to in (a) or (b) towards the learner's education at school.

APPLICATION FOR –

1. **Full exemption** (Regulation 3(1)(a))

Combined annual gross income of parents: R.....

Annual school fees per learner: R.....

(Only applicable if combined annual income of a parent is less than 10X the annual school fees per learner)

2. **Partial exemption** (Regulation 3(1)(b))

Combined annual gross income of parents: R.....

Annual school fees per learner: R.....

(Only applicable if combined annual income of a parent is less than 30X but more than 10X the annual school fees per learner.)

Partial exemption may be granted on a sliding scale as contemplated in paragraph 132 in terms of the National Norms and Standards for Funding published in the same *Government Gazette* as this document.)

3. Additional information which you request to be considered by the governing body:

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4. All supplementary documentation to prove the application for exemption must be attached for the consideration of the governing body.

5. The application form and accompanying documents must be sealed in an envelope and addressed to the chairperson of the governing body and be marked for his/her attention.

AGE REQUIREMENTS FOR ADMISSION TO AN ORDINARY PUBLIC SCHOOL

G.N. 2433 of 1998 published in *Government Gazette* No. 19377 dated 19 October 1998

amended by

G.N. 1356 of 2001 published in *Government Gazette* No. 22928 dated 11 December 2001

The Minister of Education, after consultation with each Member of the Council of Education Ministers, hereby give notice in terms of section 3(4)(i) of the National Education Policy Act, 1996 (No. 27 of 1996) and section 5(4) of the South African Schools Act, 1996 (No.84 of 1996), of the age requirements for the admission of learners to an ordinary public school or different grades at a school, as set out in the Schedule.

SME Bengu
Minister of Education
October 1998

SCHEDULE

AGE REQUIREMENTS FOR ADMISSION TO AN ORDINARY PUBLIC SCHOOL

Interpretation

1. In this notice any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 27 of 1996) and the National Education Policy Act, 1996 (No. 84 of 1996) shall have that meaning.
2. In this notice a reference to grade R will have the same meaning as grade O in the South African Schools Act, 1996.

Age requirements for admission to an ordinary public school

3. The statistical age norm per grade is the grade number plus 6.

Example: Grade 1 + 6 = age 7
 Grade 9 + 6 = age 15
 Grade 12 + 6 = age 18

4. A learner must be admitted to grade 1 if he or she turns seven in the course of that calendar year. A learner who is younger than this age may not be admitted to grade 1.
- 4A. Despite paragraph 4, the Head of Department may allow a learner who wants to be admitted to grade 1, but who will not be turning 7 during the year of such admission, to be admitted at a lower age. This deviation by the Head of Department may only occur if, in the opinion of the Head of Department, reasonable grounds exist to show that such a learner is, based on educational principles, school ready for grade 1 and it is in the best interests of such a learner to be admitted as an underage learner to a public school. The parent of the learner must show that refusal to be admitted to a school will have a detrimental effect on the child's development.

[Para. 4(A) inserted by G.N. 1356 dated 11 December 2001.]

5. A learner may be admitted to grade R only if he or she turns six in the course of that calendar year. Attendance of grade R is not compulsory.
6. The age requirements for learners with special education needs who are able to be admitted to attend ordinary public schools are the same as for other learners in ordinary public schools.

Application

7. These age requirements, and any deviations from the age norm per grade, must be applied in accordance with the Admission Policy for Ordinary Public Schools, published in the same government notice.

Short title and commencement

8. This notice is called the Age Requirements for Admission to an Ordinary Public School, and it comes into effect on 1 January 2000.

TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS

G.N. 1423 of 1999 published in *Government Gazette* No. 20669 dated 26 November 1999

The Minister of Education hereby, in terms of section 52(3) of the South African Schools Act, 1996 (Act 84 of 1996), determines the dates on which and the conditions subject to which funds and other moveable assets used by, or held on behalf of public schools contemplated in section 52(1) of the Act and which in law are the property of the State, devolve upon the public schools, as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education
November 1999

SCHEDULE

TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS

Dates of transfer

1. The funds and moveable assets used by, or held for or on behalf of a public school contemplated in section 52(1) of the South African Schools Act 84 of 1996, and which in law are the property of the State, devolve upon the school on –
 - (a) the date of publication of this notice, if the governing body of such a school has applied for the allocated functions in terms of section 21 of the Act and the functions contemplated in section 21(1)(a) have been allocated by the Head of the Department to the governing body; or
 - (b) the date from which the functions contemplated in section 21(1)(a) of the Act are –
 - (i) allocated to the governing body of a school in terms of section 21(3) of the Act on application by the governing body in terms of section 21(1) of the Act; or
 - (ii) assigned to the governing body of a school in terms of section 21(6) of the Act.

Conditions for transfer

2. **The transfer of the funds and moveable assets is subject to the following conditions:**
 - (a) The principal of a public school must draw up a financial statement of the funds and compile an inventory of the moveable state assets used by, or held for or on behalf of the public school and which in law are the property of the State. A designated official of the provincial department of education must be assigned by the Head of Education to verify in writing that the financial statement and inventory have been compiled correctly.
 - (b) The chairperson of the governing body must sign an acknowledgement of receipt of the funds and moveable assets from the State on behalf of the school and submit it to the first meeting of the governing body after signature. (ANNEXURE A.)
 - (c) A copy of the financial statement and the inventory must thereafter be made available to the Head of Department together with the signed acknowledgement of receipt. The Head of Department must keep a running record of all such documents.
 - (d) A copy of the financial statement and the inventory must be kept on record at the school.
 - (e) The moveable property listed in the inventory may not be alienated without value unless agreed to by the Head of Department.
 - (f) Any alienation of the property contemplated in paragraph (a) contrary to the provisions of paragraph (e) is invalid and the ownership of such property will revert to the State.

ANNEXURE A

**PRO-FORMA ACKNOWLEDGEMENT OF RECEIPT OF FUNDS AND OTHER MOVABLE ASSETS
TRANSFERRED TO A PUBLIC SCHOOL IN TERMS OF SECTION 52(3) OF THE SOUTH AFRICAN SCHOOLS
ACT, 1996 (ACT 84 OF 1996)**

I, (name of the chairperson of the governing body)
on behalf of the public school..... (name of the public school),
duly acknowledge receipt from the State of the funds in the enclosed financial statement, that were paid into the bank
account of the school, and the assets listed in the enclosed inventory.

THUS DONE and SIGNED at on this
day

of 1999 (date of receipt)

.....
Chairperson of governing body

WITNESSES:

1.
2.

REGULATIONS FOR SAFETY MEASURES AT PUBLIC SCHOOLS

G.N. 1040 of 2001 published in *Government Gazette* No. 22754 dated 12 October 2001.

The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 61 of the South African Schools Act, 1996 of the regulations relating to safety measures at public schools as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education

SCHEDULE

REGULATIONS FOR SAFETY MEASURES AT SCHOOLS

Definitions

1. 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 –

“**dangerous object**” means –

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

unless such objects are used for education purposes;

“**HOD**” means the Head of Education Department in a province;

“**illegal drug**” means any unlawful intoxicating or stupefying substance;

“**public school premises**” includes a building, structure, hall, room, office, convenience, land, enclosure, which is under the control of a public school, to which a member of the public has a right of access, or is usually admitted, or to which he or she may be admitted.

Scope of applicability

2. These regulations apply to all public schools.

Application of other laws

3. Notwithstanding the provisions of these Regulations, a public school is not exempted from complying with the provisions of any other applicable law and these Regulations are intended to support such applicable laws.

Violence and drug free public schools

4. (1) All public schools are hereby declared drug free and dangerous object free zones.
- (2) No person may –
- (a) allow any dangerous object in the public school premises;
 - (b) carry any dangerous object in the public school premises;
 - (c) store any dangerous object in the public school premises except in officially designated places identified by the principal;
 - (d) possess illegal drugs on public school premises;
 - (e) enter public school premises while under the influence of an illegal drug or alcohol;

- (f) cause any form of violence or disturbances which can negatively impact on any public school activities;
 - (g) wittingly condone, connive, hide, abet, encourage possession of dangerous objects or refuse, fail, neglect to report the sighting or presence of any dangerous objects to the departmental authorities or the police as soon as possible;
 - (h) directly or indirectly cause harm to anyone, who exposes another person who makes an attempt to frustrate the prevention of the dangerous objects and activities.
- (3) A police official or in his absence, the principal or delegate may, without warrant –
- (a) search any public school premises if he or she has a reasonable suspicion that a dangerous object or illegal drugs may be present in the public school premises in contravention of the regulations;
 - (b) search any person present on the public school premises; and
 - (c) seize any dangerous object or illegal drugs present on public school premises or on the person in contravention of these regulations.

Access to public schools premises

5. (1) Subject to the Constitution, laws and national and provincial policies, the HOD or principal of any public school may and for such timeframes as may be necessary –
- (a) take such steps as he or she may consider necessary for the safeguarding of the public school premises, as well as for the protection of the people therein; and
 - (b) direct that the school may only be entered in accordance with the provisions of subregulation (2).
- (2) No person shall without the permission of the principal or HOD enter into any public school premises in respect of which a direction has been issued under subregulation (1)(a), and for the purpose of the granting of that permission the principal or HOD may require of the person concerned to –
- (a) furnish his or her name, address and any other relevant information required by the principal or HOD;
 - (b) produce proof of his or her identity to the satisfaction of the principal or HOD if necessary;
 - (c) declare whether he or she has any dangerous object or illegal drugs in his or her possession or custody or under his or her control;
 - (d) declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he or she has in his or her possession or custody or under his or her control, and show those contents to him or her;
 - (e) subject himself or herself and anything which he or she has in his or her possession or custody or under his or her control to a search by a person of the same gender, an examination by an electronic device, sniffer dogs or other apparatus in order to determine the presence of any dangerous object or illegal drug; and
 - (f) hand to the principal or HOD anything which he or she has in his or her possession or custody or under his or her control for examination or custody until he or she leaves the premises.
- (3) Without derogation of the provisions of the Trespass Act, 1959 (Act No. 6 of 1959), the principal or HOD may at any time remove any person from any public school premises if –
- (i) that person enters the public school premises concerned without the permission contemplated in subregulation (2);
 - (ii) that person refuses or fails to observe any steps contemplated in subregulation (1)(a); and
 - (iii) the principal or HOD considers it necessary for the safeguarding of the public school premises concerned or for the protection of the people thereon.
- (4) If it is not practicable to examine or keep in custody, on or in the public school premises concerned, anything which may be examined or kept in custody under subregulation (2), it may be removed to a suitable place for that purpose.

Exemption of certain persons

6. The provisions of regulation 5 do not apply in respect of any member of a police service established by or under any law, a member of the South African Defence Force, the Minister of Education, the Member of the Executive Council responsible for education in a province or an official of the Department or provincial departments of Education who is required in the performance of his or her functions to enter or enters upon any public school premises and who produces proof of his or her identity to the satisfaction of the principal or HOD concerned.

Visits to public schools by public and political office bearers

7. (1) Members of the public and political office bearers, public representatives and the media have a right to visit public schools in the interests of public accountability, but this right must be regulated to ensure that schools are not disrupted by such visits, and to avoid the politicisation of such visits. This right is subjected to reasonable controls to ensure the proper functioning of education.

- (2) If such visits are desired, the person intending to visit must request and obtain written permission from the principal or HOD prior to the visit. The request must be made at least thirty days before the intended visit, unless there are sound reasons for a shorter notification period. This request must clearly indicate the date, time and purpose of the visit, the names of all participants, and the aspects which are intended to be looked at. The principal of the public school shall not refuse reasonable access to a person who has such written permission.
- (3) In cases where the written permission is granted by the HOD, the HOD, before granting such permission must consult the principal of the public school to be visited, to determine whether it is feasible for them to receive such a visit, and whether or not the school programme is likely to be seriously affected thereby.
- (4) Wherever possible a Departmental office-based representative should accompany such visitors.

Visits to public schools by parents

8. (1) Parents have the right to visit the public school where their children have been admitted but such visits may not disrupt any of the school activities.
- (2) Parents are required to make an appointment with the principal of the school for a personal appointment with him or her prior to the visit and must state the reason for the visit and the persons who may be involved during the visit.

General

9. (1) All public schools must display clear signs at the entrance that any person who enters the school may be subjected to a search.
- (2) Any person who contravenes these regulations may be removed from the public school premises.
- (3) Public schools must cooperate with police stations to ensure that visible policing is present during all sporting and cultural events at the school.
- (4) Public schools must encourage governing body members and parents to participate in community policing forums.
- (5) Public schools must develop action plans to counter threats of violence which have the potential to have a negative impact on school activities and to implement regulation 4(1).
- (6) The plans in subregulation (5) must ensure the safety of all learners, staff members and parents during school activities.
- (7) Public schools must engage in advocacy campaigns to communicate to the public the status of the schools concerning the regulations and the right to protection against violence.
- (8) The HOD must provide guidelines to assist the public schools in developing the action plans contemplated in subregulations (5) to (7).
- (9) The HOD must be provided with action plans contemplated in subregulations (5) to (7) within 6 months after the commencement of the Regulations.

Delegation of powers

10. The HOD may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under these regulations and the performance of any of his or her duties in terms of these regulations to any employee in the Provincial Department of Education.

Short title and commencement

11. These regulations may be cited as the *Regulations for Safety Measures at Public Schools* and come into operation on the date of publication thereof.

REGULATIONS TO PROHIBIT INITIATION PRACTICES IN SCHOOLS

G.N. 1589 of 2002 published in *Government Gazette* No. 24165 dated 13 December 2002

The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 61(f) as read with the Preamble to the South African Schools Act, 1996 and in compliance with section 4(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) of the regulations relating to the prohibition of initiation practices as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education

SCHEDULE

Scope of application

1. These regulations apply to all public and Independent schools.

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 injuria**” 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 school 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. The common link is that the behaviour would be unwanted by any reasonable person and could not be justified through a personal or family relationship;

“**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 school, a group, intramural or extramural activities, interschools sports team, or organization –

- (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.

Any activity irrespective of its designation other than referred to in regulation 3.5.4 which has a similar effect and object as initiation is deemed to be an initiation practice;

“**in loco parentis**” means acting in the place of a parent who has entrusted the custody and control of his or her child to an educator or another person during normal intramural or extramural school activities.

“**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 learner feels pressured by any learner 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 learner would not come forward after being initiated for fear of victimization.

“**protect**” means the act of guarding a person or an object against current or future loss, damage or harm.

Principles and values

3. The Preamble to the Act requires that rights of learners, parents and educators are upheld and to promote the acceptance of responsibility for the organization and governance of schools in partnership with the State. Such rights include but are not limited to the following:

3.1 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

3.2 Privacy, respect and dignity

3.2.1 Every learner has the right to privacy, which includes the right not to have his or her person or property searched or his or her possessions seized. Notwithstanding this the principal or an educator may search learners based on his or her reasonable suspicion that the learner is in possession of an illegal object, using search methods that are reasonable in scope.

3.2.2 Every learner has a right to dignity and has the right to have his or her human dignity respected. Recognizing a right of dignity is an acknowledgement of the intrinsic worth of human beings. That implies mutual respect including respect for one another’s convictions and cultural traditions.

3.3 Non-violence and the freedom and security of a person

3.3.1 Every learner has the right to freedom and security of his or her person, which includes the right to be free from all forms of violence or assault, and not to be treated or punished in a cruel, inhuman or degrading way.

3.3.2 Learners have the right not to be locked up in solitary confinement or detention or to be locked out of safe environments.

3.4 Protection from maltreatment, neglect, abuse or degradation

Every child has the right to be protected from maltreatment, neglect, abuse or degradation. All appropriate social and educational measures must be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who acts *in loco parentis*.

3.5 School environment and discipline

3.5.1 A safe environment that is conducive to education including security of property, security of person, well-cared for school facilities, school furniture and equipment, toilet facilities, absence of harassment in attending classes, writing tests and examinations, partaking in extramural activities or sport, all create an atmosphere that is conducive to education and training. All parties have a responsibility to maintain such an environment.

3.5.2 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. The Act empowers school authorities to discipline learners, but it is unlawful to delegate this authority to learners.

3.5.3 Learners have the responsibility to learn and develop their own full potential and to allow fellow learners, without any hindrance, to reach their full potential.

3.5.4 Schools 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 learners 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

- 4.1 No principal, educator or learner may allow or participate in any act or practice which involves initiation practices or may cause or contribute to the humiliation, degradation, harassment, assault, *crimen injuria*, intimidation or maltreatment of learners.
- 4.2 There should be a relationship of mutual trust and respect between learners, and between learners and educators. Victimisation of the one by the other is unacceptable, and peer pressure cannot be regarded as a justification for engaging in acts of victimisation.

- 4.3 The Learner Representative Council should represent the interests and views of all the learners and promote proper conduct of learners. However, no learner has the right or authority to punish other learners.
- 4.4 Learners should be protected from abuse by adults or other learners and learners' behaviour must be free of any violence and in line with the democratic values of human dignity, equality and freedom.

Responsibilities of principals and governing bodies

- 5.1 A principal must ensure that no initiation practices take place in his or her school, including hostels, or during any school activities away from the school premises. The principal must put systems in place to encourage learners to bring such practices to his attention and to ensure that such learners be free from victimisation. The Head of Department must ensure that this system is in place in every school in his or her province within a year after the commencement of these regulations.
- 5.2 The principal, as head of the institution in terms of section 16(3) of the Act, has a primary responsibility to ensure that learners are not subjected to *crimen injuria*, assault, harassment, maltreatment, degradation, humiliation or intimidation from educators or learners and must protect learners from such practices. A principal must also take reasonable steps to ensure that such practices are not caused by peer pressure.
- 5.3 A disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault. Educators have a duty to care for and protect learners from violence because of their *in loco parentis* status.
- 5.4 If any initiation practices or acts take place through the actions of learners, the school governing body as the authority responsible for the discipline of learners, must take appropriate action in terms of section 8 of the Act or a Code of Conduct to prevent such practices and to protect learners from such practices.
- 5.5 If any initiation practices or acts take place in a school and members of staff are involved or allow such actions to take place or fail to take the necessary precautions to prevent such practices from taking place, the employer must take disciplinary actions in terms of applicable law against such perpetrators.

Responsibilities of educators

- 6.1 Educators must protect, promote and respect the rights of learners as contemplated in clause 3.
- 6.2 Every educator is responsible to assist the school governing body with discipline at the school and school related activities.
- 6.3 Every educator has a duty to control the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators must take reasonable measures where necessary to prevent a learner from harming himself or herself or others.
- 6.4 In cases where a learner cannot adjust to the school and where his or her behaviour is objectionable in that it violates the rights of others, an educator has the obligation to refer such a learner to the principal and to inform the learner's parents and the school governing body.
- 6.5 An educator at the school has the same rights and obligations as a parent to protect, control and discipline a learner according to the Code of Conduct during the time the learner is in attendance at the school, or at any school function, school excursion or school related activity.

Short title and commencement

7. These regulations may be cited as the Regulations to Prohibit Initiation Practices in Schools and come into operation on the date of publication thereof.

**SECTION 3:
EMPLOYMENT OF EDUCATORS ACT
76 OF 1998**

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EMPLOYMENT OF EDUCATORS ACT 76 of 1998

[ASSENTED TO 30 SEPTEMBER, 1998]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 2 OCTOBER, 1998]

as amended by

Education Laws Amendment Act, No. 48 of 1999
South African Council for Educators Act, No. 31 of 2000
Education Laws Amendment Act, No. 53 of 2000
Education Laws Amendment Act, No. 57 of 2001
Education Laws Amendment Act, No. 50 of 2002

ACT

To provide for the employment of educators by the State, for the regulation of the conditions of service, discipline, retirement and discharge of educators and for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

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2. Application of Act
3. Employers of educators and other persons

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CONDITIONS OF SERVICE AND EDUCATOR ESTABLISHMENTS

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Chapter 3

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**Chapter 1
INTERPRETATION AND APPLICATION OF ACT**

Definitions

1. In this Act, unless the context indicates otherwise –

“**adult basic education centre**” means any centre which is under the control of any provincial department of education and in which basic education programmes are presented to persons of or over the age of 16 years;

“**departmental office**” means any office or institution controlled or administered by the Department of Education or any provincial department of education, but does not include any public school, further education and training institution or adult basic education centre;

“**Department of Education**” means the department established in terms of section 7(2) read with Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), responsible for education at national level;

“**Director-General**” means the Director-General: Education;

“**educator**” means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, further education and training institution, departmental office or adult basic education centre and who is appointed in a post on any educator establishment under this Act;

“**employer**”, in relation to any provision of Chapter 4, 5 or 7 which applies to, or is connected with –

- (a) an educator in the service of the Department of Education, means the Director-General;
- (b) an educator in the service of a provincial department of education, means the Head of Department;

“**further education and training institution**” means a further education and training institution as defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), but does not include any private further education and training institution;

[Definition of “further education and training institution” substituted by s. 6(a) of Act No. 53 of 2000.]

“**Head of Department**”, in relation to a provincial department of education, means the head of the provincial department of education;

“**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“**Member of the Executive Council**” means the member of the Executive Council of a province responsible for the education portfolio of that province;

“**Minister**” means the Minister of Education;

“**prescribed**” means prescribed by regulation;

“**provincial department of education**” means a department responsible for education in a province and includes all public schools, further education and training institutions, departmental offices and basic adult education centres in such province;

“**public school**” means a public school as defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

“**regulation**” means a regulation made under section 35;

“**this Act**” includes a regulation and the Schedules to this Act;

[Definition of “this Act” substituted by s. 6(b) of Act No. 53 of 2000.]

“**trade union**” means any trade union which is a member of the Education Labour Relations **Council**.

Application of Act

2. The provisions of this Act shall apply in respect of the employment of educators at –
- (a) public schools;
 - (b) further education and training institutions;
 - (c) departmental offices; and
 - (d) adult basic education centres.

Employers of educators and other persons

3. (1) Save as is otherwise provided in this section –
- (a) the Director-General shall be the employer of educators in the service of the Department of Education in posts on the educator establishment of the said Department for all purposes of employment; and
 - (b) the Head of Department shall be the employer of educators in the service of the provincial department of education in posts on the educator establishment of that department for all purposes of employment.
- (2) For the purposes of determining the salaries and other conditions of service of educators, the Minister shall be the employer of all educators.
- (3) For the purposes of creating posts –
- (a) on the educator establishment of the Department of Education, the Minister shall be the employer of educators in the service of the said Department; and
 - (b) on the educator establishment of a provincial department of education, the Member of the Executive Council shall be the employer of educators in the service of that department.
- (4) A public school shall be the employer of persons in the service of the said school as contemplated in section 20(4) or (5) of the South African Schools Act, 1996 (Act No. 84 of 1996).
- (5) A further education and training institution shall be the employer of persons in the service of the said institution as contemplated in section 14(2) or (3) of the Further Education and Training Act, 1998.

Chapter 2 CONDITIONS OF SERVICE AND EDUCATOR ESTABLISHMENTS

Salaries and other conditions of service of educators

4. (1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of this section, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the Minister shall determine the salaries and other conditions of service of educators.
- (2) Different salaries and conditions of service may be so determined in respect of different ranks and grades of educators, educators appointed at or outside educational institutions or educators appointed in different sectors of education.
- (3) A determination of the Minister under this section involving expenditure from the National Revenue Fund may only be made with the concurrence of the Minister of Finance.

Educator establishments

5. (1) Notwithstanding anything to the contrary contained in any law but subject to the norms prescribed for the provisioning of posts –
- (a) the educator establishment of the Department of Education shall consist of the posts created by the Minister; and
 - (b) the educator establishment of a provincial department of education shall consist of the posts created by the Member of the Executive Council.
- (2) The educator establishment of any public school, further education and training institution, departmental office or adult basic education centre under the control of a provincial department of education shall, subject to the norms prescribed for the provisioning of posts, consist of the posts allocated to the said school, institution, office or centre by the Head of Department from the educator establishment of that department.
- (3) For the purposes of this Act –
- (a) the power to create a post under this section shall include the power to grade, to regrade, to designate, to re-designate, to convert or to abolish the post; and
 - (b) the power to allocate a post under this section shall include the power to re-allocate the post.

Chapter 3
APPOINTMENTS, PROMOTIONS AND TRANSFERS

Powers of employers

6. (1) Subject to the provisions of this section, the appointment of any person, or the promotion or transfer of any educator –
- (a) in the service of the Department of Education shall be made by the Director-General; or
 - (b) in the service of a provincial department of education shall be made by the Head of Department.
- (2) Subject to the provisions of this Chapter, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, appointments in, and promotions or transfers to, posts on any educator establishment under this Act shall be made in accordance with such procedure and such requirements as the Minister may determine.
- (3) (a) Subject to paragraph (d), any appointment, promotion or transfer to any post on the educator establishment of a public school or a further education and training institution, may only be made on the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school or further education and training institution due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are so in excess and suitable for the post concerned.
- [Para. (a) amended by s. 15(a) of Act No. 48 of 1999.]
- (b) The Head of Department may only decline the recommendation of the governing body of the public school or the council of the further education and training institution, if –
- (i) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer has not been followed;
 - (ii) the candidate does not comply with any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer;
 - (iii) the candidate is not registered, or does not qualify for registration, as an educator with the South African Council for Educators;
 - (iv) sufficient proof exists that the recommendation of the said governing body or council, as the case may be, was based on undue influence; or
 - (v) the recommendation of the said governing body or council, as the case may be, did not have regard to the democratic values and principles referred to in section 7(1).
- (c) If the Head of Department declines a recommendation in terms of paragraph (b), the governing body or council concerned shall make another recommendation in accordance with paragraph (a), for consideration by the Head of Department.
- (d) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make an appointment without such recommendation.

[Para. (d) added by s. 15(b) of Act No. 48 of 1999.]

- (e) Until the relevant governing body or council is established, the appointment, promotion or transfer in a temporary capacity to any post on the educator establishment must be made by the Head of Department where a –
 - (i) new public school is established in terms of the South African Schools Act, 1996, and any applicable provincial law;
 - (ii) new further education and training institution is established in terms of the Further Education and Training Act, 1998, and any applicable provincial law; or
 - (iii) new public adult learning centre is established in terms of the Adult Basic Education and Training Act, 2000, and any applicable provincial law.

[Para. (e) added by s. 7 of Act No. 53 of 2000.]

First appointment or appointment after break in service of educator

- 6A.** (1) Despite section 6(3)(a), in the case of a first appointment or an appointment after one or more years' break in service to any provincial department of education, the employer may –
- (a) receive applications from first-time applicants or applicants returning after a break in service;
 - (b) process the applications and match applications to vacant posts; and
 - (c) make appointments to a school subject to subsection (2).
- (2) The appointment contemplated in subsection (1) may only be made after the employer has –
- (a) consulted the relevant governing body on the specific post and the requirements thereof;
 - (b) ensured that the applicant to be appointed matches the requirements of the post; and
 - (c) ensured that the applicant has prescribed qualifications.

[S 6A inserted by s. 10 of Act No. 50 of 2002.]

Appointments and filling of posts

7. (1) In the making of any appointment or the filling of any post on any educator establishment under this Act due regard shall be had to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and which include the following factors, namely –
- (a) the ability of the candidate; and
 - (b) the need to redress the imbalances of the past in order to achieve broad representation.
- (2) A person may be appointed under this Chapter –
- (a) in a permanent capacity, whether on probation or not;
 - (b) in a temporary capacity for a fixed period, whether in a full-time, in a part-time or in a shared capacity; or
 - (c) on special contract for a fixed period or for a particular assignment, whether in a full-time or in a part-time capacity.

Transfer of educators

8. (1) Subject to the provisions of this Chapter –
- (a) the Director-General or the Head of Department may transfer any educator in the service of the relevant department to any post or position in any other department of State with the prior approval of the person in that other department of State having the power to appoint or to transfer and with the consent of that educator; and
 - (b) the Director-General may transfer any educator in the service of the Department of Education to any other post in the Department; and
 - (c) the Head of Department may transfer any educator in the service of the provincial department of education to any other post in that department.
- (2) Subject to subsections (4) and (5), no transfer to any post on the educator establishment of a public school or a further education and training institution shall be made unless the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, has been obtained.

[Sub-s. (2) amended by s. 16(a) of Act No. 48 of 1999.]

- (3) The salary and other conditions of service of an educator may not be adversely affected by a transfer under this section without the consent in writing of that educator, except in accordance with the provisions of Chapter 5.
- (4) A recommendation contemplated in subsection (2) shall be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.

[Sub-s. (4) added by s. 16(b) of Act No. 48 of 1999.]

- (5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school or public further education and training institution, to a post at another public school or public further education and training institution.
[Sub-s. (5) added by s. 16(b) of Act No. 48 of 1999.]
- (6) An educator referred to in subsection (5) shall return to his or her previous post at the end of the period contemplated in that subsection.
[Sub-s. (6) added by s. 16(b) of Act No. 48 of 1999.]
- (7) Despite section 6(3)(a), in the case of an educator who has been awarded a bursary by the employer to follow a course approved by the employer, the employer may transfer such an educator, with his or her consent, to any suitable post on the educator establishment of a public school, a further education and training institution or an adult basic education and training centre.
[Sub-s. (7) added by s. 11 of Act No. 50 of 2002.]

Secondment of educators

9. (1) Any educator in the service of the Department of Education or any provincial department of education may with the consent in writing of that educator be placed at the disposal of –
- (a) another department of education;
 - (b) another government;
 - (c) any council, institution or body established by or under any law; or
 - (d) any other body or person,
- for a particular service or for a stated period on such conditions, in addition to the conditions prescribed by or under any law, as may be determined by the Director-General or the Head of Department, as the case may be.
- (2) While so placed at such disposal, the educator shall remain subject to the provisions of this Act.

Chapter 4 TERMINATION OF SERVICES

Retirement

10. (1) (a) Subject to the provisions of this section, an educator shall have the right to retire, and shall be so retired, on the day on which the educator attains the age of 65 years.
- (b) An educator who attains the said age after the first day of a month shall be deemed to have attained that age on the first day of the following month.
- (2) Notwithstanding the provisions of subsection (1), an educator who was in employment immediately before 2 September 1994 in terms of a law repealed by the Educators' Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994), shall have the right to retire on or after attaining the retirement age applicable to the educator immediately before the said date.
- (3) (a) Notwithstanding the provisions of subsection (1) or (2), an educator shall have the right to retire on or after attaining the age of 55 years.
- (b) Notwithstanding the absence of any reason for discharge in terms of section 11(1), the employer may, at the request of an educator, allow the educator to retire before attaining the age of 55 years, if the employer is of the opinion –
- (i) that a sufficient reason exists therefor; and
 - (ii) that the retirement will be to the advantage of the State.
- (4) Notwithstanding the provisions of this section, an educator –
- (a) who was in employment immediately before 1 May 1996; and
 - (b) who, without interruption of service, has completed a period of ten years continuous pensionable service in terms of the pension law applicable to the educator; and
 - (c) who has attained the age of 50 years,
- shall have the right to retire.

Discharge of educators

11. (1) The employer may, having due regard to the applicable provisions of the Labour Relations Act, discharge an educator from service –
- (a) on account of continuous ill-health;
 - (b) on account of the abolition of the educator's post or any reduction in, or reorganisation or re-adjustment of the post establishments of, departments, schools, institutions, offices or centres;

- (c) if, for reasons other than the educator's own unfitness or incapacity, the educator's discharge will promote efficiency or economy in the department, school, institution, office or centre in which the educator is employed, or will otherwise be in the interest of the State;
 - (d) on account of unfitness for the duties attached to the educator's post or incapacity to carry out those duties efficiently;
 - (e) on account of misconduct;
 - (f) if the educator was appointed in the post in question on the grounds of a misrepresentation made by the educator relating to any condition of appointment; and
 - (g) if, in the case of an educator appointed on probation, the educator's appointment is not confirmed.
- (2) If an educator is discharged from service under paragraph (f) of subsection (1), that educator shall be deemed to have been discharged on account of misconduct.

Discharge on account of ill-health

12. An educator may be discharged on account of ill-health in the circumstances referred to in Schedule 1.

[S. 12 substituted by s. 8 of Act No. 53 of 2000.]

Discharge of educators appointed on probation

13. (1) If it is not desirable to confirm the appointment, transfer or promotion of an educator on probation, the employer may, notwithstanding anything to the contrary contained in this Act but subject to this section –
- (a) extend the period of probation of the educator; or
 - (b) after reasonable notice to the educator, discharge the educator from service upon the expiry of the period of probation or any extension thereof.
- (2) No appointment, transfer or promotion on probation may be extended, and no educator who is serving on probation may be discharged from service, if –
- (a) the educator has been diligent;
 - (b) the educator's conduct has been uniformly satisfactory;
 - (c) the educator is in all respects suitable for the post which the educator holds; and
 - (d) the educator has complied with all the conditions applicable to the educator's appointment, transfer or promotion.
- (3) An educator whose transfer or promotion on probation is not confirmed and who immediately before such transfer or promotion was an educator, other than an educator on probation, shall be transferred to the post formerly held by that educator, or to a post of equivalent grading.

Certain educators deemed to be discharged

14. (1) An educator appointed in a permanent capacity who –
- (a) is absent from work for a period exceeding 14 consecutive days without permission of the employer;
 - (b) while the educator is absent from work without permission of the employer, assumes employment in another position;
 - (c) while suspended from duty, resigns or without permission of the employer assumes employment in another position; or
 - (d) while disciplinary steps taken against the educator have not yet been disposed of, resigns or without permission of the employer assumes employment in another position,
- shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct, in the circumstances where –
- (i) paragraph (a) or (b) is applicable, with effect from the day following immediately after the last day on which the educator was present at work; or
 - (ii) paragraph (c) or (d) is applicable, with effect from the day on which the educator resigns or assumes employment in another position, as the case may be.
- (2) If an educator who is deemed to have been discharged under paragraph (a) or (b) of subsection (1) at any time reports for duty, the employer may, on good cause shown and notwithstanding anything to the contrary contained in this Act, approve the re-instatement of the educator in the educator's former post or in any other post on such conditions relating to the period of the educator's absence from duty or otherwise as the employer may determine.

Resignations

15. (1) An educator may resign by giving 90 days' notice in writing or such shorter notice as the employer may approve at the request of the educator.
- (2) If the name of an educator is struck off the register of educators kept by the South African Council for Educators, the educator shall, notwithstanding anything to the contrary contained in this Act, be deemed to

have resigned with effect from the day following immediately after the day on which the educator's name was so struck off.

Chapter 5 INCAPACITY AND MISCONDUCT

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 as provided in Schedule 1.

[S. 16 substituted by s. 9 of Act No. 53 of 2000.]

Serious misconduct

17. (1) An educator must be dismissed if he or she is found guilty of –
- (a) theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports;
 - (b) committing an act of sexual assault on a learner, student or other employee;
 - (c) having a sexual relationship with a learner of the school where he or she is employed;
 - (d) seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee;
 - (e) illegal possession of an intoxicating, illegal or stupefying substance; or
 - (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).
- (2) If it is alleged that an educator committed a serious misconduct contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures provided for in Schedule 2.

[S. 17 substituted by s. 10 of Act No. 53 of 2000.]

Misconduct

18. (1) Misconduct refers to a breakdown in the employment relationship and an educator commits misconduct if he or she –
- (a) fails to comply with or contravenes this Act or any other statute, regulation or legal obligation relating to education and the employment relationship;
 - (b) wilfully or negligently mismanages the finances of the State, a school, a further education and training institution or an adult learning centre;
 - (c) without permission possesses or wrongfully uses the property of the State, a school, a further education and training institution, an adult learning centre, another employee or a visitor;
 - (d) wilfully, intentionally or negligently damages or causes loss to the property of the State, a school, a further education and training institution or an adult learning centre;
 - (e) in the course of duty endangers the lives of himself or herself or others by disregarding set safety rules or regulations;
 - (f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Education, an office of the State or a school, further education and training institution or adult learning centre;
 - (g) misuses his or her position in the Department of Education or a 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 his or her 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 himself or herself from work without a valid reason or permission;
 - (k) unfairly discriminates against other persons on the basis of race, gender, disability, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
 - (l) performs poorly or inadequately for reasons other than incapacity;
 - (m) without the written approval of 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 substance, including alcohol;
 - (q) while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner;
 - (r) assaults, or attempts to or threatens to assault, another employee or another person;
 - (s) incites other personnel to unprocedural and unlawful conduct;
 - (t) displays disrespect towards others in the work-place or demonstrates abusive or insolent behaviour;
 - (u) intimidates or victimises fellow employees, learners or students;
 - (v) prevents other employees from exercising their rights to freely associate with trade unions in terms of any labour legislation;
 - (w) operates any money-lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution or office where he or she is employed;
 - (x) carries or keeps firearms or other dangerous weapons on State premises, without the written authorisation of the employer;
 - (y) refuses to obey security regulations;
 - (z) gives false statements or evidence in the execution of his or her duties;
 - (aa) falsifies records or any other documentation;
 - (bb) participates in unprocedural, unprotected or unlawful industrial action;
 - (cc) fails or refuses to –
 - (i) follow a formal programme of counselling as contemplated in item 2(4) of Schedule 1;
 - (ii) subject himself or herself to a medical examination as contemplated in item 3(3) of Schedule 1 and in accordance with section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998); or
 - (iii) attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3(8) of Schedule 1;
 - (dd) commits a common law or statutory offence;
 - (ee) commits an act of dishonesty; or
 - (ff) victimises an employee for, amongst others, his or her association with a trade union.
- (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 contained in Schedule 2.
- (3) If, after having followed the procedures contemplated in subsection (2), a finding is made that the educator committed misconduct as contemplated in subsection (1), the employer may, in accordance with the disciplinary code and procedures contained in Schedule 2, impose a sanction of –
- (a) counselling;
 - (b) a verbal warning;
 - (c) a written warning;
 - (d) a final written warning;
 - (e) a fine not exceeding one month's salary;
 - (f) suspension without pay for a period not exceeding three months;
 - (g) demotion;
 - (h) a combination of the sanctions referred to in paragraphs (a) to (f); or
 - (i) dismissal, if the nature or extent of the misconduct warrants 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.
- (5) An educator may be dismissed if he or she is found guilty of –
- (a) dishonesty, as contemplated in subsection (1)(ee);
 - (b) victimising an employee for, amongst others, his or her association with a trade union, as contemplated in subsection (1)(ff);
 - (c) unfair discrimination, as contemplated in subsection (1)(k);
 - (d) rape, as contemplated in subsection (1)(dd);
 - (e) murder, as contemplated in subsection (1)(dd);
 - (f) contravening section 10 of the South African Schools Act, 1996 (Act No. 84 of 1996), as contemplated in subsection (1)(dd).

[S. 18 substituted by s. 11 of Act No. 53 of 2000.]

19 to 24 inclusive.

[Ss. 19 to 24 inclusive substituted with s. 18 by s. 11 of Act No. 53 of 2000.]

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 has a 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)(e) to (i).
- (3) In lodging an appeal, the educator must comply with the procedure laid down in Schedule 2.

[S. 25 substituted by s. 12 of Act No. 53 of 2000.]

Furnishing South African Council for Educators with records

26. In each case where steps were taken against any educator under section 24(2), other than the cautioning or reprimanding of the educator, the employer shall furnish the South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto.

**Chapter 6
SOUTH AFRICAN COUNCIL FOR EDUCATORS**

[Chapter 6 repealed by s. 28 of Act No. 31 of 2000.]

27 to 32 inclusive.

[Ss. 27 to 32 inclusive repealed by s. 28 of Act No. 31 of 2000.]

**Chapter 7
GENERAL**

Performance of other work by educators

33. (1) Unless an educator's conditions of service provide otherwise –
- (a) an educator shall place such time as the Minister may determine at the disposal of the employer;
 - (b) no educator shall without permission of the employer perform or undertake to perform remunerative work outside the educator's official duty or work;
 - (c) no educator may claim additional remuneration in respect of any official duty or work which the educator –
 - (i) performs voluntarily; or
 - (ii) has been ordered to perform by a competent authority.
- (2) The employer may order an educator to perform duties on a temporary basis other than those duties ordinarily assigned to the educator which are appropriate to the grade, designation or classification of the educator's post.

Offences and penalties

34. Any person who –
- (a) has been duly summoned under section 21(3)(a) and who fails without sufficient cause –
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the disciplinary tribunal from further attendance;
 - (b) has been called upon in terms of section 21(3)(b) and who refuses to be sworn or to affirm as a witness; or
 - (c) fails without sufficient cause –
 - (i) to answer fully and satisfactorily any question lawfully put to that person under section 21(3)(c); or
 - (ii) to produce any book, document or object in that person's possession or custody or under that person's control which that person was required to produce in terms of the said section 21(3)(c),
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Regulations

35. The Minister may make regulations which are not inconsistent with any law relating to –
- (a) (i) the recovery of any reward, allowance or remuneration received in an irregular manner by any educator;
 - (ii) the recovery of any portion of an allowance or salary paid erroneously to any educator, or the discontinuance or withdrawal of any other benefit awarded erroneously; and
 - (iii) the payment or award of any portion of an allowance or salary or of any other benefit erroneously withheld from any educator;
 - (b) (i) the advertising of posts;
 - (ii) the establishment, composition, powers, duties and functions of selection boards to recommend persons for appointment in, or officers for promotion or transfer to, posts;
 - (iii) the qualifications for appointment as, the term of office and the vacation of office of, members or temporary members of such a selection board, and the filling of casual vacancies in such a selection board;
 - (iv) the appointment of a chairperson or an acting chairperson of such a selection board; and
 - (v) the convening of, the procedure at, and the quorum for, meetings of such a selection board, and the manner in which resolutions shall be passed by such a selection board;
 - (c) the conditions of service of educators;
 - (d) any matter required or permitted to be prescribed by regulation under this Act; and
 - (e) in general, any matter which the Minister may consider necessary or expedient to prescribe or regulate in order to achieve the objects of this Act.

Assignment of functions

36. (1) The Minister may –
- (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 25 or 35, on such conditions as the Minister may determine; or
[Para. (a) substituted by s. 13(a) of Act No. 53 of 2000.]
 - (b) authorise the said Director-General or person to perform any duty assigned to the Minister by or under this Act.
- (2) The Director-General may –
- (a) delegate to any person in the service of the Department of Education any power conferred upon the Director-General by or under this Act, on such conditions as the Director-General may determine; or
 - (b) authorise the said person to perform any duty assigned to the Director-General by or under this Act.
- (3) The Member of the Executive Council may –
- (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 25, on such conditions as the Member of the Executive Council may determine; or
[Para. (a) substituted by s. 13(b) of Act No. 53 of 2000.]
 - (b) authorise the said Head of Department or person to perform any duty assigned to the Member of the Executive Council by or under this Act.
- (4) The Head of Department may –
- (a) delegate to any person in the service of the provincial department of education any power conferred upon the Head of Department by or under this Act, on such conditions as the Head of Department may determine; or
 - (b) authorise the said person to perform any duty assigned to the Head of Department by or under this Act.

Repeal of Act promulgated under Proclamation 138 of 1994, and savings

37. (1) Subject to the provisions of subsection (2), the Educators' Employment Act, 1994, is hereby repealed.
- (2) Anything done under the said Act and which could be done under a provision of this Act, shall be deemed to have been done under that provision.
 - (3) Notwithstanding the repeal of the said Act, any inquiry into inefficiency and any proceedings in respect of a charge of misconduct instituted or commenced under the said Act shall be continued and concluded as if the said Act had not been repealed.
 - (4) Notwithstanding the repeal of the said Act, the regulations which were made under the said Act and were in force immediately before the commencement of this Act, and which are not inconsistent with this Act, shall

continue in force until they are repealed, withdrawn or amended by regulations made under section 35 of this Act.

Transitional arrangements in respect of certain colleges

38. (1) In this section –

“**college**” means a college of education, technical college, youth college, community college, state-aided college, state college or other college which is wholly or partly funded by the State in respect of the salaries and other conditions of service of persons –

- (a) holding posts on the establishment of that college which had been created under section 3(1) of the repealed Act; or
 - (b) employed additional to the said establishment under the repealed Act;
- and

“**the repealed Act**” means the Educators’ Employment Act, 1994 (promulgated under Proclamation No. 138 of 1994).

(2) In order to deal effectively with any matter relating to the employment of educators at any college until such time as that college is declared to be a higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or a further education and training institution under the Further Education and Training Act, 1998, as the case may be –

- (a) any post on the establishment of that college which had been created immediately before the commencement of this Act by the Member of the Executive Council under section 3(1) of the repealed Act shall, notwithstanding the provisions of section 37(1), continue to exist and shall, for the purposes of this Act, be deemed to be a post created by the Member of the Executive Council under section 5(1)(b) and allocated to that college by the Head of Department under section 5(2);
- (b) the establishment of that college consisting immediately before the commencement of this Act of posts which had been so created shall, notwithstanding the provisions of the said section 37(1), continue to exist and shall, for the purposes of this Act, be deemed to be an educator establishment of that college as contemplated in section 5(2);
- (c) any person who, immediately before the commencement of this Act –
 - (i) was holding any post which had been so created shall, notwithstanding the provisions of the said section 37(1), continue to hold that post and shall, for the purposes of this Act, be deemed to have been appointed in, or promoted or transferred to, the post concerned under Chapter 3, as the case may be;
 - (ii) was employed additional to that establishment under the repealed Act shall, notwithstanding the provisions of the said section 37(1), continue to be so employed and shall, for the purposes of this Act, be deemed to have been so employed under this Act;
- (d) the salary and other conditions of service applicable to that person immediately before the commencement of this Act shall, notwithstanding the provisions of the said section 37(1), continue to be applicable to that person and shall, for the purposes of this Act, be deemed to have been determined by the Minister under section 4 in respect of the person concerned,

and the provisions of this Act shall, with the necessary changes, apply in respect of that college, post, establishment, person, salary or conditions of service, and the Member of the Executive Council, the Head of Department and the Minister shall have all such powers, duties and functions assigned by or under this Act to them in relation to –

- (i) a public school;
- (ii) a post on the educator establishment of the said school;
- (iii) the said educator establishment;
- (iv) an educator holding the said post or employed additional to the said educator establishment; or
- (v) the salary or other conditions of service of the said educator,

as are necessary to deal with any such matter: Provided that any inquiry into inefficiency and any proceedings in respect of a charge of misconduct instituted or commenced against that person under the repealed Act shall be continued and concluded as if the said section 37(1) had not been enacted.

- (3) (a) Subject to the provisions of this Act or the Labour Relations Act, a college may create posts additional to the establishment contemplated in subsection (2).
- (b) The college shall be the employer of persons holding the said posts.
- (4) The provisions of this section, other than the proviso to subsection (2), shall cease to apply to the college, post, establishment, person, salary or conditions of service concerned on the date on which that college is declared to be a higher education institution under the Higher Education Act, 1997, or a further education and training institution under the Further Education and Training Act, 1998, as the case may be.

Transitional arrangements in respect of disciplinary proceedings

38A. Any disciplinary proceedings instituted against an educator for an alleged misconduct prior to the commencement of the Education Laws Amendment Act, 2000, must be continued and concluded in terms of Chapter 5 of the Employment of Educators Act, 1998.

[S. 38A inserted by s. 14 of Act No. 53 of 2000.]

Short title

39. This Act shall be called the Employment of Educators Act, 1998.

Schedule 1

[Schedule 1 added by s. 15 of Act No. 53 of 2000 and amended by Act No. 50 of 2002.]

INCAPACITY CODE AND PROCEDURES FOR POOR WORK PERFORMANCE

Codes, rules and standards

1. (1) The Code of Good Practice contained in Schedule 8 to the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to incapacity, constitutes part of this Code and Procedures, in respect of poor work performance.
- (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, or 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 as contemplated in item 2(2);
 - (c) the extent to which the educator lacks the necessary skills to perform in accordance with the educator's job description;
 - (d) the nature of the educator's work and responsibilities; and
 - (e) the circumstances of the educator.

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 the procedure in respect of poor performance; and
 - (b) after serving the written reasons referred to in paragraph (a), meet with –
 - (i) the educator; or
 - (ii) the educator and the educator's trade union representative or a fellow employee, if the educator so chooses.
- (2) Despite section 4 of this Act, the performance of educators must be evaluated according to performance standards which may be prescribed by the Minister.

[Sub-item (2) substituted by s. 12 of Act No. 50 of 2002.]
- (3) In the meeting referred to in 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, if the educator agrees, the educator's trade union representative or a fellow employee on –
 - (i) whether or not 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.
- (4) After hearing the educator, his or her trade union representative or the educator's fellow employee, the employer must, if necessary, develop and initiate a formal programme of counselling 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 paragraph (a), the establishment of realistic time frames within which the employer will expect the educator to meet the required performance standards; and
 - (c) the identification and provision of appropriate training.

- (5) (a) If the educator fails or refuses to follow a formal programme of counselling and training as contemplated in subitem (4), 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 counselling and training as contemplated in subitem (4), fails to meet the required performance standard for the post, the employer, after consulting the educator, may –
 - (i) provide further training to the educator;
 - (ii) provide counselling to the educator;
 - (iii) transfer the educator;
 - (iv) demote the educator; or
 - (v) terminate the employment of the educator.
- (6) (a) Before transferring or demoting an educator or terminating his or her services for poor performance, the employer must convene an inquiry in order to give the educator the opportunity to make representations in response to the allegations against him or her, which shall include the right to –
 - (i) call, examine and cross-examine witnesses;
 - (ii) bring all relevant documentation to the attention of the person presiding over the inquiry, and have access to documents produced in evidence by the employer;
 - (iii) be represented at the proceedings by a co-employee or trade union representative;
 - (iv) have an interpreter present if the educator so requires;
 - (v) lead all relevant evidence, including evidence in mitigation of the sanction, if necessary.
- (b) The provision of items 5, 7, 8 and 9 of Schedule 2 apply to these inquiries, read with the changes required by the context.
- (7) (a) The person appointed by the employer to conduct procedures referred to in subitems (1) to (4), must be an employee on a higher post level than the educator concerned, and must as far as practically possible be his or her direct supervisor or the immediate superior of such supervisor.
- (b) If the direct supervisor or the immediate superior of such supervisor of the educator is the cause for the procedures referred to in subitems (1) to (4), the employer must appoint a person within the Department of Education or the provincial department of education, as the case may be, who is on the same level as the supervisor or the immediate superior of such supervisor.

INCAPACITY CODE AND PROCEDURES IN RESPECT OF ILL HEALTH OR INJURY

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 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.
- (2) In conducting the investigation the employer must give the educator, or the trade union representative of the educator or fellow employee, the opportunity to state the case of the educator and to be heard on all the issues that the employer is investigating.
- (3) (a) Subject to section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998), 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 may be 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) (i) 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.
- (ii) The medical practitioner contemplated in paragraph (b) may also submit a report if the educator is dissatisfied with a report contemplated in paragraph (a).

- (4) Based on the medical reports the employer must determine whether or not 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.
- (5) After the investigation of the extent of the educator's ill health or injury, the employer must provide the educator with a written report setting out the results or findings of the investigation.
- (6) 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.
- (7) If an educator refuses or fails to be subjected to an examination contemplated in subitem (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.
- (8) (a) Before acting in accordance with subitem (6), the employer must convene an inquiry in order to give the educator the opportunity to make representations in response to the allegations against him or her, which shall include the right to –
 - (i) call, examine and cross-examine witnesses;
 - (ii) bring all relevant documentation to the attention of the person presiding over the inquiry, and have access to documents produced in evidence by the employer;
 - (iii) be represented at the proceedings by a co-employee or trade union representative;
 - (iv) have an interpreter present if the educator so requires;
 - (v) lead all relevant evidence, including evidence in mitigation of sanction, if necessary.
- (b) The provisions of items 5, 7, 8 and 9 of Schedule 2 apply to these inquiries, read with the changes required by the context.
- (9) 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 programme which the educator will be expected to follow at the cost of the employee; or
 - (d) terminate the employment of the educator, if the behavior is repetitive.
- (10) The employer must give the educator or the educator's representative a written report and consult again with the educator if the educator fails to –
 - (a) follow the formal rehabilitation programme;
 - (b) attend rehabilitation; or
 - (c) address the problem of alcohol or drug abuse.
- (11) After consulting with the educator as contemplated in subitem (10) the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

Schedule 2

[Schedule 2 added by s. 15 of Act No. 53 of 2000 and amended by Act No. 57 of 2001 and by Act No. 50 of 2002.]

DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

Purpose and scope

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

Principles

2. The principles underlying the Code and Procedures and any decision to discipline an educator are that –
- (a) discipline is a corrective and not a punitive measure;
 - (b) discipline must be applied in a prompt, fair, consistent and just manner;
 - (c) discipline is the responsibility of an employer;
 - (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 a finding or sanction contemplated in section 25(2);
[Sub-para. (iv) substituted by s. 8 of Act No. 57 of 2001.]
 - (e) as far as possible, disciplinary procedures are held at the place of work and are understandable to all educators;
 - (f) 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; and
 - (g) disciplinary proceedings must be concluded in the shortest possible time frame.

Code of Good Practice

3. (1) The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to discipline, constitutes part of this Code and Procedure.
- (2) (a) The conduct of an educator that may warrant a disciplinary action is listed in sections 17 and 18.
(b) After consultation with the trade unions, the Minister may prescribe other conduct which constitutes misconduct.
- (3) 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, or 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.
- (4) The form of disciplinary procedure to be followed in any case must be determined by the employer.

Sanctions and disciplinary procedures pertaining to less serious misconduct cases

4. (1) (a) The employer must delegate the function to deal with misconduct referred to in subitems (2) to (6), to –
- (i) the head of the institution or office where the educator is employed; or
 - (ii) the immediate superior of the educator where the educator concerned is the head of the institution or office;
- (b) The employer must determine in writing the specific acts of misconduct to be dealt with under the delegation referred to in paragraph (a).
- (2) In cases where the seriousness of the misconduct warrants counselling, 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 as contemplated in subitems (3), (4) or (5).
- (3) (a) In cases where the seriousness of the misconduct warrants it, the employer of the educator may give the educator a verbal warning.
(b) The employer must inform the educator that further misconduct may result in more serious disciplinary action.
(c) The employer must record the warning contemplated in paragraph (b).
- (4) 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 this Schedule.

- (b) The employer must give a copy of the written warning to the educator, who must acknowledge receipt on the copy.
 - (c) If the educator refuses to sign the copy for acknowledgement of 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 and the written objection or additional information contemplated in paragraph (g), may be taken into account in deciding on an appropriate sanction;
[Para. (f) substituted by s. 9(a) of Act No. 57 of 2001.]
 - (g)
 - (i) 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.
 - (ii) The additional information and the objection referred to in paragraph (a) must be filed with the written warning.
- (5) 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 in accordance with Form B attached to this Schedule.
 - (b) The employer must give a copy of the final written warning to the educator, who must sign a copy to acknowledge receipt.
 - (c) If the educator refuses to sign a copy to acknowledge the receipt of the final written warning, the employer must hand the warning to the educator in the presence of another educator, who must sign in confirmation that the 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.
 - (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 account in deciding on an appropriate sanction;
[Para. (f) substituted by s. 9(b) of Act No. 57 of 2001.]
 - (g)
 - (i) If the educator disagrees with the final written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction.
 - (ii) The additional information and the objection referred to in subparagraph (i) must be filed with the final written warning.
- (6) (a) If the seriousness or extent of the misconduct does not warrant a formal enquiry the procedures in paragraphs (b), (c) and (d) must 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 or other employee 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 therefor.
 - (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)
 - (i) An educator may not appeal against any of the above sanctions but may lodge an objection in writing, against the sanction imposed, or provide additional written information.
 - (ii) The objection or additional information must be filed together with a record of the sanction in the educator's personal file.
- (7) For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator must be taken into account.

Notice of enquiry for misconduct cases other than those contemplated in item 4

5. (1) The educator must be given written notice at least five working days before the date of the hearing.

- (2) The written notice of the disciplinary hearing must be given in accordance with Form C attached to this Schedule and must contain –
 - (a) a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - (b) details of the time, place and venue of the hearing;
 - (c) when delivered by registered post, the date on which the letter was received by the educator as indicated by the post office;
 - (d) information on the rights of the educator to representation by a fellow educator or a trade union representative;
 - (e) information on the rights of the educator to representation by a legal representative, if the presiding officer so directs; and
 - [Para. (e) substituted by s. 10 of Act No. 57 of 2001.]
 - (f) information on the rights of the educator to call witnesses at the hearing.
- (3)
 - (a) The educator must acknowledge receipt of the notice by signing a copy of the notice.
 - (b) If the educator refuses to sign for the receipt of the notice, it must be given to the educator in the presence of a fellow educator, who must sign in confirmation that the notice was conveyed to the educator.

Suspension

6.
 - (1) In the case of serious misconduct in terms of section 17, the employer may suspend the educator on full pay for a maximum period of three months.
 - (2) In the case of misconduct in terms of section 18, the employer may suspend an educator in accordance with the procedure contemplated in subitem (1), 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 work-place.
 - (3)
 - (a) 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;
 - (b) The presiding officer may decide on any further postponement. Such a postponement must not exceed 90 days from the date of suspension.
 - (c) If the proceedings are not concluded within 90 days, the employer must enquire from the presiding officer what the reasons for the delay are and give directions for the speedy conclusion of the proceedings.
 - (d) At the time of the enquiry contemplated in paragraph (c) the employer may, after giving the educator an opportunity to make representations, direct that the further suspension will be without pay.

Conducting disciplinary hearing

7.
 - (1) The disciplinary hearing must be held within ten working days after the notice referred to in item 5 is delivered to the educator.
 - (2) The presiding officer must be appointed by the employer.
 - (3) If the educator so chooses, he or she may be represented at the hearing by a fellow educator or a representative of a trade union.
 - (4) If the presiding officer deems it necessary, an interpreter must assist at the hearing.
 - (5) Subject to section 3(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), if the presiding officer so directs, the employer or educator may be represented by a legal representative.
 - (6) 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 absence of the educator.
 - (7) The presiding officer must keep a record of the notice of the disciplinary hearing and of the proceedings.
 - (7A)
 - (a) The record referred to in subitem (7) includes an electronic recording of the proceedings.
 - (b) A transcript of electronic recordings or a portion of the transcript of a recording may be made on request of the educator or his or her representative on payment of the prescribed fee contemplated in section 22 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
 - [Sub-item (7A) inserted by s. 13(a) of Act No. 50 of 2002.]
 - (8) The presiding officer must read the notice for the record before the start of the hearing.
 - (9)
 - (a) The representative of the employer must lead evidence on the conduct giving rise to the hearing.
 - (b) The educator or the educator's representative may question any witness called by the representative of the employer.

- (10) For the purposes of the investigation and hearing, the representative of the employer may summon any person who –
- (a) may be able to give information of material importance concerning the subject of the investigation or hearing; or
 - (b) has in his or her possession, custody or control, any book, document or object which may have a bearing on the matter.
- (10A)(a) Whenever disciplinary proceedings are pending before any presiding officer, and it appears to him or her that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the presiding officer may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.
- (b)
 - (i) An examination, cross-examination or re-examination of a witness in respect of whom the presiding officer has appointed an intermediary under paragraph (a), except examination by the presiding officer, must not take place in any manner other than through that intermediary.
 - (ii) Such intermediary may, unless the presiding officer directs otherwise, convey the general purport of any question to the relevant witness.
 - (c) If the presiding officer appoints an intermediary under paragraph (a), he or she may direct that the relevant witness must give his or her evidence at any place which –
 - (i) is informally arranged to put that witness at ease;
 - (ii) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
 - (iii) enables the presiding officer and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.
- [Sub-item (10A) inserted by s. 13(b) of Act No. 50 of 2002.]
- (11) Where the educator has requested that a person be present at a hearing as his or her witness, the employer must provide the educator with the assistance to ensure that such witnesses attend.
- (12) The summons to appear at a disciplinary hearing, must be in accordance with Form D attached to this Schedule and served on the person by way of delivery by –
- (a) hand;
 - (b) telefax; or
 - (c) registered post.
- (13) The date on which the summons is served will be when delivering by –
- (a) hand, the date of delivery;
 - (b) telefax, the date reflected on the telefax; or
 - (c) registered post, the date on which the letter was received by the educator as indicated by the post office.
- (14) (a) The educator or his or her representative must be given an opportunity to lead evidence.
(b) The representative of the employer may question the witnesses of the educator.
- (15) The presiding officer may ask any witness questions for clarification.
- (16) The presiding officer must give a finding whether or not the educator has committed the misconduct, and must inform the educator of the finding and the reasons therefor.
- (17) (a) Before deciding on a sanction, the presiding officer must give the educator an opportunity to present evidence in mitigation.
(b) The representative of the employer may present evidence regarding aggravating circumstances.
- (18) 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 personal file of the educator.

Steps after disciplinary hearing

8. (1) 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 –
- (a) the nature of the case;
 - (b) the seriousness of the matter;
 - (c) the educator's previous record; and
 - (d) any mitigating or aggravating circumstances.

- (2) With the agreement of the educator, the presiding officer may impose the sanction of suspension without pay or demotion as an alternative to dismissal.
- (3) If an educator is demoted, he or she may apply for promotion after a year without prejudice.
- (4) The employer may not implement the sanction during an appeal by the educator.

Appeals

9. (1) An educator may appeal against a finding or sanction by making an application in accordance with Form E attached to this Schedule.
- (2) 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.
- (3) On receipt of the application referred to in subitem (1), 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.
- (4) 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, he or she must notify the educator of the date, time and place where such representation must be made.
- (5) The Member of the Executive Council or the Minister, as the case may be, must consider the appeal, and may –
 - (a) uphold the appeal;
 - (b) in cases of misconduct contemplated in section 18, amend the sanction; or
 - (c) dismiss the appeal.
- (6) The employer must immediately implement the decision of the Member of the Executive Council or the Minister, as the case may be.

Form A

[Form A substituted by s. 11(a) of Act No. 57 of 2001.]

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[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.

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:

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Form B

[Form B substituted by s. 11(b) of Act No. 57 of 2001.]

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

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

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 REPRESENTATIVE OF EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Form C

[Form C substituted by s. 11(c) of Act No. 57 of 2001.]

NOTICE OF DISCIPLINARY MEETING

[DATE]

[NAME OF EMPLOYEE]

[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.

The alleged misconduct is based on the following evidence:

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

The hearing will 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.

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.

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 REPRESENTATIVE OF EMPLOYER

DATE

ACKNOWLEDGMENT OF RECEIPT BY EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Form D

[Form D substituted by s. 11(d) of Act No. 57 of 2001.]

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:

TO:
(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), 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 OF EMPLOYER

Form E

NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I,, [NAME OF EMPLOYEE] hereby
appeal 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. [THE APPEAL REQUEST IS NOT VALID UNLESS
THIS DOCUMENT IS 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
proceedings.

SIGNATURE OF EMPLOYEE

DATE

[PERSAL NO.]

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 sanctions together with warnings; or
5. dismissal.

TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATORS

G.N. 1743 of 1995 published in *Government Gazette* No. 16814 dated 13 November 1995

as amended by

G.N. 1153 of 1997 published in *Government Gazette* No. 18245 dated 1 September 1997

G.N. 1498 of 1997 published in *Government Gazette* No. 18416 dated 11 November 1997

G.N. 594 of 1998 published in *Government Gazette* No. 18841 dated 17 April 1998

G.N. 626 of 1998 published in *Government Gazette* No. 18861 dated 24 April 1998

G.N. 1638 of 1998 published in *Government Gazette* No. 19592 dated 9 December 1998

G.N. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001

REGULATIONS REGARDING THE TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATION

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, hereby make regulations in terms of section 28, read with sections 1, 4(1), 5(1) and 9 of the Educators Employment Act, 1994, as set out in the Schedule.

S.M.E. BENGU
Minister of Education

SCHEDULE

Chapter 1 APPLICATION OF REGULATIONS

Definitions

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

“**abroad**” means any country outside the borders of the Republic of South Africa;

“**opposite training**” means training recognised by the Minister;

“**approved qualification**” means a degree, a diploma, a certificate or another qualification recognised by the Minister as a qualification for appointment as an educator;

“**calendar month**” means a period ranging from the first day up to and including the last day of any of the 12 months of a year;

“**calendar year**” means a period ranging from the first day of January of a year up to the last day of December of the same year;

“**cycle**” in relation to sick leave, means a period of three years calculated from 1 January 1980 and each succeeding period of three years: Provided that, in the case of an educator appointed after 1 January 1980 whose date of appointment does not coincide with the commencement date of a cycle, the period of his or her service from the date of his or her appointment to the date of commencement of the following cycle shall for the purpose of these regulations be regarded as a full cycle;

“**day of rest**” means a Saturday, a Sunday or a public holiday;

“**employer contribution**” means the monthly amount referred to in regulation 64;

“**employing department**” means a department as defined in section 1(1) of the Public Service Act, 1994, in which the educator concerned is employed;

“**head of education**” means the head of the department responsible for education within a province;

“**household**” means –

- (a) an educator’s spouse; and

- (b) an educator or his or her spouse's necessarily dependent child who is *bona fide* resident with such educator: Provided that if such a child studies at an institution for post-school education, whether intramurally or extramurally, he or she may be deemed to be a member of the household, but only –
- (i) if he or she did not take up any permanent full-time employment (including any type of vocational training to which remuneration is attached) after leaving school, excluding compulsory military service which he or she had to undergo after leaving school or work during vacations or temporary full-time employment which he or she had taken up between –
 - (aa) leaving school and the commencement of the academic year; or
 - (bb) leaving school and the commencement of such military service; or
 - (cc) the completion of such military service and the commencement of the academic year, and had commenced his or her studies at such an institution at the commencement of the academic year following the completion of his or her schooling or military service; and
 - (ii) until –
 - (aa) he or she attains the minimum post-school qualification (or minimum combination of post-school qualifications) which will enable him or her to take up employment in the field of study for which he or she originally intended to qualify himself or herself; or
 - (bb) the normal duration of the course, as prescribed by the institution concerned, plus one academic year, expires, if it takes him or her longer than such prescribed period to attain the relevant qualification as a result of poor academic performance; or
 - (cc) he or she discontinues the relevant course of study; or
 - (dd) he or she changes his or her course of study, whichever of the said four events occurs first; and
- (c) a relative of an educator who is permanently resident with and necessarily dependent on him or her and whose income, from any source, does not exceed the sum of –
- (i) the appropriate maximum basic social pension; plus
 - (ii) the maximum allowance for a war veteran to whom a social pension has been awarded; plus
 - (iii) the maximum allowance paid to a person as a result of a late application for a social pension,
- and if the relative concerned is a social pensioner, then any allowances other than those mentioned in subparagraphs (ii) and (iii) above, which he or she may receive in terms of the relevant regulations referred to above, eg an attendant's allowance, should be ignored for the purposes of this paragraph: Provided that where two relatives so reside with him or her and are dependent on him or her and where the one relative would normally have been a dependent of the other relative, for instance a father and a mother, both such relatives may be regarded as members of his or her household only if half of their joint income, from any source, does not exceed the sum of the maximum basic social pension in question and the allowances contemplated in subparagraphs (i) to (iii) above; and

“married housing” means state housing designated for an educator with a household that normally lives with him or her;

“maximum rand amount” means an amount equal to 4/6 of the maximum membership fee as determined by the Minister for subsidy purposes;

“medical scheme” means a medical scheme which is registered in terms of an Act that governs the business of medical schemes;

“member contribution” means an amount equal to the subscription minus the monthly employer contribution;

“membership fee” means the full membership fee levied by a medical scheme;

“month” means a period extending from a day in a month up to the day preceding the day corresponding numerically to that day in the following month, both days inclusive;

“office” means a state educational institution excluding a school;

“providing department” means the department in the province concerned responsible for the buying or erection of state housing and other related matters;

“province” means any one of the nine provinces established under section 124 of the Constitution of the Republic of South Africa, 1993;

“recognisable experience” means experience recognised in terms of regulation 11;

“salary band” means the range of salaries applicable to an educator in accordance with such educator's post level and qualifications;

[Definition of “salary band” inserted by GN. No. 1153 of 1997 dated 1 September 1997.]

“salary increment”;

[Definition of “salary increment” deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

“salary incremental date”;

[Definition of “salary incremental date” deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

“salary incremental period”;

[Definition of “salary incremental period” deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

“salary range” means the salaries applicable to a specific level within the salary grading system of the Public Service;

[Definition of “salary range” inserted by GN. No. 1153 of 1997 dated 1 September 1997.]

“school” means any educational institution or that part of such an institution at which education and training, including pre-primary education, is provided and which is maintained, managed and controlled or subsidised by a provincial education department, excluding a university and technikon;

“school day” means a day in a school term on which tuition is scheduled to take place at a school, to pupils enrolled at such school;

“school holiday” means a period between any two consecutive school terms during which tuition is suspended;

“school term” means any one of the periods into which a particular school year is divided for tuition purposes and fixed as such by the head of education for a particular school;

“service” means, for purposes of regulation 67, service with an employer under the Act, as well as service in a department of State in terms of an Act other than the Act including service in an institution established or being established by an Act of Parliament and which obtains or has obtained its funds in whole or in part from the State Revenue Fund;

“single housing” means state housing designated for an educator who does not have a household that normally lives with him or her;

“standard, non-standard and voetstoets housing” means housing as determined by the providing department;

“state housing” means housing, contemplated in regulation 68(2) of which the State is the owner or tenant;

“stationed” means the transfer and settlement of an educator abroad and includes an educator seconded to another Government or institution abroad, except in the case where a secondment agreement contains specific stipulations regarding medical assistance;

“subscription” means the amount that a person must pay monthly in order to obtain membership of a registered medical scheme;

[Definition of “subscription” substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

“the Act” means the Educators’ Employment Act, 1994;

“transfer” means –

- (a) the moving of an employee and his or her household from one headquarters to another in the Republic or in a foreign country;
- (b) the temporary or permanent evacuation of an official quarters at the headquarters of an educator in order to occupy other accommodation; and
- (c) the evacuation by an educator of accommodation in order to occupy official quarters at his or her headquarters;

“year” means a period of 12 months extending from a day in a year to the day preceding the day corresponding numerically to that day in the following year, both days inclusive.

Chapter 2 GENERAL CONDITIONS OF SERVICE AND SALARIES APPOINTMENT, PROMOTION, TRANSFER AND TERMINATION OF SERVICE

Qualifications for appointment and promotion of educators

2. (1) No person shall be appointed as an educator either in a permanent, or temporary capacity, or on special contract, or be promoted, unless he or she complies with the experience requirements determined by the Minister and is in possession of an approved qualification and is able to submit satisfactory evidence thereof: Provided that an employer may appoint a person who is not in possession of an approved qualification as an educator in a temporary capacity for a specified period if the employer deems such appointment necessary and in the interest of education.

(2)

[Reg. 2(2) repealed by G.N. No. 626 of 1998 dated 24 April 1998.]

Appointment on probation

3. (1) (a) An educator shall be appointed on probation for a period of at least 12 months, which period may be extended, on good cause shown, for a further period not exceeding 12 months.
- (b) An employer may approve the transfer or promotion of an educator during his or her period of probation: Provided that such transfer or promotion will be on probation and such probation may be for a period of less than 12 months if such period together with the probation served in the former post, shall total at least 12 months.
- (c) The employer may, if it is deemed necessary, require that the promotion of an educator employed in a permanent capacity, be on probation: provided that the conditions in paragraphs (a) and (b) shall apply.
- (2) The probation period of an educator shall be extended by the number of days leave of whatever nature taken by him or her during a probation period or any extension thereof: Provided that a school holiday shall not be considered as leave for the purposes of this subregulation.
- (3) If the head of the relevant institution or office certifies that during his or her probation period or extended probation period, such educator has been diligent and his or her conduct uniformly satisfactory and that he or she is in all respects suitable for the post which he or she holds, the employer may confirm the permanent appointment, transfer or promotion if the educator has complied with all the conditions to which his or her appointment, transfer or promotion was subject.
- (4) For the purposes of subregulation (1) an appointment on probation shall, notwithstanding the fact that the period during which it was in force has expired and notwithstanding anything to the contrary contained in that subregulation, be deemed to continue until the educator concerned is notified in writing by the employer that his or her probationary appointment –
- (a) has been confirmed; or
- (b) has not been confirmed; or
- (c) has been extended for a further period:
- Provided that a notification contemplated in paragraphs (a), (b) and (c) shall be directed to the educator not later than six months after the expiry of the period of his or her probationary appointment, and that when the period of probationary appointment is extended for a further period, that further period shall be computed from the date of which the first-mentioned period would have expired by effluxion of time in terms of subregulation (1).

Reappointment of educators who have retired or who have been retired on pension prematurely

4. The reappointment of an educator, whether in a full-time or a part-time capacity in a post referred to in section 3(1) of the Act, who has retired or has been retired on pension before reaching his or her retirement age shall be approved by the employer: Provided that such reappointment shall be subject to the conditions as determined by the Minister.

Filling of vacant posts by educators

5.

[Reg. 5 deleted by G.N. No. 594 of 1998 dated 17 April 1998.]

Date on which salary commences and terminates

6. (1) Subject to the provisions of subregulations (2), (3), (4), (5), (6), (7) and (8) an educator shall be paid a salary with effect from the date on which he or she assumes duty up to and including the date on which his or her service terminates.
- (2) An educator who renders service at an office from the first working day up to and including the last working day of a month shall be paid a salary with effect from the first day of the month in question up to and including the last day of such month.
- (3) Subject to the provisions of subregulations (4) and (5) an educator employed at a school who is appointed during any school term and who renders service for a continuous period of at least 30 days during such school term shall be paid a salary –
- (a) if such service begins on the first working day of the school term, from the first day of the month in which he or she assumes duty up to and including the last day he or she is so in service; or
- (b) if such service terminates on the last working day of the school term, from the day such service begins up to and including the last day of the month concerned; or
- (c) if such service does not begin on the first working day of the school term and also does not terminate on the last working day of the school term, from the day such service begins up to and including the last day he or she is so in service.
- (4) If a school term commences within the same month in which the preceding school term ends, salary shall be paid under the circumstances referred to in subregulation (3)(a) –
- (a) with effect from the first day following the closing date of the preceding school term; or

- (b) with effect from the day following the date on which the services of the educator concerned terminated under any other education department if he or she so served as an educator at a school for a continuous period of at least 30 days, including the last working day of the preceding school terms.
- (5) If a school term ends within the same month in which the following school term commences, salary shall, under the circumstances referred to in subregulation (3)(b), be paid up to and including the last working day of the school term in which the service of the educator concerned terminates at a school.
- (6) An educator employed at a school who is appointed during any school term and who renders service for a period of less than 30 days during such school term shall be paid a salary from the day on which such service begins up to and including the last day the educator is so in service, irrespective of whether such service begins on the first working day of the school term or terminates on the last working day of the school term: Provided that, if he or she renders service up to and including the last working day of the said school term and renders service as from the first working day of the following school term for a continuous period of at least 30 days, he or she shall be paid a salary for the intervening holiday period.
- (7) An educator employed at a school who is appointed during any school term and who renders service for a continuous period of at least 30 days, if such service terminates on the last working day of the last school term of the year, concerned, shall be paid a salary up to and including the last day of such year.
- (8) An educator whose resignation takes effect during any school holiday or on the first school day for educators following upon such school holiday, shall, in the application of this regulation be deemed to have terminated his or her service on the last day of the calendar month in which the previous school term ended.
- (9) An educator whose services terminate on any date by reason of his or her having reached the retiring age as determined in regulation 15, shall receive salary up to and including the day preceding such date, unless the services of such educator are retained beyond such date, in which event he shall receive salary up to and including the last day on which he remains in service, subject to the provisions of regulation 6.
- (10) Notwithstanding the provisions of subregulation (3)(a) a person who has been appointed as an educator at a school in a permanent capacity and who, immediately after the completion of his or her course of training or instruction as an educator is called up for his or her initial period of compulsory military service and is therefore unable to assume duty on the first working day of a school term and to whom leave could have been granted in terms of regulation 49(1) had he or she already assumed duty, shall be paid a salary as if he or she had assumed duty on the first working day of the school term.

Remuneration during school holiday

- 7. An educator whose services are terminated on the last day of a school term and who is reappointed and assumes duty within the first four school days for educators of the following school term and has rendered service for a continuous period of at least 30 days after assumption of duty, shall, notwithstanding the provisions of regulation 6, be entitled to receive salary in respect of the intervening school holiday for which he or she has not already received salary: Provided that if such an educator does not assume duty within the said first four school days and he or she has been granted leave with pay for a period including such four days, he or she shall be deemed to have assumed duty within such first four school days.

Salary increments

8.

[Reg. 8 deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

9.

[Reg. 9 deleted by GN. No. 1153 of 1997 dated 1 September 1997.]

Evaluation of qualifications

- 10. The Minister may determine measures for the evaluation of qualifications for employment in education.

[Reg. 10 substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

Experience

- 11. (1) The types of experience and the extent of recognition of such experience on the appointment of an educator shall be as follows:
 - (a) Actual educator's experience shall include all experience gained while the person held an educators post: Provided that the period of initial compulsory military service shall be deemed to be actual educator's experience;
 - (b) appropriate experience shall include working experience which, in the opinion of the Minister, develops the candidate, directly and appositely, in all respects regarding knowledge, skill and attitude, for holding an educator's post;
 - (c) other experience shall include experience other than actual educator's experience and appropriate experience recognised by the Minister.

- (2) The different types of experience referred to in subregulation (1) shall be recognised to the following extent:
 - (a) Actual educator's experience – full recognition.
 - (b) Appropriate experience – full recognition.
 - (c) Other experience – one year's recognition for every two years experience (that is, the number of years, months and days of experience is divided by two and parts of days fall away).
- (3) All experience recognised in terms of subregulation (2) shall be deemed to be experience gained after a candidate has been placed in a qualification category.

Achievement recognition

12. The Minister may determine measures for the recognition of achievement of educators.

[Reg. 12 substituted by GN. No. 1153 of 1997 dated 1 September 1997.]

Wrongly granted remuneration

13. (1) If an incorrect salary on appointment, transfer or promotion or an incorrect advancement of salary was awarded or granted to an educator, or if the correct salary was awarded or granted but at a time when or in circumstances under which it should not have been awarded or granted to him or her, the employer shall correct the educator's salary with effect from the date on which the incorrect salary or salary advancement commenced, notwithstanding the fact that the educator concerned was unaware that an error had been made in the case where the correction amounts to a reduction of his or her salary.
- (2) If an educator referred to in subregulation (1) has in respect of his or her salary, including any portion of any allowance or other remuneration or any other benefit calculated on his or her basic salary, or awarded to him or her by reason of his or her basic salary –
 - (a) been underpaid, an amount equal to the amount of the underpayment shall be paid to him or her, and that other benefit which he or she did not receive, shall be awarded to him or her as from a current date; or
 - (b) been overpaid or received any such other benefit not due to him or her –
 - (i) an amount equal to the amount of the overpayment shall be recovered from him or her by way of the deduction from his or her salary in instalments as may be determined by the employer, with due regard to the applicable Treasury Instructions by way of legal proceedings, or partly in the former manner and partly in the latter manner; and
 - (ii) that other benefit shall be discontinued or withdrawn as from a current date, but the educator concerned shall have the right to be compensated by the employer for any patrimonial loss which he or she has suffered or will suffer as a result of that discontinuation or withdrawal.
- (3) With the approval of the Treasury the amount of an overpayment to be recovered in terms of subregulation (2)(b) may be remitted in whole or in part.

[Reg. 13 amended by GN. No. 1153 of 1997 dated 1 September 1997.]

Unauthorised remuneration

14. (1) (a) If any remuneration, allowance or other reward is received by an educator in connection with the performance of his or her work with the employer other than in accordance with the provisions of the Act or these regulations, or is received contrary to the provisions of section 24(1)(b) of the Act, that educator shall pay into the relevant Provincial Revenue Fund an amount equal to the amount of such remuneration, allowance or other reward, or, where it does not consist of money, the value thereof as determined by the employer, and if he or she does not do so, it shall be recovered from him or her by the employer by way of legal proceedings or in such manner as the Treasury may approve, and be paid into the relevant Provincial Revenue Fund.
 - (b) The Educator concerned may appeal against such a determination by the employer to the Member of the Executive Council who may make such order as he or she may think fit: Provided that the educator may declare a dispute on grounds of such order in terms of the provisions of the Education Labour Relations Act, 1993.
 - (c) The employer may with the consent of the Department of State Expenditure determine that the educator concerned may retain the whole or a portion of the remuneration, allowance or reward.
- (2) If in the opinion of the employer an educator has received any remuneration, allowance or other reward referred to in subregulation (1)(a) and it is still in his or her possession or under his or her control or in the possession or under the control of any other person on his or her behalf, or, if it is money, has been deposited in any deposit-taking financial institution in his or her name or in the name of any other person on his or her behalf, the employer may in writing require that educator or that person or that financial institution not to dispose thereof, or, if it is money, not to dispose of a corresponding sum of money, as the case may be, pending the outcome of any legal steps for the recovery of that remuneration, allowance or reward or the value thereof.

- (3) (a) Subject to the provisions of paragraph (b), any salary, allowance, fee, bonus or honorarium which may be payable in respect of the services of an educator who has been made available to a national or provincial department or a council, institution, body or person contemplated in section 7 of the Act, shall be paid into the Provincial Revenue Fund.
- (b) In circumstances regarded by the employer as exceptional, he may recommend to the Treasury the payment out of the Provincial Revenue Fund to the educator concerned of an amount equal to that salary, allowance, fee, bonus or honorarium, or a portion thereof.

Retirement on pension

15.

[Reg. 15 repealed by G.N. 1638 of 1998 dated 9 December 1998.]

Discharge of an educator on account of the abolition of his or her post or a reduction, reorganisation or re-adjustment of staff

16. Subject to the provisions of regulation 5(2), the employer shall, if he or she intends to discharge an educator from service in terms of section 8(1)(b) of the Act, give such an educator three calendar months' written notice of such discharge.

REMUNERATIVE PAYMENTS OVER AND ABOVE SALARIES

Differentiated allowances

17. The Minister may determine measures for the payment of differentiated allowances to educators appointed at certain education institutions or appointed to certain posts.

[Reg. 17 substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]

Acting allowance

18.

[Reg. 18 repealed by G.N. 1638 of 1998 dated 9 December 1998.]

Allowance to educators who perform supervisory duties at hostels

19. If an educator performs control or supervisory duties and functions at a hostel attached to a state educational institution such educator shall receive, subject to such conditions as the Minister may determine, a non-pensionable allowance, which allowance shall be based on the control or supervisory duties and functions of such educator as well as the number of pupils accommodated at the hostel concerned.

Compensation for examination-related work

20. An educator, appointed by the employer to perform work related to public examinations, may be remunerated according to tariffs determined by the Minister.

[Reg 20 substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]

Exemption from payment for instruction by educational institutions

21. An educator who, in his or her capacity as a student, must pay for instruction, or any other service resulting from such instruction, which he or she follows in accordance with one or other instructional programme approved by the employer and which is offered by a department of education responsible for education or an educational institution instituted, registered or administered in terms of a law, may on a basis approved by the employer, be compensated partly or in full in a direct or indirect manner for such expenditure.

Department-specific awards

22. A non-pensionable allowance determined by the employer and according to a system determined by the Minister may be paid to an educator –

- (a) who, in the opinion of the employer is unusually competent or who possesses unusual qualifications or who has rendered excellent service;
- (b) in order to promote the recruitment and retention of staff;
- (c) for the execution of specific assignments; or
- (d) because the employer is of the opinion that specific circumstances exist.

Official duty

23. (1) An educator shall be on official duty –
- (a) in the case of an educator at a school –

- (i) during the service periods laid down in the school timetable which reflects the curriculum or the times approved by the employer for the school; and
 - (ii) during the times in which such other activities, which do not constitute part of the school timetable, but are related to school affairs, take place; and
- (b) in the case of an educator at an institution, other than a school during the times approved by the employer.
- (2) An educator shall, during his or her official duty, give his or her full attention to the duties entrusted to him or her and shall not without the consent of the head of the relevant institution or office be absent from his or her school or institution during his or her hours of official duty.

Attendance registers

24. The employer may determine that an attendance register be kept in which an educator shall record the time of his or her arrival at and departure from his or her place of duty.

Official channels of communication

25. (1) A request or communication from an educator in connection with a matter falling within the scope of the employer's power or duties shall be directed to the employer via the head of the relevant institution or office.
- (2) Notwithstanding subregulation (1), matters regarding the appointment, termination of service and leave privileges and enquiries about the remuneration of an educator shall be referred to the head of education by the principal of the school concerned.

Replying to questions

26. An educator shall reply explicitly to a question concerning his or her duties and powers put to him by a person who is competent to put such question: Provided that an educator shall not be obliged to furnish a reply which may incriminate him or her.

Lawful instructions

27. (1) Subject to the provisions of subregulation (2), an educator shall carry out a lawful instruction given to him or her, in writing or verbally, by an authorised person.
- (2) An educator may, at the time of a verbal instruction, request that such instruction be confirmed in writing and he or she may submit any complaint he or she may have in connection therewith to the employer for a decision.

Residential addresses and telephone numbers

28. An educator shall notify the employer of his or her residential address and telephone number, if any, and of any change thereof and the employer or a person authorised by him or her shall keep a record thereof in a register which shall be kept for that purpose.

Full-time study courses

29. An employer may, on the terms and conditions he may determine, authorise an educator to follow a full-time study course approved by the employer and while such educator follows such course he or she shall be deemed to be on duty in an educator's post.

Proof of marriage or change of marital status

30. An educator shall, within 30 days after entering into matrimony or after his or her marital status has changed, submit a certified copy of the marriage certificate, decree of divorce or death certificate, as the case may be, to the employer: Provided that the employer may in his or her discretion demand the submission of the original certificate or decree.

Reports on educators and adverse remarks

31. (1) A report, on a form determined by the Minister, shall be drawn up and submitted to the employer by the head of the relevant institution or office in respect of any educator as often as the employer may require.
- (2) Subject to the provisions of subregulation (3), an educator on whom a report has been drawn up in terms of subregulation (1) shall not have access to such report.
- (3) Any adverse remark contained in a report referred to in subregulation (1) shall be brought to the notice of the educator concerned in writing and in its full context by the person who compiled the report.
- (4) The educator referred to in subregulation (3) shall sign the said report and return it to the compiler thereof together with such representations, in writing, as he may desire to submit in respect thereof.
- (5) The provisions of subregulations (1) to (4) shall also apply to adverse remarks made in respect of an educator in a written communication, except that such remarks shall be brought to the educator's attention by the head of the relevant institution or office.

- (6) If it comes to the attention of the employer that an adverse remark is unjustified, the employer may at any time, if he or she deems fit, declare any adverse remark in connection with an educator which has been brought to the attention of the educator in terms of subregulation (3) null and void and in such a case the educator shall be notified in writing of the nullification thereof.

Management bodies on which educators serve

32. An educator who serves on the management of an association or body which designates members of the governing body of a state educational institution where the educator is employed, shall declare his interests withdraw from the specific discussion.

Part-time temporary educators

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[Reg 33 to 63 repealed by G.N. No. 1400 of 19 December 2001.]

Chapter 3 LEAVE OF ABSENCE

[Chapter 3 (regs 34–63) repealed by GN 1400 of 19 December 2001.]

Chapter 4 MEDICAL ASSISTANCE, STATE HOUSING, SUBSISTENCE ALLOWANCE, OFFICIAL JOURNEYS AND TRANSPORT, HOUSE OWNER ALLOWANCE, SERVICE BONUS, LONG SERVICE RECOGNITION AND RESETTLEMENT EXPENDITURE

Medical assistance

Employer contribution

64. (1) The monthly contribution by the employer in respect of the subscriptions payable to a medical scheme on a monthly basis is calculated in accordance with a basis determined by the Minister and shall be paid to the different medical schemes of which educators are members.
- (2) (a) In order to qualify for an employer contribution, an educator shall provide the employer with written proof of membership of the medical scheme of which he or she is a member, as well as of the monthly subscriptions applicable to him or her.
- (b) An educator shall notify the employer of any changes in membership of a medical scheme, as well as any change in subscriptions.
- (c) Notwithstanding the provisions of paragraphs (a) and (b), employers may in consultation with a medical scheme, make suitable arrangements regarding the particulars of educators who are members of such medical scheme including subscription of such educators.
- (3) A member contribution shall be deducted every month from an educator's salary by stop-order and paid to the medical scheme of which he or she is a member.
- (4) (a) Subject to the provisions of this Chapter, an employer contribution is payable to the medical scheme on every salary pay date: Provided that if an educator obtains membership of a scheme that requires subscriptions to be paid in advance, the educator may make a double payment of subscriptions in one month in which case the employer contribution may be doubled.
- (b) The payment of the employer contribution shall be suspended with effect from the date on which an educator no longer qualifies for an employer contribution in terms of this Chapter.
- (5) If an educator is absent from duty without pay, during which subscriptions cannot be deducted from his or her salary, the employer may on application by an educator, continue with the payment of the employer contribution.

Medical assistance to educators, who are stationed abroad or who are on official visits abroad

65. (1) The provisions of this regulation shall be –
- (a) applicable to an educator, as well as his or her dependants, who are stationed abroad and who receive medical treatment there or during visits to the Republic;
- (b) *mutatis mutandis* applicable to the husband and children of a married female educator who accompany her abroad;
- (c) subject to subregulation (3), *mutatis mutandis* applicable to the dependant children of educators stationed abroad who live in the Republic or who visit their parents abroad;
- (d) applicable to an educator who is an official visit abroad.
- (2) (a) An educator stationed abroad –
- (i) may be compensated by the Department of Foreign Affairs for the difference between the cost of a medical or related service abroad in respect of which an educator's medical scheme grants benefits and the actual benefits paid out by the medical scheme concerned in terms of its rules:

- Provided that the employers' contribution with regard to the services referred to in subregulation (8) shall be limited to an amount determined by the Minister;
- (ii) and his or her dependants may be compensated by the employer for subsistence and travelling expenses necessarily and inevitably incurred in order to acquire specific medical and related services elsewhere than at his or her station: Provided that the benefit is subject thereto that a particular service is not available at the educator's station or that it is of an unacceptably low standard; and
 - (iii) may, notwithstanding the provisions of subparagraphs (i) and (ii) be paid subsistence and travelling expenses in cases where the employer is of the opinion that it would be a less expensive arrangement to convey such educator to a suitable place elsewhere than his or her station for medical treatment.
- (b) (i) If an educator is on an official visit abroad and he or she must necessarily and inevitably make use of medical services there, the difference between the cost of such treatment abroad and the cost of a similar service charges by a supplier of such a service in the Republic may be refunded to him or her by the employer.
 - (ii) The provisions of subparagraph (i) shall *mutatis mutandis* be applicable in respect of the spouse of an educator who accompanies him or her officially.
- (3) (a) In order for an educator stationed abroad to qualify for the benefits in this regulation, he or she has to be a member or a dependant of a member (recognised as such by the medical scheme) of a medical scheme in the Republic which grants benefit with regard to medical or related expenses incurred abroad and which is willing to make such payments to the Department of Foreign Affairs.
 - (b) In the case where an educator is seconded to an institution abroad and he or she as a result thereof is compelled to obtain membership of a medical scheme to which the employees of the relevant institution have to become members, the medical assistance, where applicable, must be entrenched in the secondment agreement concerned.
- (4) (a) In order for an educator stationed abroad to qualify for the benefits in this regulation an amount in accordance with the tariffs as determined by the employer from time to time, and subject to subregulation (5), shall be deducted from the educator's salary and paid into the relevant Provincial Revenue Fund.
 - (b) The amount referred to in paragraph (a) shall be payable from the first day of the month following the month in which the educator concerned leaves the borders of the Republic until the last day of the month in which he or she is transferred back to the Republic: Provided that this period shall not be regarded to be interrupted by periods of absence for whatever reason: Provided further that the husband and the children of a married female educator who accompanies her abroad shall be taken into account in determining the amount referred to in paragraph (a).
- (5) Children of a divorced educator stationed abroad who are registered as dependants of such educator's medical scheme but who are staying with the former spouse within the Republic, qualify *mutatis mutandis* for the benefits in this regulation: Provided that –
 - (a) they on a *bona fide* basis stay with the former spouse and otherwise comply with the requirements relating to dependent children referred to in the definition of "household";
 - (b) they are taken into account in determining the amount referred to in subregulation (4)(a);
 - (c) the amount referred to in subregulation (4)(a) is paid for the duration of the educator's stay abroad; and
 - (d) where applicable, the educator beforehand exercises a choice to let such children participate in the benefits in this regulation.
- (6) The subsistence and travelling expenses referred to in subregulation (2)(a)(ii) shall apply in cases where the necessity of accompaniment contemplated in paragraphs (a) and (c) is confirmed on the basis of a medical certificate –
 - (a) when a parent accompanies a child who has to undergo medical treatment;
 - (b) when a spouse accompanies an educator who has to undergo medical treatment;
 - (c) when an educator accompanies his or her spouse who has to undergo medical treatment; and
 - (d) when the dependent children of an educator or those of his or her spouse accompany him or her or his or her spouse who has to undergo medical treatment: Provided that no alternative arrangement could be made for their care at the educator's station.
- (7) An educator stationed abroad experiencing problems in meeting the financial obligations resulting from the acquiring of a medical service that is recognised for benefit purposes by his or her medical scheme, may apply to the employer for relief-aid in the form of an advancement or the direct settlement of the medical bill: Provided that the payment of the amount of the relief-aid for which application is made, has been demanded by the supplier of the service concerned and that it is taken into account when claims are being processed.
- (8) The employer contribution in respect of –
 - (a) crown- and bridgework of teeth;

- (b) spectacle frames; and
 - (c) contact lenses,
- is limited to an amount calculated in accordance with a basis determined by the Minister.
- (9) An educator who is transferred abroad, as well as his or her dependents who will accompany him or her, shall prior to their departure undergo a medical examination by a registered physician at the cost of the employer: Provided that the employer may in his or her discretion and for reasons acceptable to him or her, grant exemption from such a medical examination.
 - (10) The submission, channelling and processing of claims shall be done in accordance with regulation 67.
 - (11) (a) In cases where an educator on an official visit abroad receives medical treatment, the contribution to be made by the employer towards the costs of such treatment may be determined after consultation with the medical scheme of which the educator is a member.
 - (b) If an educator referred to in paragraph (a) is not a member of a medical scheme the costs of a similar service must be determined by the employer after consultation with an acknowledged medical scheme.
 - (c) The provisions contained in subregulation (7), (8) and (9) shall *mutatis mutandis* apply to an educator referred to in paragraph (a).
 - (12) (a) The Department of Foreign Affairs –
 - (i) annually provides on its vote for the expenditure resulting from the granting of benefits referred to in subregulation (2)(a)(i) above with regard to all educators stationed abroad; and
 - (ii) is, where applicable, responsible for establishing the basis in accordance whereof foreign currencies are to be converted to rand or *vice versa*.
 - (b) Individual employers shall provide for the following expenses:
 - (i) Expenses resulting from the medical treatment of educators on official visits abroad.
 - (ii) Subsistence and travelling expenses referred to in subregulation (2)(a)(ii), read with subregulation (6).
 - (iii) The granting of relief-aid as referred to in subregulation (7).
 - (iv) Expenses resulting from medical examinations referred to in subregulation (9).

Procedure for the submission, channelling and processing of claims abroad

- 66.** (1) (a) The original bill in respect of medical assistance abroad, shall, under cover of a claim form of the medical scheme of which the educator is a member, be submitted to the mission or foreign office who shall ensure that –
- (i) the claim form is filled in correctly;
 - (ii) the bill is properly specified or that the type of service is understandable; and
 - (iii) proof of payment is provided.
- (b) The mission or foreign office shall pay the sum-total of the claim, or such other amount as determined in accordance with guidelines laid down by the Department of Foreign Affairs in consultation with other government institutions who have personnel abroad, to the educator in local currency.
- (c) The Department of Foreign Affairs checks and verifies the claim and sends it to the medical scheme of which the official is a member.
- (2) (a) The medical scheme determines in terms of its rules –
- (i) the benefits payable in respect of a specific claim and pays it to the Department of Foreign Affairs; and
 - (ii) the member's liability in respect of a service not acknowledged by the scheme for benefit purposes.
- (b) With regard to the member's liability referred to in paragraph (a)(ii) the Department of Foreign Affairs determines the amount to be paid from State funds.
- (c) The mission or foreign office shall recover the member's liability referred to in paragraph (a)(ii) from him or her in local currency.

Medical assistance to educators at retirement or termination of service

- 67.** (1) (a) The provisions contained in this regulation are applicable to an educator who retires with pension or whose service is terminated and who has been a member of a medical scheme prior to his or her retirement or termination of service.
- (b) In the case of the death of an educator who has been a member of a medical scheme, including an educator who passes away prior to retirement or termination of service, the provisions contained in this regulation are also applicable to the surviving spouse who becomes a member of the medical scheme in his or her place: Provided that in the case of an educator who as a result of a customary marriage has more than one spouse, the continued employer contribution in respect of such an

- educator who passes away prior to or after retirement or termination of service, is limited to an amount not exceeding the employer contribution for one surviving spouse with or without dependants, as the case may be.
- (2) The extent to which assistance is rendered shall be as set out in subregulation (3) and will be calculated only once in accordance with the position which applies or had been applicable in respect of an educator at retirement or termination of service or at his or her death, as the case may be.
- (3) (a) The following educators or their surviving spouses, qualify for assistance in accordance with the basis as set out in paragraph (b):
- (i) Educators who pass away or retire as a result of the attainment of the normal retirement age referred to in regulation 15;
 - (ii) educators whose services are terminated by the employer as a result of the abolition of their posts, reorganisation, to promote efficiency, or to economise;
 - (iii) educators who, at their request, retire with the approval of the employer (but not as a result of misconduct or incapacity), or as a result of a right to early retirement;
 - (iv) educators who retire according to a decision by the employer (but not as a result of misconduct or incapacity);
 - (v) educators who retire as a result of ill health not ascribed to their own doing; and
 - (vi) educators who retire as a result of injury on duty.
- [Reg. 67(3)(a) substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (b) Assistance in respect of the persons referred to in paragraph (a) is rendered on the following basis:
- (i) In the event of retirement or termination of service or death prior to 1 May 1996, the rules as applied on the date of termination of service or death, remain applicable.
 - (ii) In the event of retirement or termination of service or death on or after 1 May 1996 of educators who, at the time of their retirement or termination of service or death, are members of a medical scheme, assistance is rendered on the basis as determined by the Minister.
- [Reg. 67(3)(b) substituted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (c)
- [Reg. 67(3)(c) deleted by G.N. No. 1153 of 1997 dated 1 September 1997.]
- (d) Assistance in respect of the persons referred to in paragraph (c) is rendered on the following basis:
- (i) In the event of retirement or termination of service prior to 10 June 1994 the rules as applied on the date of termination of service, remain applicable.
 - (ii) In the event of retirement or termination of service on or after 10 June 1994 educators who, at the time of their retirement or termination of service, are members of a medical scheme and –
 - (aa) who are at least 55 years old with at least 15 years service (which may include previous periods of service), the state contribution is 3/6 of membership fees, limited to 75% of the maximum rand amount;
 - (bb) who are at least 50 years but younger than 55 years old with at least 15 years service (which may include previous periods of service), the state contribution is 2/6 of membership fees, limited to 50% of the maximum rand amount;
 - (cc) who retire or whose services are terminated at an age younger than 50 years and who have at least 20 years service (which may include previous periods of service) at their disposal, such educators qualify for assistance according to the basis in subparagraph (ii) at attaining the age of 50: Provided that they are not receiving medical assistance on account of their employment by another employer.

[(sic) It would appear that (d) should also have been deleted by G.N. No. 1153 as it refers to (c) which was deleted.]

State housing

68. (1) The provisions of this regulation shall not be applicable to an educator residing in a hostel attached to a state educational institution.
- (2) An employer may make state housing available to an educator when it is to be utilised as an instrument in the execution of his or her duties and because the work specifications of a specific post require that the incumbent thereof be available on the terrain where such duties are performed, within and outside his or her official hours of duty and educators occupying such posts shall be obliged to occupy the housing.
- (3) (a) Rent in respect of standard married housing is levied at 4% of the annual basic pensionable salary of the educator with a maximum as determined by the Minister.
- (b) Rent in respect of standard single housing is levied at 1% of the annual basic pensionable salary of the educator.
- (c) Rent in respect of non-standard and voetstoets housing shall be 75% of that of standard housing referred to in paragraph (a) or (b), as the case may be.

- (4) An educator who occupies state housing is liable for any levy, tax on services or other charge in respect of water, electricity, sanitation services, refuse removal, etc. which is payable to the local authority concerned or other institution: Provided that if it is not paid directly by the educator, payment must be made to the employer at the compensating tariffs as determined by the providing department with the approval of the Department of State Expenditure.
- (5)
 - (a) The providing department is responsible for the maintenance of state housing, as well as of the permanent fixtures and the grounds (gardens excluded) that form part thereof.
 - (b) The employer who rents housing with the view to making it available as state housing, is responsible for the maintenance, etc. of such housing.
 - (c) The educator is liable and responsible for –
 - (i) keeping the buildings and grounds clean and neat;
 - (ii) maintaining the garden;
 - (iii) all keys received by him or her;
 - (iv) the replacement of consumable articles such as fluorescent lights, light bulbs, etc; and
 - (v) repairing of damage to the housing caused through his or her own fault.
- (6) Should an educator to whom state housing is made available for occupation, be obliged to vacate such housing temporarily in order that it may be occupied by a substitute or to allow for essential repairs or renovations –
 - (a) he or she is exempted from all obligations imposed upon him or her by this regulation, until he or she again occupies such housing; and
 - (b) the measures determined by the Minister apply *mutatis mutandis* to him or her, should he or she at the same time be obliged to remove his or her personal possessions from the relevant housing.
- (7) An educator is not exempted from his or her obligations in terms of this regulation during periods of leave or the performance of official duty away from his or her normal place of work.
- (8) Should an educator –
 - (i) die; or
 - (ii) be discharged in terms of section 8(1)(b) or (c) of the Educators' Employment Act, 1994,the educator and/or his or her household may, whichever is applicable, subject to this regulation, be permitted to stay in state housing for a period not exceeding three months following the month of his or her death or discharge.
- (9) Only the educator and his or her household are allowed to occupy state housing and sub-letting may not take place, unless prior approval has been granted by the providing department or employer on conditions determined by the latter.
- (10) The employing department may supply furniture for state housing, in which case the educator shall pay the tariffs determined by the employing department with the approval of the Department of State Expenditure.
- (11) A department, the State or any person in the employment of a department or the State is not responsible for any loss of or damage to the personal possessions of an educator in state housing.

Other housing

69. (1) Other housing that state housing may be provided to an educator if in the opinion of the employer exceptional circumstances exist and it is in the interest of education and in cases where –
- (a) an educator who, in the interest of the employer, stays at a specific headquarters for a relatively short period;
 - (b) private housing is not available;
 - (c) educators whose posts were not identified for the provision of state housing, must be provided with housing at training centres; and
 - (d) educators are stationed at a place where, or in the vicinity of which, private housing does exist, but their work is of such a nature that it must be possible to reach them on short notice and that they must be able to report as a unit, as a result of which it is essential that they be accommodated at a specific place or near such a place.
- (2) (a) If housing is provided in the circumstances set out in subregulation (1), rent shall be levied at market related tariffs.
- (b) Market related tariffs are rent which apply generally for the market in the area for comparable housing, or, where housing or comparable housing is not available, any other acceptable basis which reflects rent tariffs for the particular area, as whether the housing is purchased or erected by the providing department or rented by the employer department.
- (3) The provisions of subregulation (1) shall *mutatis mutandis* apply to housing contemplated in subregulation (2).

Accommodation expenditure

70. An educator who, with the approval of the employer is on official duty away from his headquarters, shall be compensated by the employer for the accommodation expenditure incurred by him or her of necessity during such a period in addition to his or her normal expenditure on the basis determined by the Minister.

Official journeys and transport

71. If it is required of an educator to perform official duties at a centre other than his or her headquarters and he or she has of necessity to make use of transport approved by the employer to travel between his or her headquarters and such centre he or she may be compensated in accordance with a tariff determined by the Minister by the employer for the expenditure involved.

Transport between residence and place of duty

72. (1) A head of education may at his or her discretion authorise an educator to use government transport between his or her residence and place of duty, should exceptional transport problems arise regarding the performance of duty at a particular place of duty and which make it essential that government transport be provided.
- (2) If an educator is transported in terms of subregulation (1) he or she must pay for such transport according to the tariffs determined by the Minister.

Home Owner Allowance Scheme: Application and limits of scheme

73. (1) In order to participate in the provisions of the Home Owner Allowance Scheme (hereinafter referred to as the scheme) either on the date of application or at any point of time during the allowance payment period, an educator shall comply with all the provisions of these regulations dealing with the scheme in so far as such provisions are applicable to him or her.
- (2) An educator who wishes to participate in the scheme shall –
- (a) be a contributing member of a statutory instituted pension or provident fund or shall be under an obligation to contribute to such a fund upon completion of a qualifying period of service;
 - (b) be employed in a full-time capacity;
 - (c) in the event of being a full-time educator, employed in a temporary capacity, be younger than 65 years of age; and
 - (d) not be married to a person who already participates in the scheme for the Public Service.
- (3) If an educator or his or her spouse, in addition to the dwelling that he or she occupies, owns another paid-off dwelling or not paid-off dwelling (wherever located and in spite of the fact that the registered mortgage in the case of the other not paid-off dwelling is smaller or larger than the registered bond on the dwelling which he or she occupies) which is registered in his or her or his or her spouse's name and in respect of which he or she or his or her spouse previously for any period received an allowance (a subsidy) on the basis described in these regulations (or on a similar basis) on the strength of his or her or his or her spouse's service in the Public Service, an education department, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision, as contemplated in section 15(1) of the Public Service Act, 1994, he or she qualifies for a reduced allowance.
- (4) If a reduced allowance is payable to an educator in terms of subregulation (3) and the other paid-off or not paid-off dwelling referred to in the said subregulation is sold, the provisions of regulation 75 are *mutatis mutandis* applicable: Provided that if the other paid-off or not paid-off dwelling is sold on a leasehold basis it is for this purpose still regarded as being in the possession of the educator or his or her spouse.
- (5) In order to qualify for participation in the scheme an educator shall own a dwelling –
- (a) which is registered in –
 - (i) such educator's name; or
 - (ii) both such educator's and his or her spouse's names; or
 - (b) which is constructed on –
 - (i) premises in respect of which the person(s) referred to in paragraph (a) has obtained a right of leasehold under a statutory provision; or
 - (ii) tribal or state land in respect of which official ratification of the right to occupy such land, can be produced by the person(s) referred to in paragraph (a); or
 - (c) that was obtained by the person(s) referred to in paragraphs (a) by way of a contract of sale which will lead to the acquisition of right of possession/proprietary rights and in respect of which a registered mortgage was granted to him or her by an institution referred to in subregulation (9), but which cannot as yet be transferred in the said person(s) name(s), because –
 - (i) surveying or town establishment, or the provision of sewerage or other services such as roads, water, electricity, etc., are not finalised; or

- (ii) the person concerned, if surveying and town establishment is finalised, has not paid the required deposit on the purchase price of the dwelling in full; or
 - (iii) the final purchase price of the property has not yet been finalised and only a provisional purchase price is known at the time of signing the suspensive sale agreement; and
- (d) that is situated within the borders of the Republic of South Africa.
- (6) (a) The dwelling shall be occupied by the educator and, if applicable also his or her dependants: Provided that if an educator with dependants purchases or constructs or already owns a dwelling elsewhere than at his or her headquarters (eg the new headquarters to which he or she is to be transferred or the place where he or she wishes to settle after retirement), and this dwelling is occupied only by his or her dependants, and he or she joins them periodically, he or she should be deemed to comply with this requirement.
- (b) If, as a result of disaster (hurricane, flood, earthquake, fire damage, etc.) or intimidation, an educator is forced to vacate the dwelling temporarily the employer may continue with the payment of a home owner allowance subject to the conditions and for the period which is deemed reasonable.
- (c) The home owner allowance may also be paid to an educator who is officially compelled to occupy official quarters: Provided that such educators' –
 - (i) private dwelling must be let, unless the employer is of the opinion that acceptable reasons exist why the dwelling cannot be let or letting would be impractical due to individual circumstances;
 - (ii) dwelling, if it is let, shall be let at a market-related tariff unless the employer is convinced that it is not possible, in which case a lower tariff can be accepted; and
 - (iii) home owner allowance shall be limited to the allowance payable on the compulsory instalment minus any rent received in a particular month.
- (7) The dwelling in respect of which a home owner allowance is paid must be situated in the vicinity of the workplace or headquarters of the educator concerned or must normally have been occupied by the educator should he or she not be living in official quarters, except in the case of an educator stationed at a place where no private housing is available or allowed, the employer may decide otherwise.
- (8) There shall be a registered mortgage (and not a leasehold contract) on the dwelling in respect of which a home owner allowance is paid, which mortgage was obtained from either –
 - (a) the National Housing Board;
 - (b) a local authority;
 - (c) a financial institution registered with the Office for Banks in the South African Reserve Bank; or
 - (d) any other body instituted by an Act of Parliament and which grants loans:Provided that home loans granted by financial institutions created by statute for the development of *inter alia*, rural areas, eg development trusts or corporations, shall be deemed to be registered mortgages.

Calculation of homeowners allowance

74. Subject to the provisions of these regulations, the allowance payable under the scheme is calculated according to the basis, conditions and limitations determined by the Minister.

Recognised loan amount

75. (1) For purposes of the scheme the recognised loan amount is the total of the whole or part of the registered mortgage that was used to buy, construct or to make immovable improvement or alterations (including structural maintenance) to the dwelling or to the premises of the dwelling which an educator occupies.
- (2) In determining the recognised loan amount which is used to calculate the allowance –
- (a) a particular registered mortgage, or the total of registered mortgages if an educator has more than one such a loan on his or her dwelling, is considered the recognised loan amount it is used as contemplated in subregulation (1);
 - (b) the amount of registered mortgages or parts thereof which were not used for the purposes as contemplated in subregulation (1), shall be deducted from the registered mortgage, or the total of registered mortgages if an educator has more than one such a loan on his or her dwelling; and
 - (c) the recognised loan amount, when applicable, shall be further reduced with the amount with which an educator should be penalised in accordance with regulation 76.
- (3) The amounts of registered mortgages which were not used for the purposes as contemplated in subregulation (1) and with which an educator is penalised in terms of the order of magnitude of the recognised loan amount which is used to calculate his or her allowance, shall not be transferable with regard to dwellings which he or she may later purchase or cause to be constructed.

Employment of the proceeds from the sale of a previously subsidised dwelling

76. (1) If an educator or his or her spouse previously owned another dwelling (paid-off or not paid-off) which was registered in his or her or his or her spouse's name in respect of which he or she or his or her spouse

previously for any period received a subsidy (or allowance on the basis set out in these regulations or a similar basis) on the grounds of his or her spouse's service in the Public Service, an education department, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision and which was sold (for this purpose it is deemed to be sold on the date on which the property is registered in the name of the owner), he or she is expected (but not obliged) to use an amount equal to the full difference between the full selling price of the previous dwelling, on the one hand, and the total sum of the balance of the mortgage loan (if any) on the date of sale plus his or her sale costs plus purchasing costs (agent's commission, inspection fees, architect's fees, etc.) conveyancing costs and transfer fees on the new property, on the other hand, for the purpose of purchasing the dwelling (or for purchasing the premises and for the construction of the dwelling) which he or she occupies: Provided that –

- (a) the "other dwelling" referred to in this subregulation concerns only the last dwelling in respect of which a home owner allowance (previously housing subsidy) was paid; and
 - (b) a dwelling sold on the leasehold basis is not deemed to have been sold, since it is registered in the name of the "seller".
- (2) If an educator does not use (or did not use) the said amount for this purpose, the recognised loan amount on the dwelling which is occupied by the educator (or the total of the recognised loan amounts in the case of an educator who has registered more than one mortgage on his or her dwelling) must be reduced by the said amount for the purpose of calculating the allowance.
 - (3) Subregulation (2) is applicable in the case of –
 - (a) an educator who granted the purchaser of his or her previous dwelling an extension for payment of a part of the purchase price until such time as he or she produces proof that the shortfall has been paid in full on the registered mortgage (or the registered mortgages if more than one mortgage is registered in respect of the dwelling); or
 - (b) an educator who is holding back part of the proceeds for immovable improvements or alterations to the new home, until such time as he or she produces proof that the improvements for which the amount concerned was held back have been completed.
 - (4) The amount contemplated in subregulation (2) with which an educator is penalised in respect of a particular dwelling, in terms of the order of magnitude of the recognised loan amount which is used to calculate his or her allowance on such a dwelling, is not transferable with regard to dwellings which he or she may purchase or erect later.
 - (5) An educator who sells a previous dwelling under the circumstances as contemplated in subregulation (1), but who fails or refuses to declare how the proceeds were spent, shall be completely excluded from participation in the scheme from the date of the sale of the previous dwelling: Provided however that he or she qualifies again for participation in the scheme from the salary pay day of the month in which he or she declares how the proceeds were spent.

Date with effect from which the home owners allowance is paid

77. (1) An educator may be paid an allowance referred to in regulation 73, on each salary pay day.
- (2) An allowance contemplated in subregulation (1) shall be terminated if any of the conditions to which the scheme or such allowance is subject, is not complied with.
- (3) If an allowance contemplated in subregulation (1) is suspended in terms of subregulation (2), the allowance may be re-instated with effect from the date that the educator concerned complies with the said conditions.

Home owners allowance payment period

78. (1) An allowance referred to in regulation 73 shall be paid for the duration of the redemption period to which the registered mortgage in respect of which the allowance is paid, is subject.
- (2) If an educator –
 - (a) on his or her appointment applies for an allowance in respect of a dwelling which he or she purchased or constructed before his or her appointment; or
 - (b) whose allowance in respect of a dwelling was terminated for any reason, later again qualified for an allowance in respect of the same dwelling on the grounds of changes in his or her circumstances, his or her date of appointment, or the date on which he or she again qualifies for the allowance concerned, as the case may be, is his or her allowance period commencement date. The educator's allowance period expiry date is (remains) as determined in accordance with subregulation (1).
- (3) If an educator has more than one registered mortgage in respect of the dwelling that he or she occupies, the allowance payment period with regard to each such mortgage is as contemplated in subregulations (1) and (2).
- (4) If any adjustment of the redemption period (extension or reduction) to which a registered mortgage loan is subject, is made, the allowance payment period shall be adjusted accordingly.

Recognition of further or increased registered mortgages

79. (1) Subject to the provisions of regulation 75(1) and (2), an educator shall come into consideration for an increased monthly allowance whenever he or she negotiates a further or an increased registered mortgage and utilises the funds thus obtained –
- (a) to bring about any immovable improvement or alteration to the dwelling which is occupied by him or her or to the premises on which it is situated; or
 - (b) for the redemption of a private loan which was obtained to purchase or to construct the dwelling or to improve or alter it as contemplated in paragraph (a).
- (2) If a further or increased registered mortgage is utilised for immovable improvements or alterations, it shall be acknowledged for the purpose of allowances at the earliest from the date on which the said improvements or alterations were completed: Provided that the employer may approve that completed parts of such improvements or alterations be taken into account for the purpose of allowances.
- (3) The fact that the registered mortgage debt of an educator on his or her dwelling is to be redeemed within a few months of that the registered mortgage debt which he or she had on his or her dwelling was redeemed in full (in other words the mortgage is cancelled), does not mean that subregulation (1) is not applicable to him or her and such an educator can still obtain a further registered mortgage loan on his or her dwelling and if all the qualifying requirements are met, be paid an allowance in respect thereof.

Recognition of advances and reinstatement of existing registered mortgages

80. (1) An educator who obtains an advance or reinstatement of existing registered mortgages (i.e. an action which does not influence the order or magnitude of his or her existing registered mortgage loan amount), even if the funds are utilised for recognised purposes, shall not come into consideration for an increased monthly allowance.
- (2) If an educator obtains an advance or reinstatement on his or her existing registered mortgage whether or not he or she utilises the funds for the purposes as contemplated in regulation 79(1)(a) or (b) and his or her mortgagee adjusts (lengthens) the redemption period to which the existing loan is subject, the allowance payment period remains unaltered.

Allowance payment during official duty away from headquarters

81. (1) If an educator and all his or her dependants, as a result of circumstances beyond his or her control and arising from his or her official duties are obliged to vacate the dwelling temporarily, payment of the allowance may, subject to subregulation (2), be continued from the date of such vacating until he or she and his or her dependants again occupy the dwelling.
- (2) The continued payment of the allowance in terms of subregulation (1) must be reduced with the rent received for the dwelling (for this purpose the person must indicate in writing that all steps are being taken to let the dwelling and he or she must inform the employer monthly of the rent received), on condition that this subregulation does not apply in respect of the first six months after a person and all his or her dependants have vacated the dwelling.
- (3) Subregulations (1) and (2) are *mutatis mutandis* applicable to a single educator (without dependants).

Allowance payment on transfer to a foreign country or from one headquarter to another in the Republic

82. (1) If an educator who has been transferred as well as his or her dependants vacate the dwelling in respect of which he or she is receiving an allowance, payment of the allowance may be continued, regardless of whether the dwelling is being leased or not –
- (a) until such time that he or she sells the dwelling and for this purpose it is deemed to have been sold on the date on which the property is registered in the name of the new owner; or
 - (b) until such time as he or she qualifies for an allowance in respect of a dwelling at his or her new headquarters; or
 - (c) for a period of six months, calculated from the date that his or her transfer comes into effect, regardless of whether he or she and his or her dependants physically left his or her previous headquarters before, on or after that date,
- whichever of the three periods is the shortest.
- (2) If the dependants of the transferred educator, or any of them, continue to occupy the dwelling at his or her previous headquarters, he or she shall be deemed still to be complying with the occupancy requirement laid down in regulation 73(7)(a) and payment of an allowance should be continued to him or her as long as such dependant continues to live in the dwelling and he or she continues to comply with all the qualifying requirements.
- (3) If the dependants of the transferred educator, referred to in subregulation (2), vacate the dwelling concerned –
- (a) before expiry of the relevant (shortest) period as set out in subregulation (1), the allowance may still be paid to him or her for the remaining part of such period; or

- (b) after expiry of the relevant (shortest) period as set out in subregulation (1), payment of the allowance shall be terminated from the date of such vacating.
- (4) Subregulations (1) to (3) shall *mutatis mutandis* be applicable to an educator –
 - (a) whose services are made available to a neighbouring state under the technical aid scheme; or
 - (b) who is transferred to another headquarters and who has to occupy official quarters there; or
 - (c) who purchases or constructs a dwelling, but before payment of a home owner allowance can be effected, is transferred.
- (5) If a transferred educator after expiry of the period during which, in terms of paragraphs (1) to (4), the allowance is payable to him or her in respect of the dwelling at his or her former headquarters, experiences substantial difficulties to sell such dwelling, the employer may authorise continued payment of the allowance to the educator by applying the provisions in paragraphs (1) to (4) *mutatis mutandis* for a further period as determined by the employer in respect of the relevant dwelling: Provided that –
 - (a) the educator experiences difficulties outside his or her control to sell the dwelling at his or her former headquarters at a price which covers his or her outstanding mortgage loan: Provided that if an educator prefers not to sell his or her dwelling, this provision shall not be applicable to him or her;
 - (b) the continued allowance shall be calculated as if the educator is still occupying the dwelling;
 - (c) the continued allowance be reduced with the rent received for the dwelling at the former headquarters and for this purpose the educator must indicate in writing that all reasonable steps have been taken to let the dwelling and he or she must inform the employer monthly of the rent received and the rent so received must be market-related, unless the employer is convinced that rental at a market related tariff is not possible; and
 - (d) the continued payment of the allowance is reconsidered every six months.
- (6) (a) An educator serving abroad qualifies for the continued payment of the home owner allowance in respect of the dwelling in the Republic on which an allowance was paid at the time of transfer or secondment.
 - (b) The amount of the continued allowance is limited to the allowance payable on the compulsory instalment, minus any rent received in a particular month.
 - (c) Payment of the continued allowance takes place only on submission of proof of rent received on the dwelling and in cases where the dwelling cannot be leased for a limited period of time, educators must indicate their willingness in writing to let their dwellings: Provided that the rent obtained must be market-related, unless the employer is convinced that rental at a market related tariff is not possible.

Allowance payment on transfer to or appointment in education

83. The provisions of regulation 81(1) to (3) apply *mutatis mutandis* to an educator who is transferred in terms of section 6 of the Act, or who was in the employ of the Public Service as contemplated in the Public Services Act, 1994, and is appointed in Education without any interruption in service if he or she –
- (a) changes his or her station as a result of such transfer or appointment;
 - (b) at the time of such transfer or appointment owns a dwelling at his or her previous station in respect of which he or she received an allowance from his or her former employer.

Effect of leave of absence on allowances

84. Payment of an allowance under the scheme to an educator shall be continued during periods of leave of absence of any nature, whether with or without payment, or periods of suspension, in terms of section 14(2) of the Act, on condition that if –
- (a) he or she is absent on leave without payment, the allowance may be paid to him or her for a particular month only if he or she provides acceptable proof that the monthly repayment on his or her mortgage which was payable during that month has in fact been paid; and
 - (b) he or she and his or her dependants vacate the dwelling during such period of leave of absence or suspension, the dwelling is not leased: Provided that if the dwelling is leased, payment of the allowance shall be terminated from the date of such leave.

Responsibility of participants in scheme

85. An educator who applies for an allowance under the scheme or who is in receipt of such allowance, shall –
- (a) substantiate his or her application with the necessary documentary evidence;
 - (b) during his or her allowance payment period, report any change which may have an influence on the registered loan amount or the expiry date of his or her allowance payment period and where applicable, substantiate it with documentary evidence;
 - (c) make arrangements that his or her monthly instalments on his or her mortgage is recovered by stop-order from his or her salary and paid to the mortgagee; and

- (d) deliver a statement from the mortgagee which reflects the annual transactions with regard to his or her mortgage, on request to his or her employer.

Over and underpayments of allowances

86. (1) If the amount of an allowance under the scheme paid to an educator is found to be incorrect the error shall be corrected immediately and any amount which because of such error was –
- (a) overpaid shall be recovered from the educator: Provided that if the amount cannot be recovered in a single sum, interest shall not be charged on the monthly outstanding balance; or
 - (b) underpaid, shall be paid to the educator.
- (2) (a) If discovered that an allowance is paid to an educator who does not qualify for it, or that an allowance higher than that for which he or she qualifies is paid as a result of the fact that he or she deliberately provided incorrect information or withheld relevant information –
- (i) payment of the allowance to him or her shall be suspended from the first pay date after it was discovered;
 - (ii) the amount paid or overpaid shall be recovered from him or her: Provided that if such amount cannot be recovered in a single sum but by monthly payments, interest shall be charged on the outstanding balance at the rate determined from time to time for this purpose by the Minister of Finance; and
 - (iii) he or she shall not come into consideration for an allowance again.
- (b) Any action taken under paragraph (a) shall not prevent action in accordance with the provisions with regard to misconduct as contained in the Act.

General measures concerning the payment of a home owner allowance

87. (1) (a) If a dwelling is registered in the names of two or more persons none of whom are married to each other, the following shall be applicable in respect of each person who participates in the scheme:
- (i) If all the persons in whose names the dwelling is registered are educators or other persons who may take part in the scheme, the real loan amount is divided in the proportion to which the educators concerned obtained ownership in the property, thereby to determine the recognised loan amount of each educator.
 - (ii) If not all of the persons in whose names the dwelling is registered are educators or other persons who may take part in the scheme, the real loan amount –
 - (aa) is divided in the proportion to which the persons concerned have ownership in the property, thereby to determine the recognised loan amount for each person; or
 - (bb) is divided by the number of persons concerned to determine the loan amount for each person,and whichever recognised loan amount is the smaller is used for allowances purposes.
 - (iii) The allowance is paid for the normal allowance payment period, subject to the provisions of regulation 77.
 - (iv) When the dwelling is sold the gross return is divided in the proportion as used in subparagraph (a)(i) or (ii), in order to determine the gross return and furthermore the usable net return in each case for purposes of the application of regulation 75
- (b) The total of the monthly allowances payable in the case of educators as contemplated in paragraph (a)(i), or in the case of educators and those other persons as contemplated in paragraph (a)(ii) shall not be more than that payable if the dwelling was registered in only one person's name.
- (2) (a) No allowance shall be payable to an educator who occupies a dwelling that is registered in the name of a company, partnership or trust.
- (b) When a dwelling that was registered in the name of a deceased husband is kept in the last mentioned estate or in trust and it is clear from the testamentary directions that the widow who is employed as an educator will shortly acquire ownership of the dwelling (for example as soon as the estate has been administered) and she maintains the monthly instalments with regard to the mortgage of the dwelling concerned –
- (i) it shall be deemed that she complies with the ownership requirement and an allowance shall be paid to her if she complies with all the other requirements; and
 - (ii) her allowance period expiry date is that date when the registered redemption period to which the loan is subject will expire.
- (3) Loans that do not comply with the provisions of regulation 73(9) shall not be acknowledged for allowance purposes: Provided that if such a loan is redeemed by an acknowledged mortgage, such mortgage may be recognised for allowance purposes to the extent which the private loan was used for recognised purposes as contemplated in regulation 79(1)(a).
- (4) Regulation 75 shall *mutatis mutandis* be applicable to an educator who divides his or her property on which an allowance is paid to him or her, and sells part of it on the basis that it is expected of an educator to pay off an amount equal to the difference between the full purchase price of the sold part and the total sum of

his or her divisioning and sale costs, as well as any amount for the said return that it used by him or her for immovable improvements or alternations to or on the premises of the dwelling which he or she occupies: Provided that if the said return is not used accordingly, the provisions of regulation 75(2) shall be applicable.

- (5) (a) As mortgagees in general imposed interest on registered mortgages for the period from the date of registration of the mortgage loan to the date before that on which the first obligatory capital and interest redemption (instalment) is payable, an educator who complies with the occupancy requirement as referred to in regulation 73(7) during the period that interest is imposed, may be paid an allowance on the interest paid directly by an educator to his or her mortgagee, in respect of the true period that interest was imposed or 30 days, whichever is the shorter period.
- (b) The allowance that is payable in accordance with the paragraph (a), is calculated as follows:
- $$A \times \frac{B}{30} = \text{allowance on interest}$$
- where –
- A represents the allowance that is payable in accordance with regulation 73 in respect of the recognised loan amount of the educator concerned; and
- B represents the true number of days (maximum 30) in respect of which interest was imposed.
- (c) The provision in paragraph (a) shall only be applicable to the first or main mortgage loan on a dwelling, and an allowance is therefore not payable on the interim interest of a second or further mortgage loan on the dwelling that an educator occupies.
- (6) If an educator divorces his or her spouse and as a result thereof the dwelling in respect of which he or she or his or her spouse previously for any period of time received an allowance (or subsidy) on the basis set out in these regulations or on a similar basis on the grounds of his or her or his or her spouse's service in the Public Service, the Department of Posts and Telecommunications, a provincial administration or with a council, institution or body established by or under a legal provision as meant in section 15(1) of the Public Service Act, 1994 –
- (a) is sold so that the proceeds can be awarded to his or her spouse or that the proceeds can be divided between himself or herself and his or her spouse, his or her case should be dealt with in terms of the provisions of regulation 75 and for such purpose only 50% of the net proceeds from the sale of the dwelling as contemplated in the said regulation shall be taken into account if he or she obtains a further dwelling and applies for an allowance;
- (b) is granted to his or her spouse (where, for example, the dwelling is transferred in his or her spouse's name or usufruct is granted to her or him), his or her case should be dealt with in terms of the provisions of regulation 75 as if he or she had sold the dwelling and for such purpose and in order to determine the net proceeds and realistic valuation of the dwelling's market value at the time that it is awarded to the spouse must be obtained: Provided that only 50% of the net proceeds as contemplated in the said regulation shall be taken into account when he or she obtains a further dwelling and applies for an allowance; or
- (c) is retained by him or her but is encumbered by further debt by obtaining a higher or further registered mortgage loan to reimburse his or her spouse for her or his part in the joint estate, his or her case is to be dealt with in terms of the provisions of regulation 75 as if he or she had sold the dwelling and bought another one and for such purpose and in order to determine the net proceeds, a realistic valuation of the dwelling's market value at the time of his or her divorce, must be obtained: Provided that an allowance based on an amount of not more than 50% of the net proceeds may be paid on the higher or further mortgage loan.

Service bonus

88. (1) (a) A non-pensionable service bonus is payable to educators in terms of this regulation.
- (b) An educator who does not qualify for leave is excluded from the provisions of this regulation.
- (2) (a) The date of payment of the service bonus referred to in subregulation (3) is the date on which an educator's salary is paid in the month in which his or her birthday falls: Provided that in the case of an educator whose birthday falls during any of the months of January, February or March, his or her service bonus is paid in April.
- (b) An educator whose services terminate for any reason with effect from the day following his or her service bonus pay date, nevertheless qualifies for the service bonus: Provided that a service bonus is not payable to an educator whose services terminate with effect from his or her service bonus pay date or any earlier date, for whatever reason, with the exception of an educator contemplated in subregulation (5).
- (3) The service bonus is calculated as follows:

Amount of the service bonus

$$\frac{A}{365} \times B - \frac{C}{365} \times B + \frac{D}{E} \times \frac{B}{365}$$

where –

A represents the following service period (in days and not more than 365 days), as the case may be:

- The service period of 12 months ending on the last day of the month that precedes the month in which the service bonus pay date for the educator concerned falls; or
- the period which elapsed from the date of the (latest) appointment of the educator concerned up to the last day of the month preceding the month in which his or her service bonus pay date falls, if he or she had not been employed for the full period of 12 months as mentioned above;

B represents the following amount, namely:

- 93% of the full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) of the educator for the month in which his or her service bonus pay date falls, if he or she is a member of a pension fund or is not yet a member because he or she has not yet completed the qualifying service period for membership; or
- the full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) of the educator for the month in which his or her service bonus pay date falls if he or she does not qualify for membership of a pension fund, for example an employee employed under a contract that makes provision for payment of a benefit on expiring of such contract;

C represents the number of days, if any, in respect of which the person concerned, during the appropriate period represented by factor A above, received no salary as a result of –

- vacation and/or special leave without salary granted to him or her; and/or
- unauthorised absences from service recorded as vacation leave without salary; and/or
- his or her having been suspended from his or her duties without remuneration, according to the Act in terms of which he or she was appointed; and/or
- payment of his or her salary having been entirely suspended on the grounds of an offence which he or she committed while carrying out military service; and

D represents the number of working hours, if any, in respect of which the person concerned during the appropriate period represented by factor A above, received no salary as a result of unauthorised absences from duty which is recorded as pro rata vacation leave without salary; and

E represents the minimum number of working hours which the educator concerned must work per day.

- (4) (a) In respect of each educator to whom a service bonus is payable based on an amount of 93% of his full gross basic salary, a calculation shall be made according to the following formula, even if the reduction part of the formula referred to in subregulation (3) has the effect that no service bonus is payable to the educator:

$$28\% \times \frac{A}{365} \times B = \text{amount,}$$

where –

- A represents the same as factor A in the formula in subregulation (4); and
 - B represents the full gross basic monthly salary of the officer or employee concerned for the month in which his or her service bonus pay date falls.
- (b) The amounts calculated according to paragraph (a) in respect of all educators whose service bonus pay date falls in the same month should be added together and paid into the Civil Pension Stabilisation Account.

- (5) A *pro rata* service bonus is payable when –

- (a) the services of an educator is terminated for one of the reasons referred to in subregulation (6): Provided that he or she received a service bonus on his or her last service bonus pay date before his or her termination of service; or

- (b) an educator dies.

- (6) The reasons for termination of services contemplated in subregulation (5)(a) are the following:

- (a) Retirement at reaching the voluntary or optional retirement age.

- (b) Discharge of an educator –

- (i) on account of continued ill-health without own default;
- (ii) owing to the abolition of his or her post or reduction in or reorganisation or readjustment of departments or offices;
- (iii) if, for reasons other than his or her own unfitness or incapacity, his or her discharge will promote efficiency or economy in the department or office in which he or she is employed, or will otherwise be in the interest of the Public Service; and
- (iv) on account of unfitness for his or her duties or incapacity to carry them out efficiently (as opposed to misconduct).

- (c) Termination of the services of an educator on or after attaining the age of 60 years, for any reason, including voluntary resignation, but excluding
- (i) voluntary resignation, in order to avoid discharge on account of misconduct or ill-health occasioned by own default;
 - (ii) discharge on account of misconduct or unsatisfactory service or ill-health occasioned by own default;
 - (iii) absconding;
- (d) Termination of an educator's services, irrespective of whether the department terminates his or her service, or he or she resigns voluntarily, because his or her spouse is transferred by the department in which he or she is employed and there being no vacant post available to him or her in any department at his or her spouse's new station: Provided that, should there be a post available for him or her (in any department) at his or her spouse's new station, but he or she refuses to accept it, no service bonus shall be paid to him or her.
- (7) The *pro rata* service bonus contemplated in subregulation (5) is calculated as follows:

Amount of *pro rata* service bonus

$$\frac{A}{365} \times B - \frac{C}{365} \times B + \frac{D}{E} \times \frac{B}{365}$$

where –

- A represents the period (in days) extending from the first day of the month in which his or her last service bonus pay date fell (or from the date of appointment in the case of death if the deceased was not paid a service bonus previously), up to his or her last day of service;
- B represents the applicable amount indicated below –
- 93% of the educator's full gross basic salary (excluding any allowance, irrespective of whether it is pensionable or not) in the month that his or her services terminate if he or she is a member of a pension fund or not yet a member because he or she has not yet completed the qualifying service period for membership; or
 - an educator's full gross basic salary (excluding any allowance, irrespective whether it is pensionable or not) in the month that his or her services terminate if he or she does not qualify for membership of a pension fund;
- C represents the number of days, if any, in respect of which the person concerned, during the appropriate period represented by factor A above, received no salary as a result of –
- vacation or special leave without salary granted to him or her; or
 - unauthorised absences from service recorded as vacation leave without pay; or
 - his or her having been suspended from his or her duties without remuneration according to the Act in terms of which he or she was appointed; or
 - payment of his or her salary having been entirely suspended on the grounds of an offence which he or she committed while carrying out military service; and
- D represents the number of working hours, if any, in respect of which the person concerned during the appropriate period represented by factor A above, received no salary as a result of unauthorised absences from duty which is recorded as *pro rata* vacation leave without salary; and
- E represents the minimum number of working hours which an educator concerned must work per day.
- (8) A *pro rata* service bonus, calculated in accordance with the formula in subregulation (7) may be paid to an educator whose birthday falls in January, February or March, when his or her services terminate before his or her normal service bonus pay date in April as a result of his or her voluntary resignation, on condition that such person is still employed on the salary pay date of the month in which his or her birthday falls, in other words it an educator whose birthday is in February resigns with his or her last day of service 31 January, a *pro rata* service bonus may not be paid to him or her: if such an educator's services terminate on or after his or her normal salary pay date in February, he or she shall qualify for a *pro rata* service bonus on his or her last day of service.
- (9) In respect of each educator to whom in terms of the provisions in subregulation (5) a *pro rata* service bonus is payable based on an amount of 93% of his or her full gross basic salary, a calculation shall be made according to the following formula, even if the reduction part of the formula contemplated in subregulation (7) has the effect that no *pro rata* service bonus is payable to the educator or employee:

$$28\% \times \frac{A}{365} \times B = \text{amount,}$$

where –

- A represents the same as factor A in the formula in subregulation (7);
- B represents the full gross basic salary of the educator concerned for the month in which his or her service bonus pay date falls.
- (10) The amounts calculated according to subregulation (9) in respect of all educators whose *pro rata* service bonus pay date falls in the same month should be added together and paid into the Civil Pension Stabilisation Account.

- (11) (a) When an educator dies, the *pro rata* service bonus contemplated in subregulation (5)(b) must be paid in respect of –
- (i) marriages in terms of the Marriage Act, 1961 –
 - (aa) to the surviving spouse; or
 - (bb) if there is no surviving spouse, in equal shares to, or for the benefit of, minor or major children (including a legally adopted child) of the deceased, who at the time of his or her death were fully dependent on him or her; or
 - (cc) if there is no surviving spouse or children, into his or her estate; and
 - (ii) customary marriages –
 - (aa) to the surviving spouse or in equal shares if there are more than one surviving spouse; or
 - (bb) if there is no surviving spouse, in equal shares to, or for the benefit of, minor or major children (including a legally adopted child) of the deceased, who at the time of his or her death were fully dependent on him or her; or
 - (cc) if there is no surviving spouse or children, into his or her estate.
- (b) When an educator's services terminate for any reason other than death, and he or she dies after his or her services have terminated but before a *pro rata* service bonus is paid to him or her, such *pro rata* service bonus should be paid into his or her estate, irrespective of whether or not he or she has left behind a surviving spouse or fully dependent children.
- (c) The *pro rata* service bonus which on termination of services –
- (i) is payable to an educator should be used as a set-off against any departmental debt which he or she may have, unless such debt can be fully recovered by other means, for example outstanding salary and allowances or pension moneys, or unless subparagraph (ii) applies; or
 - (ii) is payable to the surviving spouse or fully dependent children or into the estate of the deceased educator, shall not be used for the purposes mentioned in subparagraph (i).
- (d) For purposes of factor A in the formula in subregulations (3) and (7) previous uninterrupted service in a temporary or permanent capacity, as well as previous service at an institution contemplated in Public Service Regulation C5.7, may be acknowledged for service bonus purposes, on condition that this paragraph is not applicable to an educator if he or she has received a *pro rata* service bonus at the end of any previous service period.
- (e) The service bonus is not part of salary or an allowance or pensionable and should therefore not be taken into account –
- (a) in the calculation of service or leave gratuities, additional compensation, allowances or any other service benefit or compensatory measure which in any way is based on salary; and
 - (b) in the classification of educators according to their salaries for purposes of the granting of any service benefit or compensatory measure, overtime remuneration, any allowance, rent for official quarters, etc.

Long service recognition

89. (1) The authority to approve that an award be made to an educator for long service recognition rests with the employer.
- (2) Awards for long service recognition may, subject to this regulation, be made to educators appointed in a permanent capacity.
- (3) An employer may make the following awards for long service recognition:
- (a) A certificate and, if the educator so wishes, the discounting of a maximum of 10 days available vacation leave in cash after he or she has rendered 20 years of continuous and consistently satisfactory and devoted service.
 - (b) A certificate and a wrist-watch and, if the educator so wishes, the discounting of a maximum of 15 days available vacation leave in cash after he or she has rendered 30 years of continuous and consistently satisfactory and devoted service.
- (4) (a) For purposes of the service requirement contemplated in subregulation (3), service in the Public Service contemplated in section 8 of the Public Service Act, 1994, may be acknowledged, as well as the following service on condition that there is no break in service during the transfer or appointment of the persons concerned:
- (i) In terms of a former provincial ordinance;
 - (ii) rendered in terms of the –
 - Precious Stones Act, 1964 (Act No. 73 of 1964);
 - Water Act, 1956 (Act No. 54 of 1956); and
 - Development Trust and Land Act, 1936 (Act No. 18 of 1936);
 - (iii) rendered in terms of any law as an educator;

- (iv) at a statutory institution in those cases where a function and the personnel therewith were transferred from the Public Service and the same personnel, with a "retransferring" of such function to the Public Service, is appointed again in the Public Service.
- (b) An educator to whom a wrist-watch may be granted, may make a choice regarding the wrist-watch he or she wants and such choice is limited to the make and the model (and the distributors thereof).
- (c) If an educator elects to discount the available vacation leave referred to in subregulation (3), the actual applicable salary notch of the educator concerned as on the date of qualification for the award shall be used to calculate the amount to be paid to him or her.
- (d) If a blind educator qualifies for the award of a wrist-watch, he or she may be permitted to purchase a braille wrist-watch of his or her choice from the South African National Council for the Blind: Provided that the cost involved, which can be arranged by means of an advance to the educator concerned, is limited to the maximum amount of the usual wrist-watch which could be awarded to him or her in terms of paragraph (b).
- (e) Wrist-watches may be awarded posthumously subject to the award being made to the surviving spouse only and the educator having already qualified for the award before his or her death.

Resettlement expenditure

90. (1) Upon the transfer, appointment or termination of service of an educator in terms of the Act or of his or her death, such an educator or his or her estate, whichever is applicable, shall be compensated by the employer for the reasonable resettlement expenditure actually and necessarily incurred as a result thereof within the framework of the provisions of this regulation and taking into account the following measures and guidelines:
- (a) The head of education, within the context of the provisions, determine policy regarding aspects such as maximum periods of compensation, limits of expenditure, restrictions in respect of the quantity and kind of personal effects, the number and brand of motor vehicles, classes of travel, means of transport, costs of property transfer and any other possible form of expenditure or facet of transfer costs which may come to the fore.
 - (b) In considering the implications in terms of costs, it must be seen to that effective competition takes place where services are rendered for the purpose of resettling an educator or employee and that all available alternatives are taken into consideration to ensure that the most suitable option is exercised under the circumstances.
 - (c) The status of the educator being resettled in terms of his or her rank and taking into account the particular circumstances and underlying reasons.
 - (d) The principle of fairness and reasonableness by the employer in the application of the relevant measures.
 - (e) The delegation of any of the powers vested in the Minister in terms of the provisions of this regulation, must be done taking into account the provisions of the Exchequer Act, 1975 (Act No. 66 of 1975).
- (2) The following expenses shall be payable to an educator on transfer:
- (a) The accommodation and transport expenditure of an educator and a member of his or her household arising from a visit beforehand to the new headquarters.
 - (b) The accommodation and transport expenditure of an educator and his or her household arising from the transfer to the new headquarters including the transport of personal effects from packing to the eventual unpacking thereof at permanent accommodation as well as the all-inclusive insurance cover thereof.
 - (c) The expense of storage of personal effects as well as the all-inclusive insurance thereof.
 - (d) The expense of interim accommodation at the old or new headquarters.
 - (e) The expense of customs duty, or other levies or fees arising from the transport of private motor vehicles across international borders.
 - (f) The transfer expense arising from the purchase of a dwelling or a building site and the erection of a building thereon which expenses shall include the costs of conveyance of the property, mortgage costs, expenses arising from the drafting of a contract and inspection fees: Provided that when transfer expenses are included in a mortgage loan, payment shall not be made to the educator personally, but directly to his or her mortgage loan account.
 - (g) A single amount as determined by the head of education for each child attending school as assistance towards the expenditure of school books, uniforms, sport outfits and other requirements: Provided that the amount shall be effective from a date determined by the Minister and shall be revised quarterly on 1 January, 1 April, 1 July and 1 October, respectively, on the grounds of price increases as reflected in the Central Statistical Service's Consumer Price Index for Clothing and footwear for the first month of the previous quarter, rounded-off for the nearest higher full rand.

- (h) A single amount to meet incidental expenses arising from resettlement, other than those for which specific provision is made in this regulation on the following basis:
- (i) If furnished accommodation is occupied permanently an amount equal to 35% of an educator's basic monthly pensionable salary as on the date of resettlement.
 - (ii) If unfurnished accommodation is occupied permanently an amount equal to 50% of a single educator's basic monthly pensionable salary as at the date of resettlement, or an amount equal to the basic monthly pensionable salary of an educator with dependents as on the date of resettlement.
 - (iii) An amount equal to 35% of the monthly norm station allowance in the local monetary unit as on the date of resettlement in the case of an educator who is transferred to a foreign country:

Provided that if the amount referred to in subparagraph (i) or (ii) is less than an amount calculated in accordance with the applicable percentage referred to in the said paragraphs and based on the monthly pensionable salary in the first salary position of salary range 8, the applicable amount based on the last mentioned basis must be paid: Provided further that the amount referred to in subparagraphs (i) and (ii) shall not exceed an amount based on the basic monthly pensionable salary of a Director: Education.

[Proviso to reg. 90(2)(h)(iii) amended by G.N. No. 1153 of 1997 dated 1 September 1997.]

- (i) The home owner allowance in respect of a dwelling at the previous headquarters may be continued with if the Member of the Executive Council so determine.
 - (j) The travelling expenses incurred by an educator's school attending children who remain at the old headquarters for a period not exceeding a school year: Provided that such expenditure shall be limited to the most economical means of travel to and from the new headquarters at the beginning and end of school holidays and at the end of the school year.
- (3) (a) The travelling as well as transport expenses, insurance costs and storage costs for not longer than one month, of the personal effects of a candidate and his or her household who, on appointment in terms of the Act, necessarily has to relocate may be compensated on the same basis as that provided for in subregulation (2).
- (b) Persons referred to in paragraph (a) shall be bound contractually in writing to be in the service of the employer concerned for a period of not less than 12 months.
- (4) The accommodation and transport expenditure of an educator and his household who is expected to do parliamentary duty, at the beginning and end of a parliamentary session as well as the conveyance to and from Cape Town of essential personal effects and the all-inclusive insurance cover thereof may be compensated on the basis determined by the Minister.
- (5) (a) The expenses provided for in subregulation (2)(b), (c), (d) and (e), arising from moving from an existing place of residence to a place where an educator (excluding an educator who was recruited abroad) and his or her household wishes to settle in the Republic on termination of service, may be paid *mutatis mutandis* to such educator, or his or her household in the case of his or her death on the basis, conditions and requirements which the employer may determine.
- (b) The expenses provided for in subregulation (2)(b) may be paid *mutatis mutandis* on termination of service to an educator who was recruited abroad or his or her household in the case of his or her death, from his or her existing place of residence back to the place where initially recruited.
- (6) If an educator dies whilst on official duty away from his or her headquarters or whilst stationed abroad, including a member of his or her family who accompanies him or her officially, expenses arising therefrom (excluding funeral costs), shall be paid.

Repeal of regulations and savings

91. (1) Subject to the provisions of subregulation (2) the Regulations listed in Annexure A are hereby repealed.
- (2) Anything done or deemed to have been done in terms of the provisions of the Regulations repealed by subregulation (1) and which may or shall be done in terms of these Regulations, shall be deemed to have been done in terms of the corresponding provision of these Regulations.

CHAPTER 5

GENERAL CONDITIONS OF SERVICE OF PERSONS APPOINTED TO PERFORM DUTIES IN RESPECT OF PUBLIC EXAMINATIONS

Appointment

92. (1) A person may be appointed in terms of section 4(2) of the Act, in a part-time temporary capacity to perform duties, as determined by the employer, in respect of a public examination.
- (2) The criteria for the appointment of a person referred to in sub-regulation (1) shall be determined by the Minister.

[Reg. 92 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

Remuneration and compensation

93. (1) A person appointed in terms of regulation 92 shall be remunerated in terms of tariffs determined by the Minister and shall not be entitled to any other benefits provided for elsewhere in these regulations.
- (2) A person referred to in sub-regulation (1) shall be compensated for travel and subsistence as determined by the Minister.

[Reg. 93 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

Official duty

94. (1) A person appointed in terms of regulation 92 for marking or related duties shall be on official duty during the determined period and shall give his or her full attention to such duties.
- (2) A person referred to in sub-regulation (1) shall indicate in an attendance register provided by the employer for that purpose, the time of his or her commencement and ending of duties performed.

[Reg. 94 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

Termination of duties

95. The services of a person employed in terms of regulation 92 terminate on completion of the duties for which he or she has been appointed.

[Reg. 95 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

Suspension from duties

96. (1) The employer or his or her delegate may summarily suspend, in terms of section 14(2) of the Act, a person appointed in terms of regulation 92 from his or her duties without pay, in terms of Regulation 93, if:
- (a) prima facie evidence exists that his or her appointment was based on false information; or
- (b) in the opinion of the employer, reasonable evidence exists that the continued performance of duties by such a person may jeopardise the progress with and/or the integrity of the examination process.
- (2) A person referred to in sub-regulation (1) shall leave the premises on which the examination-related duties are performed, immediately upon suspension from his or her duties.
- (3) Upon completion of the said examination, a disciplinary investigation against the said person shall be conducted in terms of section 13 of the Act. If the employer decides not to charge the said person with misconduct or if the person is found not guilty of misconduct, the person will receive a remuneration equivalent to what he or she would have been paid had he or she not been suspended.

[Reg. 96 inserted by G.N. No. 1498 of 1997 dated 11 November 1997.]

ANNEXURE A

1. **Regulations promulgated under the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988), as contained in:**

Government Notice No	Dated	Extent of repeal
R. 693	30 March 1990	The whole
R. 290	24 January 1992	The whole
R. 972	3 April 1992	The whole
R. 1871	10 July 1992	The whole
R. 2253	26 November 1992	The whole
R. 695	30 March 1990	The whole
R. 292	24 January 1992	The whole
R. 1872	10 July 1992	The whole
R. 3396	24 December 1992	The whole
R. 2255	26 November 1992	The whole

2. **Regulations promulgated under the Indians Education Act, 1965 (Act No. 61 of 1965), as contained in:**

Government Notice No	Dated	Extent of repeal
R. 1288	26 August 1966	The whole
R. 911	30 May 1974	The whole
R. 2260	22 October 1982	The whole
R. 1563	5 July 1991	The whole
R. 2501	25 October 1991	The whole
R. 2584	11 September 1992	The whole

3. Regulations promulgated under the Education and Training Act, 1979 (Act No. 90 of 1979), as contained in:

Government Notice No	Dated	Extent of repeal
R. 1099	2 July 1993	The whole
R. 493	18 March 1994	The whole

4. Regulations promulgated under the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), as contained in:

Government Notice No	Dated	Extent of repeal
R. 1898	21 November 1963	Chapter B
R. 675	11 April 1975	The whole
R. 675	5 April 1984	The whole
R. 7	3 January 1986	The whole
R. 1611	12 July 1991	The whole
R. 3178	20 November 1992	Regulations 3,4 and 5
R. 350	5 March 1993	The whole
R. 826	14 May 1993	The whole

5. Regulations promulgated under the Technical Colleges Act, 1981 (Act No. 104 of 1981), as contained in:

Government Notice No	Dated	Extent of repeal
R. 901	26 April 1991	The whole
R. 1873	10 July 1992	The whole
R. 2257	26 November 1993	The whole

6. Regulations promulgated under the Education Ordinance, 1953 (Ordinance No. 29 of 1953) (Transvaal), in so far as it relates to conditions of service of educators at colleges of education and as contained in:

Administrator's Notice No.	Dated
1053	23 December 1953
211	16 March 1960
219	28 March 1962
594	5 September 1962
888	2 December 1964
214	23 March 1966
609	19 July 1967
624	19 July 1967
625	19 July 1967
962	18 September 1968
348	2 April 1969
687	25 June 1969
1028	17 September 1969
470	29 April 1970
1355	18 November 1970
469	14 April 1971
1359	9 August 1972
2154	6 December 1972
7	3 January 1973
534	3 April 1974
1054	25 August 1976
490	20 April 1977
629	20 June 1979

Government Notice No.	Dated
R. 1877	10 July 1992

7. Regulations promulgated under the Education Ordinance, 1980 (Ordinance No. 12 of 1980) (Orange Free State), as contained in:

Administrator's Notice No.	Dated	Extent of repeal
310	18 November 1981	Chapter 9, in so far as it relates to conditions of service of educators at colleges of education.
6	4 January 1985	In so far as it relates to conditions of service of educators at colleges of education.

Government Notice No.	Dated	Extent of repeal
R. 1513	5 June 1992	In so far as it relates to conditions of service of educators at colleges of education.
R. 1876	10 July 1992	In so far as it relates to conditions of service of educators at colleges of education.

8. Regulations promulgated under the Natal Education Ordinance, 1969 (Ordinance No. 46 of 1969) (Natal), in so far as it relates to conditions of service of educators at colleges of education and as contained in:

Provincial Notice No.	Dated
328	6 July 1972
636	7 December 1972
24	1975
377	26 June 1975
504	1975
739	18 December 1975
340	1977
513	1981
292	8 August 1985

Government Notice No.	Dated
R. 1512	5 June 1992
R. 1875	10 July 1992

9. Regulations promulgated under the Education Ordinance, 1956 (Ordinance No. 20 of 1956) (Cape), in so far as it relates to conditions of service of educators at colleges of education and as contained in:

Government Notice No.	Dated
R. 1511	5 June 1992
R. 1874	10 July 1992

CREATION OF EDUCATOR POSTS IN A PROVINCIAL DEPARTMENT OF EDUCATION AND THE DISTRIBUTION OF SUCH POSTS TO THE EDUCATIONAL INSTITUTIONS OF SUCH A DEPARTMENT

G.N. 1676 of 1998 published in *Government Gazette* No. 19627 dated 18 December 1998

as amended by

G.N. 1451 of 2002 published in *Government Gazette* No. 24077 dated 15 November 2002

CREATION OF EDUCATOR POSTS IN A PROVINCIAL DEPARTMENT OF EDUCATION AND THE DISTRIBUTION OF SUCH POSTS TO THE EDUCATIONAL INSTITUTIONS OF SUCH A DEPARTMENT

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education –

- (a) in terms of section 35 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), hereby withdraw regulations No. R. 593 and No. R. 594, published in Regulation Gazette No. 6159 on 17 April 1998;
- (b) in terms of section 5(1), read with section 35, of the Employment of Educators Act, 1998, make regulation 1 as set out in the Schedule; and
- (c) in terms of section 5(2), read with section 35, of the Employment of Educators Act, 1998, make regulation 2 as set out in the Schedule.

SME BENGU
Minister of Education

SCHEDULE

1. DETERMINATION OF EDUCATOR POST ESTABLISHMENT OF PROVINCIAL DEPARTMENT OF EDUCATION BY MEMBER OF EXECUTIVE COUNCIL CONCERNED

- (a) In this regulation, unless the context indicates otherwise, a word or expression has the same meaning as in the Employment of Educators Act, 1998 (Act No. 76 of 1998), hereinafter called the Act.
- (b) The Member of the Executive Council responsible for education in a province must determine the educator post establishment of the provincial department of education in terms of section 5(1)(b) of the Act, in accordance with any applicable policy made in terms of the National Education Policy Act, 1996.
- (c) In determining the post establishment of a provincial department of education, the Member of the Executive Council must–
 - (i) consult with the trade unions in that province which are members of the Education Labour Relations Council (hereinafter called the ELRC) and governing body organisations which are active in that province; and
 - (ii) take into account the –
 - (aa) the budget of the provincial department of education;
 - (bb) the effect that the post establishment will have on the employment security of educators;
 - (cc) the need for redress in the implementation and promotion of curriculum policy in keeping with the basic values and principles set out in section 195 of the Constitution;
 - (dd) the fact that the division between expenditure on personnel and non-personnel costs in the budget should be educationally and financially justifiable and in accordance with national policy that may exist in this regard; and
 - (ee) the fact that the division between expenditure on educator and non-educator personnel costs in the budget should be educationally, administratively and financially justifiable and in accordance with national policy that may exist in this regard.
- (d) In determining the educator post establishment of the provincial department of education, the Member of the Executive Council must take into account the terms and conditions of employment of educators that may be affected by the post establishment, including provisions for leave, substitution and remuneration-related issues and may not vary any of these terms and conditions of employment.

2. DETERMINATION OF EDUCATOR POST ESTABLISHMENTS OF SCHOOLS BY A HEAD OF PROVINCIAL DEPARTMENT OF EDUCATION

- (a) In this regulation unless the context indicates otherwise, a word or expression has the same meaning as in the Act.
- (b) The head of a provincial department of education must, in terms of section 5(2) of the Act, determine the educator post establishment of each public school in the province in question –
- (i) by applying the post distribution model set out in Annexure 1; and
 - (ii) by taking into account: –
 - (aa) the post establishment of the provincial department of education as contemplated in regulation 1; and
 - (bb) the need for redress in the implementation and promotion of curriculum policy. The head of a provincial department of education must determine an annual programme in this regard after consultation with trade union parties to the ELRC and the governing body organisations that are active in that province.

[Reg. 2 substituted by G.N. No. 1451 of 2002 dated 15 November 2002.]

ANNEXURE 1

Post distribution model for the allocation of educator posts to schools

Principles on which the model is based

1. The model is based on the principle that available posts are distributed among schools, proportionally to their number of weighted learners.
2. The concept of “weighted learner”, instead of actual learner, is used to enable schools to compete on an equal footing for posts. As some learners and some learning areas require more favourable post allocations than others, each learner is given a certain weighting that reflects its relative need in respect of post provisioning. Other factors like the size of the school, the need to redistribute resources and the need to ensure equal access to the curriculum may require that additional weighted learners be allocated to some schools. A weighted learner enrollment for each school is determined, which, in relation to the total learner enrollment of the province, reflects its relative claim to the total pool of available posts in the province.

Factors that are being taken into account in determining the post provisioning needs of schools and learners

3. Educational and administrative factors that impact differently on the post provisioning needs of learners and of schools for which specific provision is made in the model are the following:
 - The maximum ideal class size applicable to a specific learning area or phase. This ideal maximum value also takes into account complicating factors that may apply, such as additional contact time required between educator and learner and the requirement to attend to learners in more than one place at the same time. Although the situation in South Africa is such that ideal maximum class sizes cannot be complied with, these ideal values form a basis of comparison between the requirements of all the learning areas and grades.
 - Period load of educators. It is common practice that educators in the secondary school phases have a lower period load than educators in the primary school phases. This is mainly as a result of more complex time tables and subject combinations. A lower period load implies a more favourable overall learner-educator ratio. The norms used in this regard are based on average prevailing practices and do not represent workload policy.
 - Need to promote a learning area. By providing a more favourable learner-educator ratio in respect of a learning area in grades 10 to 12, schools can be motivated to promote such a learning area. This may only be done in terms of national or provincial policy in this regard.
 - The size of the school. The smaller a school, the more difficult it is to manage with a certain learner-educator ratio and the more favourable it should be. This matter is addressed by adding a certain constant number of weighted learners to each school. The constant additional number of weighted learners could be seen as providing for a school's principal post, or for part of it, independently from the number of learners. It could also be seen as providing for posts to deal with certain basic responsibilities that each school has, irrespective of its size.
 - The number of grades. Especially in respect of smaller schools, it is more complex to manage a school with a relatively large number of grades than a similar sized school with only a few grades. This matter is addressed by linking the additional number of weighted learners, referred to under the previous point, to the number of grades. A further increase in the number of weighted learners of a combined school is required to compensate for the management complexity of such a school.
 - More than one language medium of instruction. In order to deal with this complicating factor, the number of weighted learners that is granted per grade in terms of the previous point, is increased if more than one language medium of instruction is used in the particular grade. A head of department may set a certain minimum number or percentage of the learners in a grade that must receive tuition in a second language before recognition is given in this way.

- **Disabilities of learners.** These learners require additional support from various categories of personnel. Norms in this regard still need to be determined. For the year 2003 a field-testing project will be conducted that will be aimed at determining norms with regard to the staffing of special and full-service schools and also incorporating schools with special/remedial/aid and/or pre-vocational classes, as well as district support teams. This project will be conducted in a number of districts where the allocation of posts will take place in accordance with the objectives of the field-testing project. In the other districts the status quo will remain for the time being. In order to manage the transformation and field-testing processes, all posts currently allocated to LSEN schools are to be top-sliced from the pool of posts to be distributed by means of the post distribution model. Schools in districts where the field-testing will not take place will retain their current establishments unless circumstances require otherwise. The top-sliced posts currently allocated to LSEN schools, as well as to other institutions or offices in the districts where the field-testing will take place will be allocated on the basis of criteria and outcomes of the field-testing process.
- **Access to the Curriculum.** In order to ensure affordable and fair access of learners to the curriculum, the numbers of learners that are fully funded in respect of subjects that are more expensive to offer need to be regulated. (Certain subjects are more expensive than others because they require smaller classes and/or special equipment and facilities.) A head of department, therefore, may identify specific schools at which the offering of such subjects should take place as well as the maximum number of learners at such schools that should take the subjects concerned. This means that a maximum number (or percentage) of learners may be set in respect of a particular subject at a particular school. Should a school exceed such a limit, the excess learners will be funded in terms of the norms applicable to the least expensive-subject. It is possible that the maximum number of learners that will be counted as taking a particular subject at a particular school may be specified as zero even though such a subject was considered for post provisioning purposes in the past. This would mean that all such learners taking such a subject would be counted as if they are taking the least expensive subject for purposes of post provisioning.
 In order to assist a school to introduce such a subject, a certain minimum number of learners may be counted for post provisioning purposes during a phasing in period, even though the actual number of learners taking the subject is lower than this number. The implementation of these measures must be in accordance with a department's policy on redress in the implementation and promotion of the curriculum.
- **Poverty.** In order to compensate for the negative impact that poverty has on learning, the poverty grading of a school is also taken into account.
- **Level of funding.** Policy may require that different phases be funded at different levels. Currently, all grades are set at a 100% funding level while Grade R is set at a funding level of 0%. This is merely a tool that could be used if and when required.
- **Ad Hoc factors.** Certain factors that are not considered above, such as an unexpected growth in learner numbers, may exist at a particular school and may justify the allocation of additional posts to such a school. These posts must be allocated from an additional pool of posts that need to be created for this purpose.

Weighting norms

4. The following norms and principles will apply in respect of all learners:

(a) Grades 1 to 9:

Based on the principle that uniform curricula apply to learners in schools in all phases up to grade 9, the following formula is used to determine the weighting of a learner:

c divided by the ideal maximum class size, divided by the average prevailing period load, multiplied by the funding level.

$$(w = c/m/l \times f)$$

The value of c is set at 40 and refers to the highest ideal maximum class-size in relation to which others are expressed.

Grade	Max Class Size	Period load (%)	Funding level	Weight
	(m)	(l)	(f)	(w)
R	35	100	0	0
1 to 4	35	98	100	1,166
5 to 6	40	98	100	1,02
7	37	98	100	1,103
8 to 9	37	88	100	1,229

(b) Grades 10 to 12:

In view of the variety of learning areas, each learner is weighted separately in terms of his or her curriculum.

Within the limits of the maximum number of learners recognized for post provisioning purposes, a weighting (subject-learner weighting (slw)) is determined for each subject taken by a learner by means of the following formula:

c (where $c = 40$) divided by the ideal maximum class size, multiplied by the promotion factor; divided by the average period load, multiplied by the funding level, divided by 7. The following norms apply:

$$(\text{slw} = c/m \times p/l \times f/7)$$

Subject	Ideal maximum class size	Promotion factor	Period load (%)	Funding level (%)
	(m)	(p)	(l)	(f)
All agricultural subjects with a practical component (Farm Mechanics, Animal Husbandry, Field Husbandry, etc.)	16	1	84	100
All Technical subjects excluding Technical Drawing	16	1	84	100
Technical Drawing	27	1	84	100
Woodwork, Metalwork, Industrial Arts, etc.	25	1	84	100
Home Economics, Needlework and clothing	25	1	84	100
Hotel-keeping and Catering	19	1	84	100
Art (Including Design, Painting, Sculpture, etc.)	12	1	84	100
Dance (Ballet, etc.)	12	1	84	100
Music (First Instrument)	6	1	84	100
Music Performance (Second Instrument)	6	1	84	100
Speech and Drama	12	1	84	100
Biology	32	1	84	100
Physical Science	32	1	84	100
Mathematics	38	1	84	100
Computer Studies	28	1	84	100
Typing (Including Computyping)	28	1	84	100
Shorthand/Snelskrif	28	1	84	100
All other examinable subjects	38	1	84	100
Provision for non-examinable subjects	38	1	84	100

Note: The values that appear in the table as promotion factors are all set as 1. This means that no provision is made in the table for the promotion of any of these subjects. Should provision be made in policy that a certain subject should be promoted by, say 7%, the value of "1" would become "1,07". The promotion factor per subject should be included in the provincial curriculum policy and would apply equally to all learners counted in the subject.

- A total number of weighted learners is determined in respect of each examinable subject by multiplying the number of learners taking the subject (subject-learners) with the relevant subject-learner weighting (slw). If a subject has a limit in respect of the number or percentage of learners that may take such a subject, all learners exceeding this limit will be subtracted from this number of subject-learners and added to the total number of subject-learners in respect of "all other examinable subjects". If the actual number of learners taking a subject is lower than what is provided as a minimum in order to assist the school to phase in the particular subject, the provided minimum will be counted in respect of the subject concerned. The difference between the provided minimum and the actual number must be subtracted from the number of learners in respect of "all other examinable subjects". A total number of weighted learners for all the examinable subjects is then determined.
- Each learner is allowed to take 6 examinable subjects. If the total value that is obtained by multiplying the number of learners in a particular grade by the number of subjects taken by these learners exceeds 6 times the number of learners, the total weighted learners will be adjusted accordingly.
- Provision is also made for a combination of non-examinable subjects, which, together, are given the same weighting as one "ordinary" examinable subject. A total number of non-examinable subject-learners is determined by multiplying the actual number of learners with the non-examinable slw. This is done automatically, irrespective of whether or not learners at a particular school take non-examinable subjects.
- A total number of weighted learners is then determined by adding the total numbers of examinable and non-examinable weighted learners together.

(c) A further distinction between schools is made based on the size of the school, the number of grades and whether or not more than one language medium of instruction is used. Provision for this is made by adding a certain number of weighted learners to a school's weighted enrollment linked to each recognized

language group (maximum of 2 language groups) and each grade provided for at the school. The following values apply:

- A base number of weighted learners must be added to each school. Any value from 10 to 20, in accordance with a department's needs in this regard, will apply. A head of a provincial department must select a value that will ensure a proper balance in the allocation of posts to institutions of different sizes.
- Additional weighted learners must be added in respect of each grade in which learners are enrolled. If learners in a particular grade are taught in more than one language medium, a further additional weighting will apply in respect of that grade. (A minimum number (or percentage) of learners in a particular grade receiving tuition in a second language may be specified before the additional provision applies. This additional weighting only applies once, irrespective of the number of additional languages that may apply):

Grades	1	2	3	4	5	6	7	8	9	10	11	12
Primary language group	2	2	2	2	2	2	2	3	3	3	3	3
Second language group	4	4	4	4	4	4	4	6	6	6	6	6

Any of the values in the table may be increased by a maximum of 2, provided that the head of a provincial department is satisfied that such an increase would lead to a more equitable allocation of posts.

- (d) In respect of a combined school, the base number of 10 to 20 weighted learners that is granted to a school in terms of paragraph (c), is granted in respect of both the primary school phase and the secondary school phase that the school has. For this purpose the secondary school phase must include learners in any of grades 10 to 12.
5. (a) The total number of weighted learners in each school is then adjusted in terms of its poverty ranking. The head of a provincial department must set aside a certain percentage of its available posts for poverty redress based on the department's relative level of internal inequality. The Minister may from time to time set the maximum percentage that provincial departments may use for this purpose. Until this limit is revised, it is set at 5%.
- (b) The redress posts are to be distributed to schools based on the relative poverty of the learners of a school, using an appropriate index within the framework of the indices utilized by the province in the National Norms and Standards for School Funding. The basis on which the redress posts are to be distributed among schools is as follows:

School quintiles	Allocation from redress pool of posts
Poorest 20%	35% of posts
Next 20%	25% of posts
Next 20%	20% of posts
Next 20%	15% of posts
Least poor 20%	5% of posts

Distribution formula

6. After the total number of weighted learners for each school has been determined, the number of posts to be allocated to a school is determined by means of the following formula:
- Posts = Total number of posts available, multiplied by weighted learners of school, divided by total weighted learners of all schools.

Phasing in of the model

7. The total effect that the implementation of the model has on the post allocations to individual schools should be phased in over a reasonable period. In phasing in the effects of the model, heads of departments should take into account all relevant factors that apply. These factors include the importance of maintaining stability in schools, the employment interests of educators and the need to provide classrooms, equipment and other facilities that schools require in terms of their curricula and their numbers of learners and posts.

Communication of new post establishments with schools

8. Where a school's establishment is likely to change in any school year, the adjusted post establishment should, as far as possible, be communicated to the school on or before 30 September preceding the school year.

Role of the National Department of Education (DOE)

9. Provincial departments are required to adhere to the intent and spirit of these norms. Where a province deviates from any of these norms it needs to justify such deviation to the DOE. The DOE may require information from

time to time from provinces in order to ensure that these norms are being implemented. Provinces are thus required to comply with these requests.

Transitional arrangement

10. For the 2003 school year, departments must communicate final or interim staff establishments of schools on or before 1 January 2003.

[Annexure 1 substituted by G.N. No. 1451 of 2002 dated 15 November 2002.]

PERSONNEL ADMINISTRATIVE MEASURES (PAM)

G.N. 222 of 1999 published in *Government Gazette* No. 19767 dated 18 February 1999

as amended by

G.N. 247 of 2000 published in *Government Gazette* No. 20986 dated 17 March 2000

G.N. 1430 of 2000 published in *Government Gazette* No. 21950 dated 29 December 2000

G.N. 155 of 2001 published in *Government Gazette* No. 22066 dated 17 February 2001

G.N. 774 of 2001 published in *Government Gazette* No. 22594 dated 24 August 2001

G.N. 1254 of 2001 published in *Government Gazette* No. 22878 dated 7 December 2001

G.N. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001

G.N. 78 of 2002 published in *Government Gazette* No. 23052 dated 25 January 2002

G.N. 244 of 2002 published in *Government Gazette* No. 23187 dated 1 March 2002

G.N. 1287 of 2002 published in *Government Gazette* No. 23934 dated 11 October 2002

G.N. 3417 of 2002 published in *Government Gazette* No. 24140 dated 12 November 2002

G.N. 267 of 2003 published in *Government Gazette* No. 24948 dated 21 February 2003

TERMS AND CONDITIONS OF EMPLOYMENT OF EDUCATORS DETERMINED IN TERMS OF SECTION 4 OF THE EMPLOYMENT OF EDUCATORS ACT 1998

The Minister of Education has, in terms of section 4 of the Employment of Educators Act 1998, determined the terms and conditions of employment of educators as set out in the Schedule.

S.M.E. BENGU
Minister of Education

SCHEDULE

Personnel Administration Measures (PAM) determined by the Minister of Education in terms of the Employment of Educators Act 1998 (the Act) and the Regulations made in terms of the Act (Regulations)

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In this PAM a word or expression to which a meaning has been assigned in the Act or the Regulations, shall have that meaning unless the context otherwise indicates.

CHAPTER A

1. SCOPE OF APPLICABILITY
2. NORMS AND GUIDELINES FOR THE PURPOSES OF ESTABLISHMENT DETERMINATION
3. WORKLOADS OF EDUCATORS (SCHOOL BASED)
4. DUTIES AND RESPONSIBILITIES OF EDUCATORS
5. RANK DESIGNATIONS

1. SCOPE OF APPLICABILITY

- 1.1 This PAM is applicable to educators at schools, technical colleges, colleges of education and education control and auxiliary services that concern themselves with all those activities aimed at educating and teaching pupils/students, in respect of both formal and non-formal education.
- 1.2 As regards the matters that are regulated in this PAM, only those measures contained herein shall apply, and there may, in respect of the matters regulated herein, be no deviation from the prescribed measures: Provided that should there be cases not covered by the measures contained herein or should there be any doubt as to the application of the provisions in individual cases, or should there be cases that could justify a deviation from policy, particulars thereof shall be submitted to the Department of Education with a view to a decision regarding such application or possible deviation by the Minister of Education, or the possible amendment or supplementing of the measures by the Minister of Education, with the concurrence of the Minister of State Expenditure in the event of an amendment or supplementation having a financial implication, after negotiation and agreement in terms of the Labour Relations Act, 1995.

2. NORMS/GUIDELINES FOR THE PURPOSES OF ESTABLISHMENT DETERMINATION

2.1 As regards provision of Educator Personnel the following apply:

- (a) The educator post establishment of the Department of Education consists of the posts created by the Minister.
- (b) The educator post establishment of a provincial department of education consists of the posts created by a Member of the Executive Council (MEC) responsible for education.
- (c) The educator post establishment of an education institution or office consists of the posts allocated to such an institution or office from the educator establishment of the provincial education department by the Head of such department.
- (d) The distribution of the educator posts of a provincial department of education over the various post levels must be based on the post level ratio norms as set out in paragraphs 2.2 and 2.3.

2.2 Post level ratio norms

- (a) the distribution of personnel, that is, the provision of "posts" on the fixed establishment over the various post levels according to the post level ratio norm, must be based on full-time incumbents.
- (b) Educators employed on a proportional basis as well as part-time units who are paid on a per hour basis must be converted to full-time incumbent units. (This does not include full-time units remunerated for additional work, or educators paid on a per-hour basis in respect of self-supporting courses.)
- (c) For the purposes of determining the number of "posts" on the fixed establishment, substitutes on post level 1 must not be taken into account.
- (d) The distribution of educators over post levels, including proportional appointments, must be monitored by the relevant provincial education department every quarter/term.
- (e) The distribution of educators over the various post levels in a particular reporting year, (excluding substitutes on post level 1), must conform to the prescribed post level ratio norms.
- (f) Educators who hold lower post level gradings but who are utilised on higher post levels and are remunerated on the higher post level must for the purposes of the application of the formula be deemed to occupy posts on a higher level.
- (g) The post level ratio norm shown in paragraph 2.3 below is the most favourable distribution of educators (incumbents/full-time equivalent units) over post levels that can be applied. This means that the provision (number of incumbents) applicable to higher post levels who are not utilised, may be used as incumbent numbers on lower post levels.

2.3 The post level ratio norm is as follows:

Post Level	Ratio per 1 000 Educators
1	697,20
2	182,20
3	84,50
4	34,20
5	0,95
6	0,95

NOTE: In the calculation of the number of educators at every post level, fractions must be omitted, eg 91,7 = 91. The fractions that are omitted must be added to the calculated provision of educators at post level 1.

2.4 Provision of posts of education therapist and senior education therapist

- (a) Post provisioning norms for schools in respect of education therapists and senior education therapists are additional to post provisioning in respect of other categories of educators, namely those with teaching or psychological responsibilities.
- (b) The following post provisioning norms apply in respect of education therapists:

Disability	Number of posts per learner
Cerebral Palsied	0,050
Physically disabled	0,040
Specifically learning disabled	0,033
Visually Impaired	0,010
Hearing Impaired	0,010
Epileptic	0,020
Autistic	0,033
Severely Mentally handicapped	0,010

- (c) In order to determine the number of therapist posts to be provided to a school, the number of learners in each disability category is multiplied by the applicable norm in paragraph (b). Fractions of posts which may occur after the calculated values in respect of all the categories of disability have been added together, are ignored. However, with regard to the provision of the first and only post to a school, a fraction of 0,5 or more may be rounded to a full post, unless the department concerned is able to render the required service by means of centrally based therapists.
- (d) Each learner may only be counted once even though they may be multiple disabled. Learners who are multiple disabled are counted under the category of disability which is, for purposes of post provisioning, more favourable.
- (e) For every multiple of 5 therapist posts, one post will be at post level 2; Provided that at least 3 posts should be allocated in respect of a specific discipline of therapy (speech, physiotherapy or occupational) for the allocation of a post level 2 post in respect of such discipline. Allocation of disciplines of therapy should be done in accordance with the specific needs of the school.

2.5 Conditions for the establishment of post level 6 posts

Taking into account sub-paragraphs 2.3 (Post level ratio norms) above and section 5 (Rank designations) –

- (a) the inclusive flexible remuneration package system for the senior management service, Grade A in the Public Service also applies to post level 6 educators;

[Para. (a) substituted by G.N. No. 155 published in *Government Gazette* No. 22066 dated 17 February 2001.]

- (b) post level 6 posts must only be utilised where there are actual management functions applicable;

- (c)

[Para. (c) deleted by G.N. No. 155 published in *Government Gazette* No. 22066 dated 17 February 2001.]

- (d) the grading of post level 6 is kept on par with the grading of posts of director in the rest of the Public Service as a transverse matter.

2.6 Grading of Institutions

The rank (post level) of the head of an institution is determined in terms of the grading of the institution which is done in accordance with the number of learners in the institution. The following table is applicable:

Type of Educational Institution	Number of Full-Time Equivalent Learners	Grading of Institution	Post Level of Head of Institution
Pre-primary Schools	Above required minimum but fewer than 60	PP1	1
	61–119	PP2	2
	120 +	PP3	3
Primary Ordinary Schools	Above required minimum but fewer than 80	P1	1
	80–159 (as well as schools with fewer than 80 learners but with more than one educator)	P2	2
	160–719	P3	3
	720 +	P4	4
Secondary Ordinary Schools and Combined Ordinary Schools	Above required minimum but fewer than 630	S3	3
	630 +	S4	4

Type of Educational Institution	Number of Full-Time Equivalent Learners	Grading of Institution	Post Level of Head of Institution
Comprehensive Schools (Secondary Schools with a full complement of technical or agricultural subjects added)	Above required minimum but fewer than 500 +	S3	3
	500 +	S4	4
Art, Ballet, Drama and Music Schools	Above required minimum but fewer than 400	S3	3
	400+	S4	4
Technical Colleges	Above required minimum but fewer than 300	T3	3
	300–1519	T4	4
	1520 +	T5	5
Schools for learners with specialised educational needs	Above required minimum but fewer than 350	SS3	3
	350+	SS4	4
Colleges of Education	Above required minimum but fewer than 1100	C4	4
	1100–1699	C5	5
	1700+	C6	6

2.7 Regrading of Institutions

- (a) An institution is upgraded to a higher grading level if, in terms of two consecutive annual statistics surveys, the learner enrolment of the institution exceeds the minimum enrolment requirement of such higher grading level by at least 50 full-time equivalent learners.
- (b) An institution is downgraded to a lower grading level if, in terms of two consecutive annual statistics surveys, the learner enrolment of the institution has dropped to at least 50 full-time equivalent learners below the maximum enrolment requirement of such lower grading level.
- (c) Where the enrolment of an institution increases or decreases substantially and sufficient evidence exists that the new enrolment level will be maintained for a reasonable period. The head of the department may immediately re-grade the institution in accordance with the new enrolment level.
- (d) The head of a department may grade a new institution in accordance with the enrolment that the institution is expected to maintain for a reasonable period.

[Para. 2.7 inserted by G.N. No. 774 published in *Government Gazette* No. 22594 dated 24 August 2001.]

3. WORKLOAD OF EDUCATORS (SCHOOL BASED)

3.1 Introduction

- (a) These measures cover full-time educators that are school based, inclusive of primary, secondary and LSEN schools.
- (b) The work done by educators includes the following core duties covered during a formal school day (with or without contact with the pupils) and outside the formal school day.
 - (i) *DURING THE FORMAL SCHOOL DAY*
 - aa) Scheduled teaching time
 - bb) Relief teaching
 - cc) Extra and co-curricular duties
 - dd) Pastoral duties (ground, detention, scholar patrol etc.).
 - ee) Administration
 - ff) Supervisory and management functions
 - gg) Professional duties (meetings, workshops, seminars, conferences etc.)
 - hh) Planning, preparation and evaluation.
 - (ii) *OUTSIDE THE FORMAL SCHOOL DAY*
 - aa) Planning, preparation and evaluation
 - bb) Extra and co-curricular duties
 - cc) Professional duties (meetings, workshops, seminars, conferences etc.)
 - dd) Professional development
- (c) Each post level within a school has different duties and responsibilities, encompassing the core duties outlined in paragraph (b) above, but to a varying degree.

- (d) There should be an equitable distribution of workload between the various post levels and within a post level, to ensure that one or two of the levels or an educator is not over burdened.
- (e) The expectation is that every educator must be able to account for 1800 actual working hours per annum.

3.2 Workload per educator

- (a) All educators should be at school during the formal school day, which should not be less than 7 hours per day, except for special reasons and with the prior permission of the Principal. The Principal will exercise his/her discretion in this regard based upon provincial policy. The 7 hour day includes the breaks and the period(s) in which the learners are not at school.
- (b) Scheduled teaching time during the formal school day will be specified with time allocation per post level. The allocation of subjects, timetable and resultant scheduled teaching time to be determined by the Principal in consultation with the educator staff. (Refer paragraph (c)).
- (c) All other duties are specified and allocated by the Principal after consultation with the educator staff. Educators will be expected to perform the core duties, as outlined in paragraph 3.1(b), both within and outside the formal school day, and with the understanding that none of these may diminish the overall amount of scheduled teaching time or negatively impact upon the curriculum.
- (d) All educators may be required by the employer to attend programmes for ongoing professional development, up to a maximum of 80 hours per annum. These programmes are to be conducted outside the formal school day or during the vacations. The employer shall give at least one term's notice of programmes to be conducted during the school vacations.

3.3 Scheduled teaching time per post level

- (a) The time allocated for teaching in respect of different post levels will differ according to the size of the school. In smaller schools Principals and their Deputies are required to do more teaching than in large schools with bigger staff establishments. The actual hours must therefore be established in relation to the curriculum needs of the school, the timetable and the staff establishment.
- (b) The allocation of scheduled teaching time should be done in such a manner that it:
 - (i) maximises the individual abilities of all educators;
 - (ii) optimises teaching and learning at the institutional level;
 - (iii) in general terms, the following may be considered as guidelines in determining the scheduled teaching time:

PRIMARY SCHOOL

Post Level 1	Between 85% and 92%
Post Level 2	Between 85% and 90%
Deputy Principal.....	60%
Principal	Between 10% and 92% depending on which post level appointed to.

N.B. Principals at post level 1 are expected to teach 100% of the scheduled teaching time.

SECONDARY SCHOOL

Post Level 1	Between 85% and 90%
Post Level 2	85%
Deputy Principal.....	60%
Principal	Between 5% and 60% depending on which post level appointed to.

4. DUTIES AND RESPONSIBILITIES OF EDUCATORS

4.1 Introduction

The ability of our education system to compete in an increasingly global economy depends on our ability to prepare both learners and educators for new or changing environments. This is in line with the mission in the corporate plan of the Department of Education to ensure that all South Africans receive flexible life-long learning education and training of high quality.

Management in education should be able to draw on the professional competencies of educators, build a sense of unity of purpose and reinforce their belief that they can make a difference. When and where appropriate, authorities need to allocate authority and responsibility which will ensure the building of human resource capacity.

In addition to the core duties and responsibilities specified in this section, certain specialised duties and responsibilities may be allocated to staff in an equitable manner by the appropriate representative of the employer.

4.2 Principal

- (a) JOB TITLE: Educator – public school
- (b) RANK: Principal
- (c) POST LEVEL: 1; 2; 3 or 4
- (d) THE AIM OF THE JOB:
- (i) To ensure that the school is managed satisfactorily and in compliance with applicable legislation, regulations and personnel administration measures as prescribed.
 - (ii) To ensure that the education of the learners is promoted in a proper manner and in accordance with approved policies.
- (e) CORE DUTIES AND RESPONSIBILITIES OF THE JOB:
- The duties and responsibilities of the job are individual and varied, depending on the approaches and needs of the particular school, and include, but are not limited to, the following:
- (i) GENERAL/ADMINISTRATIVE
 - To be responsible for the professional management of a public school.
 - To give proper instructions and guidelines for timetabling admission and placement of learners.
 - To have various kinds of school accounts and records properly kept and to make the best use of funds for benefit of the learners in consultation with the appropriate structures.
 - To ensure a School Journal containing a record of important events connected with the school is kept.
 - To make regular inspections of the school to ensure that the school premises and equipment are being used properly and that good discipline is being maintained.
 - To be responsible for the hostel and all related activities including the staff and learners, if one is attached to the school.
 - To ensure that Departmental circulars and other information received which affect members of the staff is brought to their notice as soon as possible and are stored in an accessible manner.
 - To handle all correspondence received at the school.
 - (ii) PERSONNEL
 - Provide professional leadership within the school.
 - To guide, supervise and offer professional advice on the work and performance of all staff in the school and, where necessary, to discuss and write or countersign reports on teaching, support, non-teaching and other staff.
 - To ensure that workloads are equitably distributed among the staff.
 - To be responsible for the development of staff training programmes, both school-based, school-focused and externally directed, and to assist educators, particularly new and inexperienced educators, in developing and achieving educational objectives in accordance with the needs of the school.
 - To participate in agreed school/educator appraisal processes in order to regularly review their professional practice with the aim of improving teaching, learning and management.
 - To ensure that all evaluation/forms of assessment conducted in the school are properly and efficiently organised.
 - (iii) TEACHING
 - To engage in class teaching as per the workload of the relevant post level and the needs of the school.
 - To be a class teacher if required.
 - To assess and to record the attainment of learners taught.
 - (iv) EXTRA- & CO-CURRICULAR
 - To serve on recruitment, promotion, advisory and other committees as required.
 - To play an active role in promoting extra and co-curricular activities in the school and to plan major school functions and to encourage learners' voluntary participation in sports, educational and cultural activities organised by community bodies.
 - (v) INTERACTION WITH STAKE-HOLDERS
 - To serve on the governing body of the school and render all necessary assistance to the governing body in the performance of their functions in terms of the SA Schools Act, 1996.
 - To participate in community activities in connection with educational matters and community building.

(vi) COMMUNICATION:

- To co-operate with members of the school staff and the school governing body in maintaining an efficient and smooth running school.
- To liaise with the Circuit/Regional Office, Supplies Section, Personnel Section, Finance Section, etc. concerning administration, staffing, accounting, purchase of equipment, research and updating of statistics in respect of educators and learners.
- To liaise with relevant structures regarding school curricula and curriculum development.
- To meet parents concerning learners' progress and conduct.
- To co-operate with the school governing body with regard to all aspects as specified in the SA Schools Act, 1996.
- To liaise with other relevant Government Departments, eg. Department of Health & Welfare, Public Works, etc., as required.
- To co-operate with universities, colleges and other agencies in relation to learners' records and performance as well as INSET and management development programmes.
- To participate in departmental and professional committees, seminars and courses in order to contribute to and/or update professional views/standards.
- To maintain contacts with sports, social, cultural and community organisations.

4.3 Deputy principal

(a) JOB TITLE: Educator – public school

(b) RANK: Deputy Principal

(c) POST LEVEL: 3

(d) THE AIM OF THE JOB:

- (i) To assist the Principal in managing the school and promoting the education of learners in a proper manner.
- (ii) To maintain a total awareness of the administrative procedures across the total range of school activities and functions.

(e) CORE DUTIES AND RESPONSIBILITIES OF THE JOB:

The duties and responsibilities of the job are individual and varied, depending on the approaches and needs of the particular school, and include, but are not limited to, the following:

(i) GENERAL/ADMINISTRATIVE

- To assist the Principal in his/her duties and to deputise for the Principal during his/her absence from school.
- To assist the Principal, or, if instructed to be responsible for:
 - school administration, eg. duty roster, arrangements to cover absent staff, internal and external evaluation and assessment, school calendar, admission of new learners, class streaming, school functions; and/or
 - school finance and maintenance of services and buildings, eg. planning and control of expenditure, allocation of funds/resources, the general cleanliness and state of repairs of the school and its furniture and equipment, supervising annual stock-taking exercises.

(ii) TEACHING

- To engage in class teaching as per workload of the relevant post level and needs of the school.
- To assess and to record the attainment of learners taught.

(iii) EXTRA- & CO-CURRICULAR

- To be responsible for school curriculum and pedagogy, eg choice of textbooks, co-ordinating the work of subject committees and groups, timetabling, "INSET" and developmental programmes, and arranging teaching practice.
- To assist the Principal in overseeing learner counselling and guidance, careers, discipline, compulsory attendance and the general welfare of all learners.
- To assist the Principal to play an active role in promoting extra and co-curricular activities in school and in its participation in sports and cultural activities organised by community bodies.
- To participate in departmental and professional committees, seminars and courses in order to contribute to and/or update one's professional views/standards.

(iv) PERSONNEL

- To guide and supervise the work and performance of staff and, where necessary, discuss and write or countersign reports.
- To participate in agreed school/educator appraisal processes in order to regularly review their professional practice with the aim of improving teaching, learning and management.

(v) INTERACTION WITH STAKE-HOLDERS

- To supervise/advise the Representative Council of Learners.

(vi) COMMUNICATION

- To meet with parents concerning learners' progress and conduct.
- To liaise on behalf of the Principal with relevant government departments.
- To maintain contact with sporting, social, cultural and community organisations.
- To assist the Principal in liaison work with all organisations, structures, committees, groups, etc. crucial to the school.

4.4 Head of Department

- (a) JOB TITLE: Educator – public school
- (b) RANK: Head of Department (subject, learning area or phase)
- (c) POST LEVEL: 2
- (d) THE AIM OF THE JOB:

To engage in class teaching, be responsible for the effective functioning of the department and organise relevant/related extra-curricular activities so as to ensure that the subject, learning area or phase and the education of the learners is promoted in a proper manner.

(e) CORE DUTIES AND RESPONSIBILITIES OF THE JOB:

The duties and responsibilities of the job are individual and varied, depending on the approaches and needs of the particular school, and include, but are not limited to, the following:

(i) TEACHING

- To engage in class teaching as per workload of the relevant post level and the needs of the school.
- To be a class teacher if required.
- To assess and to record the attainment of learners taught.

(ii) EXTRA- & CO-CURRICULAR

- To be in charge of a subject, learning area or phase.
- To jointly develop the policy for that department.
- To co-ordinate evaluation/assessment, homework, written assignments, etc. of all the subjects in that department.
- To provide and co-ordinate guidance:
 - on the latest ideas on approaches to the subject, method, techniques, evaluation, aids, etc. in their field, and effectively conveying these to the staff members concerned.
 - on syllabuses, schemes of work, homework, practical work, remedial work, etc.
 - to inexperienced staff members
 - on the educational welfare of learners in the department.
- To control:
 - the work of educators and learners in the department
 - reports submitted to the Principal as required
 - mark sheets
 - test and examination papers as well as memoranda
 - the administrative responsibilities of staff members
- To share in the responsibilities of organising and conducting of extra and co-curricular activities.

(iii) PERSONNEL

- To advise the Principal regarding the division of work among the staff in that department.
- To participate in agreed school/educator appraisal processes in order to regularly review their professional practice with the aim of improving teaching, learning and management.

(iv) GENERAL/ADMINISTRATIVE

- To assist with the planning and management of:
 - school stock, text books and equipment for the department
 - the budget for the department and
 - subject work schemes

- To perform or assist with one or more non-teaching administrative duties, such as:
 - secretary to general staff meeting and/or others
 - fire drill and first aid
 - timetabling
 - collection of fees and other monies
 - staff welfare
 - accidents
 - To act on behalf of the Principal during her/his absence from school if the school does not qualify for a Deputy Principal or in the event both of them are absent.
- (v) COMMUNICATION:
- To co-operate with colleagues in order to maintain a good teaching standard and progress among the learners and to foster administrative efficiency within the department and the school.
 - To collaborate with educators of other schools in developing the department and conducting extra-curricular activities.
 - To meet parents and discuss with them the progress and conduct of their children.
 - To participate in departmental and professional committees, seminars and courses in order to contribute to and/or update one's professional views/standards.
 - To co-operate with Further and Higher Education institutions in relation to learners' records and performance and career opportunities.
 - To maintain contact with sporting, social, cultural and community organisations.
 - To have contacts with the public on behalf of the Principal.

4.5 Teacher

- (a) JOB TITLE: Educator – public school
- (b) RANK: TEACHER
- (c) POST LEVEL: 1
- (d) THE AIM OF THE JOB:

To engage in class teaching, including the academic, administrative, educational and disciplinary aspects and to organise extra and co-curricular activities so as to ensure that the education of the learners is promoted in a proper manner.

- (e) CORE DUTIES AND RESPONSIBILITIES OF THE JOB:

The duties and responsibilities of the job are individual and varied depending on the approaches and needs of the particular school, and include, but are not limited to, the following:

(i) TEACHING

- To engage in class teaching which will foster a purposeful progression in learning and which is consistent with learning areas and programmes of subjects and grades as determined
- To be a class teacher.
- To prepare lessons taking into account orientation, regional courses, new approaches, techniques, evaluation, aids, etc. in their field.
- To take on a leadership role in respect of the subject, learning area or phase, if required.
- To plan, co-ordinate, control, administer, evaluate and report on learners' academic progress.
- To recognise that learning is an active process and be prepared to use a variety of strategies to meet outcomes of the curriculum.
- To establish a classroom environment which stimulates positive learning and actively engages learners in the learning process.
- To consider and utilise the learners' own experiences as a fundamental and valuable resource.

(ii) EXTRA- & CO-CURRICULAR

- To assist the HOD to identify aspects which require special attention and to assist in addressing them.
- To cater for the educational and general welfare of all learners in his/her care.
- To assist the Principal in overseeing learner counselling and guidance, careers, discipline and the general welfare of all learners.
- To share in the responsibilities of organising and conducting extra and co-curricular activities.

(iii) ADMINISTRATIVE

- To co-ordinate and control all the academic activities of each subject taught.
- To control and co-ordinate stock and equipment which is used and required.

- To perform or assist with one or more of other non-teaching administrative duties such as:
 - secretary to general staff meeting and/or others
 - fire drill and first aid
 - timetabling
 - collection of fees and other monies
 - staff welfare
 - accidents

(iv) INTERACTION WITH STAKE-HOLDERS

- To participate in agreed school/educator appraisal processes in order to regularly review their professional practice with the aim of improving teaching, learning and management.
- To contribute to the professional development of colleagues by sharing knowledge, ideas and resources.
- To remain informed of current developments in educational thinking and curriculum development.
- To participate in the school's governing body if elected to do so.

(v) COMMUNICATION:

- To co-operate with colleagues of all grades in order to maintain a good teaching standard and progress among learners and to foster administrative efficiency within the school.
- To collaborate with educators of other schools in organising and conducting extra and co-curricular activities.
- To meet parents and discuss with them the conduct and progress of their children.
- To participate in departmental committees, seminars and courses in order to contribute to and/or update one's professional views/standards.
- To maintain contact with sporting, social, cultural and community organisations.
- To have contacts with the public on behalf of the principal.

4.6 Office based educators

- (a) JOB TITLE: Office Based Educator
(b) RANK: Director of Education/Chief/Deputy Chief/First/Senior/Education Specialist
(c) POST LEVEL: 1/2/3/4/5/6
(d) AIM OF THE JOB

The core process in education is curriculum delivery and the strategic levers for curriculum delivery are INSET, EMD and enabling functions. The aim of jobs at offices is to facilitate curriculum delivery through support in various ways. Offices will be managed in compliance with applicable legislation, regulations, ELRC resolutions and personnel administration measures.

(e) THE CORE RESPONSIBILITIES

In executing tasks, educators must be mindful of their role in education transformation, redress and equity.

The duties and responsibilities of the job are individual and varied depending on the nature of the responsibilities attached to each post. These include but are not limited to subject advisory services, administration and policy development processes. It remains the responsibility of immediate supervisors to develop specific responsibilities and duties for each post on the basis of job content as may be applicable. The duties and responsibilities for incumbents of these posts include, but are not limited to, the following:

(i) LEADERSHIP

- To provide an environment that creates and fosters commitment and confidence among colleagues and educators, while promoting the values of fairness and equity in the workplace.
- To assist educators to identify, assess and meet the needs of learners (provide professional leadership).
- To disseminate and encourage the application of good practices in all areas of work.
- To implement systems and structures and present innovative ideas that are congruent with policy frameworks and plans.
- To create and maintain sound human relations among colleagues and enhance the spirit of co-operation at all levels.

(ii) COMMUNICATION

- To communicate effectively, both orally and in writing, with principals, other staff, parents, School Governing Bodies (SGBs), external agencies and the Department as well as to ensure timeous feedback from institutions.
- To consult with all stakeholders on decisions that affect them.
- To explain the objectives of any intervention/s to learners, educators and others.

- To chair workshops, case conferences and meetings when needed.
 - To serve on recruitment, promotion, advisory and other committees as required.
 - To assist in the development of the use of information (statistics/surveys) and communications technology as a means of gathering and disseminating information about learners.
 - To liaise with other education offices for the purpose of co-ordination.
 - To liaise with other relevant Government Departments, for example Department of Health and Welfare, Public Works, etc., as required.
 - To maintain contacts with sports, cultural and community organisations.
- (iii) FINANCIAL PLANNING AND MANAGEMENT
- To undertake activity-based costing (ABC) for planned projects/activities.
 - To prioritise activities in terms of costs and educational needs in preparation for strategic planning.
 - To plan budgets in terms of a medium term expenditure framework (MTEF).
 - To manage projects within the set budget.
 - To advise principals and school management teams on the planning, utilisation and monitoring of budgets in order to meet school objectives.
 - To maintain records to disseminate information for financial accountability.
- (iv) STRATEGIC PLANNING AND TRANSFORMATION
- To analyse the external environment and internal working environment.
 - To identify the needs of clients (learners, educators, others).
 - To prepare strategic plans with the intention of achieving the goals of the Department.
 - To prepare management plans to achieve targets as well as the needs of clients (educators, learners and others).
 - To provide guidance to institutions on strategic planning.
 - To support and co-operate with principals, staff and SGBs, in whole school development.
- (v) POLICY
- To formulate policy for operational reasons.
 - To analyse policy.
 - To implement policy.
 - To monitor and evaluate policy implementation.
 - To provide guidance to institutions on policy formulation and implementation.
- (vi) RESEARCH AND DEVELOPMENT
- To keep abreast of the latest research in the field of education.
 - To undertake small scale as well as large scale research to improve service delivery and policy formulation.
 - To encourage and support research initiatives with Universities, Colleges of Education and other Agencies.
 - To apply research findings after carefully analysing the context.
 - To maintain a database of learners/educators' needs eg professional development needs of educators.
- (vii) CURRICULUM DELIVERY
- To assist in equitable deployment of staff and resources to facilitate teaching and learning.
 - To provide pastoral support (guidance and counselling) and to learners whenever requested by institutions.
 - To maintain effective partnerships between parents and school staff to promote effective teaching and learning.
 - To develop systems for monitoring and recording progress made by learners towards achievement of targets set.
 - To support initiatives to improve numeracy, literacy and information technology as well as access to the wider curriculum.
 - To facilitate curriculum development at institution/District/Provincial/National level.
 - To provide guidance/assistance in learner assessment.
 - To promote the National campaign on Culture of Teaching, Learning and Service (COLTS).
- (viii) STAFF DEVELOPMENT
- To assess professional development needs by using questionnaires, informal methods and developmental appraisal.
 - To support/plan staff development activities based on needs and which are congruent with the principles and values of the applicable policy frameworks and plans.

- To contribute, to implement and participate in staff development programmes.
- To evaluate success/problems of staff development programmes in terms of the goals of the institutions/Department.
- To assist in capacity building programmes for SR, School Management Teams (SMTS) and SGBs.
- To provide support for professional growth of educators within an appraisal programme.
- To participate in agreed educator appraisal processes in order to regularly review their professional practice.

(ix) GENERAL

- To keep and update records of the office, district or area under his/her control.
- To ensure that Departmental circulars and other information received which affect colleagues or their work are brought to their notice as soon as possible.
- To handle all correspondence referred to his/her office.

5. WORKLOAD OF COLLEGE BASED EDUCATORS (FURTHER EDUCATION AND TRAINING)

5.1 Introduction

- (a) The work done by educators includes the following core duties covered during a formal college day (with or without contact with the learners) and outside the formal college day.

- (i) Scheduled contact hours
- (ii) Relief teaching
- (iii) Extra and co-curricular duties
- (iv) Pastoral duties
- (v) Administration
- (vi) Supervisory and management functions
- (vii) Professional duties (meetings, workshops, official college functions, seminars, conferences, etc.)
- (viii) Planning, preparation and evaluation
- (ix) Professional development

Each post level within a college has different duties and responsibilities, encompassing the core duties outlined from (i) to (ix) above, but to a varying degree.

There should be an equitable distribution of workload between the various post levels and within a post level, to ensure that neither one or two of the levels or an educator is over burdened.

The expectation is that every educator must be able to account for 1 800 actual working hours per annum.

5.2 Workload per educator

- (a) All educators should be at their college during a formal college day. A formal college day should comprise not fewer than 7 hours, but the Head of an institution:
- (i) based on provincial policy and
 - (ii) provided the 35 hours workweek is adhered to, may make exceptions.

The 7 hours per day includes the breaks and the time that a lecturer, as part of his or her job, has to visit companies to recruit students.

- (b) Scheduled contact hours during the formal college day will be specified with time allocation per post level. The allocation of subjects, timetable and resultant scheduled contact hours must be determined by the Head of the institution after consultations with the educator staff (refer paragraph 5.3).
- (c) All other duties are specified and allocated by the Head of the institution after consultations with the educator staff. Educators will be expected to perform the core duties, as outlined in paragraph 5.1(a), both within and outside of the formal college day, and with the understanding that none of these may diminish the overall number of scheduled contact hours or negatively impact upon the curriculum.
- (d) All educators may be required by the employer to attend programmes for ongoing professional development, up to a maximum of 80 hours per annum. These programmes to be conducted outside the formal college day or during vacations.

The employer shall give at least one term's notice of programmes to be conducted during the college vacations.

5.3 Scheduled contact hours

- (a) The time allocated for teaching in respect of different post levels will differ.
- (b) The allocation of scheduled contact hours should be done in such a manner that it:
- (i) maximises the individual abilities of all educators and
 - (ii) optimises teaching/training and learning at the institutional level

- (c) Where classes are so arranged that a member of the lecturing staff does not meet the required hours per week of actual contact time, determined in terms of paragraph 5.3(d)(iii), he/she may, in respect of the shortfall, be required to lecture to any class for part-time students attached to such college without receiving additional remuneration therefor. This must be done through consultation and in a fair, transparent and equitable manner.

- (d) In general terms, the following serves as guidelines in determining the scheduled contact hours:

- (i) Heads of colleges

The task of the Head of the institution is first and foremost that of manager and leader of an institution for post-school education. His/her aims should be the advancement and development of the total spectrum of interests of the College, as well as active support of the policy prescribed from time to time by the provincial education department.

- (ii) Management Staff (Post Level 3 and higher)

Management staff is expected to give instructions as part of their normal duties.

Apart from the actual contact hours, management and administrative duties, they are mainly responsible for tasks delegated to them by the Head of the institution, as well as for the continued growth of the college.

- (iii) Lecturers and Senior Lecturers (PL 1 and 2)

Their primary task as educators is effective teaching and not mere training. This includes being well-informed about their field of study by reading professional, scientific and technical Journals and by paying visits to commercial, industrial or other relevant bodies.

NOTE 1: Actual contact hours on post level 3 and higher should be between 5 hours and 15 hours per week; except for heads of institutions at post level 3. Subject to efficient curriculum delivery and an equitable workload, Heads of institutions at post level 3 may have no actual contact hours.

Actual contact hours on post-level 2 should be between 18 hours and 22.5 hours per week.

Actual contact hours for post level 1 educators should be between 22.5 hours and 25 hours per week.

NOTE 2: Educators not lecturing (no actual contact hours) shall observe a work week of 40 hours.

NOTE 3: The above actual contact hours exclude contact hours in terms of a part-time appointment of full-time educators.

5.4 Minimum number of teaching hours per week and the appointment of full-time teaching staff, in a part-time capacity, at colleges offering approved part-time classes

- (a) The minimum number of teaching hours per week that an educator must work before he or she may be appointed to perform overtime duties on a part-time basis and the maximum number of additional hours per week for which part time appointments can be made are as follows:

<i>Level of post</i>	<i>Post designation</i>	<i>Minimum number of teaching hours per week</i>	<i>Maximum number of additional hours per week for which part-time appointments can be made</i>
1	Lecturer	22.5 hours	12 hours
2	Senior Lecturer	22.5 hours	12 hours
3	Head of Division/ Deputy Head of Institution#	15 hours	6 hours
4	Deputy Head of Institution	***	6 hours (only if no full-time staff are available)
3/4/5/6	Head of Institution		6 hours (only in very exceptional cases and if no full-time staff are available)

Equal ranks as well

*** Minimum number of hours is not laid down with the proviso that the staff members involved do not qualify for part-time appointment if formal day classes are not offered.

- (b) Staff in teaching posts must comply with the above minimum number of teaching hours in order to qualify for appointment for bona fide part-time teaching. Heads of institutions, with delegated authority can, for the purposes of the appointment of full-time staff in part-time teaching posts, increase the minimum number of hours required before staff may be appointed to part-time teaching posts, within the prescribed hours as mentioned in note (1) above to suit local requirements.

- (c) Full-time staff qualify for appointment for part-time teaching for approved part-time classes. Heads of institutions must ensure that part-time classes are not created to provide an opportunity for additional income for full time staff:

[Para. (5) inserted by G.N. No. 1430 of 2000 published in *Government Gazette* No. 21950 dated 29 December 2000.]

6. RANK DESIGNATIONS

The following rank designations apply:

Rector: College of Education			4	5	6
Vice-rector: College of Education			4		
Senior Head of Department: College of Education			4		
Head of Department: College of Education			3		
Senior Lecturer: College of Education			3		
Lecturer: College of Education		2			
Principal: Technical College			3	4	5
Senior Deputy Principal: Technical College				4	
Deputy Principal: Technical College			3		
Head of Division: Technical College			3		
Principal Lecturer: Technical College			3		
Senior Lecturer: Technical College		2			
Lecturer: Technical College		1			
Principal: School	1	2	3	4	
Deputy Principal: School			3		
Head of Department: School		2			
Senior Education Therapist		2			
Teacher: School	1				
Education Therapist	1				
Director: Education					6
Chief Education Specialist				5	
Deputy Chief Education Specialist				4	
First Education Specialist			3		
Senior Education Specialist		2			
Education Specialist	1				

CHAPTER B

1. RELATIVE EDUCATION QUALIFICATION VALUE
2. APPOINTMENTS IN EDUCATION
3. THE ADVERTISING AND FILLING OF EDUCATOR POSTS
4. DETERMINATION OF SALARIES
5. RANK CODES FOR PERSAL PURPOSES
6. RANK CODES IN RESPECT OF POST LEVELS AND REQV

1. RELATIVE EDUCATION QUALIFICATION VALUE (REQV)**1.1 Definition**

A relative value is attached to an education qualification in accordance with the measures as set out in the document "Evaluation of Qualifications for Employment in Education". The determination of the REQV is based primarily on the number of recognised prescribed full-time professional or academic years of study at an approved university, technikon or college of education and taking into account the level of school education attained.

Note:

- (a) The recognition of diplomas for salary purposes is restricted to not more than two recognised post standard 10 diplomas, to a maximum REQV of 15.
- (b) Existing approved measures that deviate from those set out below must only be applied when absolutely necessary. (The said measures apply until such time as the system of determining REQVs could be developed to accommodate all needs adequately).

1.2 Requirements in respect of REQVs

REQV	EDUCATION QUALIFICATION
10	Grade 12 or lower without a teacher's qualification.
11	Grade 8, 9, 10 or 11 plus a teacher's qualification of at least two years apposite training.
12	Grade 12 plus one or two years apposite training.
13	Grade 12 plus three years apposite training.
14	Grade 12 plus four years apposite training.
15	Grade 12 plus five years apposite training.
16	Grade 12 plus six years apposite training. Only professional qualified educators can be classified under REQV 16, provided such persons are in possession of a recognised completed university degree.
17	Grade 12 plus seven years apposite training. To be regarded as having an REQV of 17 a candidate must, in addition to the requirements for classification under REQV 16, also be in possession of at least a recognised master's degree.

2. APPOINTMENTS IN EDUCATION**2.1 Definition**

The concept 'appointment' includes the following:

- (a) Employment in a full-time or part-time capacity. This includes employment in a shared capacity where more than one educator is appointed to a post.
- (b) The first appointment of a person as an Educator by an education department.
- (c) The transfer of an educator to a higher, an equal or a lower post level grading within the same education department or from one department to another.
- (d) The reappointment, after a break in service, of an educator by an education department.
- (e) The appointment of an educator can be in a permanent or temporary capacity. If the appointment is in a temporary capacity, it is for a fixed period. Appointment in a temporary capacity can either be to a substantive vacant post or as a substitute for another educator who is temporarily not occupying his or her post.

[Para. 2.1 substituted by G.N. No. 774 of 2001 published in *Government Gazette* No. 22594 dated 24 August 2001.]

2.2 Minimum requirements for appointment**(a) Educational qualifications**

- (i) In order to qualify for appointment as an educator a person must have at least a recognised three year qualification (REQV13) which must include appropriate training as an educator.
- (ii) Notwithstanding the requirements set out in paragraph (i), a person appointed to anyone of the following posts, is not required to be a qualified educator but must comply with the relevant requirements for appointment as set out in the document "Evaluation of Qualifications for Employment in Education":

- Posts for Technical Subjects including Hair Care
 - Posts for Technical Drawing
 - Posts for Instrumental Music
 - Posts for Practical Ballet, National Greek Dances, History of Ballet and Anatomy
 - Posts for training in the Hotel and Catering Industry
 - Accompanist posts for Ballet
 - Posts for Speech and Drama
 - Posts for the teaching of Nursing at Schools for Learners with Special Educational Needs
 - Posts for Television production and maintenance
 - Librarian posts at colleges and departmental head office libraries
 - Posts of Education Therapists, Psychologists and Social Workers/Pedagogues
 - Posts for the offering of instructional programmes in the Engineering field of study
 - Posts for the offering of instructional programmes in the fields of study of Business Studies, Art, Agriculture, Computer and Information Studies, Maritime Studies, Utility Services and Social Services
- (iii) Notwithstanding the requirements set out in paragraph (i), the Minister may approve the appointment, to educator posts outside education institutions of persons who have not been trained as educators in cases where such training is not a prerequisite to perform the duties attached to the specific educator post, but who are otherwise suitably qualified to perform such duties. The total number of such appointments to posts in provincial education departments as well as the Department of Education may not exceed 100.
- (vi) Notwithstanding the requirements set out in paragraph (i), a person who does not comply with the minimum qualification requirements, but who is already employed as an educator in terms of previous measures that provided for his or her appointment, may retain his or her employment status in terms of the measures that applied when he or she was appointed.
- (v) With the exception of persons appointed to posts referred to in paragraphs (ii) or (iii), a person who is appointed from outside education and who is not appropriately qualified, may only be appointed in a temporary capacity. These appointments are regarded as individual relaxations of the requirements.
- (vi) Persons who qualify for appointment in a permanent capacity in terms of paragraphs (i) to (iv), may also be promoted to appropriate posts on higher post levels.
- (vii) Notwithstanding the provisions in paragraphs (ii) to (vi), preference should in all cases be given to appropriately qualified applicants for any educator post.
- (b) *Experience*
- (i) Post level 1
- Unless otherwise required by the provisions for the filling of posts referred to in paragraph (a)(ii), no experience is required for appointment to posts at post level 1.
- (ii) Post level 2-6
- The minimum requirements in respect of experience for appointment to promotion posts are as follows:

Post level	Minimum Experience required (years)
2	3
3	5
4	7
5	8
6	9

Educator's actual as well as appropriate experience must be taken into account for purposes of appointment at post levels 2 and higher.

[Para. 2.2 substituted by G.N. No. 774 of 2001 published in *Government Gazette* No. 22594 dated 24 August 2001.]

2.3 Reappointment of educators who have retired or who have been retired on pension prematurely

Subject to the general policy prescriptions applicable to the appointment of educators, every reappointment of an educator who has retired or has been retired on pension before reaching his/her retirement age shall be approved by the head of education or by the person to whom he/she has delegated such authority. By reappointment is meant any form of re-employment in a full-time or part-time capacity of an educator who has retired or has been retired on pension prematurely in terms of any of the approved measures. Such approval shall be applicable only to reappointments to educator posts for which the State has accepted financial responsibility.

The principles referred to below shall be taken into account in considering such reappointments. The head of Education or the person delegated by him/her, shall decide on the re-appointment concerned after he/she has weighed up these principles and the extent to which they have been complied with.

- (a) In the case of reappointments, the only consideration shall be the interests of education, which includes the interests of the provincial education department and the interests of the child, the school and the State.
- (b) Other applicants who comply with the prescribed requirements for appointment, and young entrants to the profession in particular, shall be given preference over persons who have already had the opportunity of an extensive career in education.
- (c) In considering a person whose services have been terminated owing to rationalisation and who has not been given the option of appointment to another suitable post, the termination of his/her services shall not prejudice him/her being considered for reappointment.
- (d) In the absence of sound reasons, the reappointment of persons whose services have been terminated owing to rationalisation and who have been given the opportunity of being transferred to another suitable post but who have nevertheless exercised the choice of retiring on pension prematurely, shall be deemed not to be in the interests of the State.

By "suitable post" in this regard is meant a post of a grading at least equal to the one from which the Educator concerned has been retired and which, given all the relevant circumstances of the person concerned, is such that he/she may reasonably be expected to accept appointment to such position.

- (e) In the absence of sound reasons the reappointment of persons who have at their own request retired prematurely on reduced pension benefits shall not be deemed to be in the interests of the State.
- (f) The application for reappointment of persons who have retired on pension prematurely on grounds of continued ill health and whose state of health has improved to such an extent that the prescribed health requirements are met shall be considered bearing in mind the principles in paragraphs (a) and (b).
- (g) Subject to the above principles, the consideration of any reappointment of an educator shall take into account the principles of fairness and justice and the generally accepted principles relating to the maintenance of sound employer employee relations.

2.4. Transfer of serving Educators in terms of operational requirements

- (a) Operational requirements for educational institutions are based on, but not limited to the following:
 - (i) change in pupil enrolment
 - (ii) curriculum changes within a specified educational institution
 - (iii) change to the grading of the specific educational institution
 - (iv) financial restraints
- (b) These measures do not deal with the transfer of level one serving educators declared in excess in term of operational requirements linked to rationalisation to effect equity in staff provisioning. This aspect is covered by Resolution No. 6 of the Education Labour Relations Council (ELRC), dealing with the procedures for rationalisation and redeployment of educators in the provisioning of educator posts.
- (c) In cases referred to in paragraph (a) above the following procedure shall apply.
 - (i) All vacancies that arise at educational institutions must be offered to serving educators displaced as a result of operational requirements of that specific provincial education department as a first step.
 - (ii) All vacancies must be advertised and filled in terms of paragraph 3 (The advertising and Filling of Educator Posts). Provided that:
 - every attempt is made to accommodate serving educators, displaced as a result of operational requirements, in suitable vacant posts at educational institutions or offices; and
 - a provincial education department may publish a closed vacancy list. In such an event, the procedures contained in the resolution dealing with the rationalisation and deployment of educators in the provisioning of educator posts shall apply.
 - (iii) When a governing body exercises its functions in terms of section 20(1)(i) of the South African Schools Act 1996 and chapter 3 of the Employment of Educators Act, they must accommodate the obligations of the employer towards serving educators. The governing body must also take into account the requirements for appointment as determined by the Minister of Education and/or the requirements of the post as determined by the Head of the Provincial Education Department.
 - (iv) All applicants who are serving educators displaced as a result of operational requirements and who are suitable candidates for a vacant post in an educational institution or office, must be shortlisted.
 - (v) At historically disadvantaged institutions (institutions that fell under the control of the ex-Department of Education and Training, Homeland Governments and TBVC states), any educator who acted for longer than 2 continuous years in the post, at the institution, must be included in the interviews for the post. Provided that:
 - the educator is currently in the post
 - the post is part of the post establishment of that institution
 - the relevant provincial education department had approved the appointment; and
 - the educator must have applied for the post.

2.5 Position of principals in cases where an institution is upgraded or downgraded

- (a) When an institution is re-graded, the post of the principal is regarded as a new, and therefore vacant post that must, subject to these measures, be filled in terms of paragraph 3 without undue delay.
- (b) If the permanent incumbent of a principal post that has been upgraded, qualifies to be promoted to the new level and the governing body or council recommends in writing that the person may be appointed to the higher post, such appointment may be made without having to advertise the post. If the governing body or council does not make such a recommendation, the post must be advertised in which case the incumbent will be entitled to apply for the upgraded post and s/he shall be short-listed.
- (c) If such a principal's application for appointment to the upgraded post is unsuccessful, he or she will be regarded as in excess as a result of operational requirements and must be dealt with in terms of paragraph 2.4.
- (d) If a principal post is downgraded, the principal will be in excess as a result of operational requirements and must be dealt with in terms of paragraph 2.4. This includes holding the person at his or her current salary level against the downgraded post for a reasonable period up to a maximum of 2 years. If circumstances warrant it, the head of department may extend this period. Circumstances that will determine what a reasonable period is include the probability for the post to be upgraded to its original level in the near future, the personal circumstances of the incumbent and the availability of suitable posts to which the person can be transferred. The person so in excess may at any time, while occupying the downgraded post, exercise the option to be permanently appointed to the post concerned in which case his or her remuneration will be determined in terms of paragraph 4. In such a case the post does not need to be advertised if it is in accordance with a recommendation of the governing body or council.

[Para. 2.5 inserted by G.N. No. 774 of 2001 published in *Government Gazette* No. 22594 dated 24 August 2001.]

3. THE ADVERTISING AND FILLING OF EDUCATOR POSTS

3.1 Advertising

- (a) The advertisement of vacant posts for educators must:
 - (i) be self-explanatory and clear and must include:
 - minimum requirements,
 - procedure to be followed for application
 - names and telephone numbers of contact persons
 - preferable date of appointment, and
 - closing date for the receipt of applications;
 - (ii) be accessible to all who may qualify or are interested in applying for such post(s);
 - (iii) be non discriminatory and in keeping with the provisions of the Constitution of the RSA; and
 - (iv) clearly state that the State is an affirmative action employer.
- (b) All vacancies in public schools are to be advertised in a gazette, bulletin or circular. The existence of which shall be made public by means of an advertisement in the public media both provincially and nationally. The information to be furnished in the latter advertisement shall include offices and addresses where the gazette, bulletin or circular is obtainable. The gazette, bulletin or circular must be circulated to all educational institutions within the province.
- (c) Educator posts outside public schools shall be advertised both in the national and provincial media and by circular to all schools in the relevant province, ensuring that the provisions of paragraph (a) above are met.
- (d) Educator posts at colleges shall be advertised in the national and provincial media by the employing department, ensuring that the provisions of paragraph (a) above are met.

3.2 Sifting

- (a) The employing department shall acknowledge receipt of all applications by:
 - (i) informing all applicants in writing of receipt;
 - (ii) clearly indicating whether the application is complete or not; and
 - (iii) indicating whether the applicant meets the minimum requirements for the post and that such applications have been referred to the institutions concerned.
- (b) The employing department shall handle the initial sifting process to eliminate applications of those candidates who do not comply with requirements for the post(s) as stated in the advertisement.
- (c) In the case of colleges, where applications are received at the institution, the college council shall acknowledge receipt of applications in terms of paragraph 2.1 above.
- (d) Trade Union parties to Council will be given a full report, at a formal meeting, on:
 - (i) names of educators who have met the minimum requirements for the post/s in terms of the advertisement;

- (ii) names of educators who have not met the minimum requirements for the post/s in terms of the advertisement; and
- (iii) other relevant information that are reasonably incidental thereto.

3.3 Shortlisting and interviews

- (a) Interview Committees shall be established at educational institution where there are advertised vacancies.
- (b) The Interview Committee shall comprise:
 - (i) In the case of public schools:
 - one departmental representative (who may be the school principal), as an observer and resource person;
 - the Principal of the school (if he/she is not the department's representative), except in the case where she/he is the applicant;
 - members of the school governing body, excluding educator members who are applicants to the advertised post/s; and
 - one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.
 - (ii) In the case of colleges:
 - one departmental representative, as an observer and resource person;
 - the head of the institution, except in the case where s/he is an applicant;
 - members of the college council, excluding educator members who are applicants to the advertised post/s; and
 - one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.
- (c) Each Interview Committee shall appoint from amongst its members a chairperson and a secretary.
- (d) All applications that meet the minimum requirements and provisions of the advertisement shall be handed over to the school governing body responsible for that specific public school.
- (e) The school governing body is responsible for the convening of the Interview Committee and they must ensure that all relevant persons/organisations are informed at least 5 working days prior to the date, time and venue of the shortlisting, interviews and the drawing up of the preference list.

Where the Principal is an applicant, a departmental official may assist the school governing body.
- (f) The Interview Committee may conduct shortlisting subject to the following guidelines:
 - (i) The criteria used must be fair, non-discriminatory and in keeping with the Constitution of the country.
 - (ii) The curricular needs of the school.
 - (iii) The obligations of the employer towards serving educators.
 - (iv) The list of shortlisted candidates for interview purposes should not exceed five per post.
- (g) The interviews shall be conducted according to agreed upon guidelines. These guidelines are to be jointly agreed upon by the parties to the provincial chamber.
- (h) All interviewees must receive similar treatment during the interviews.
- (i) At the conclusion of the interviews the interviewing committee shall rank the candidates in order of preference, together with a brief motivation, and submit this to the school governing body for their recommendation to the relevant employing department.
- (j) The governing body must submit their recommendation to the provincial education department in their order of preference.
- (k) In the case of colleges, the interviewing committee shall submit its ranked preference list to the college council for their recommendation to the relevant employing department.

3.4 Appointment

- (a) The employing department must make the final decision subject to:
 - (i) satisfying itself that agreed upon procedures were followed; and
 - (ii) that the decision is in compliance with the Employment of Educators Act of 1998, the South African Schools Act, 1996 and the Labour Relations Act, 1995.
- (b) The employer will inform all unsuccessful candidates, in writing, within eight weeks of an appointment being made.

3.5 Records

The employer must ensure that accurate records are kept of proceedings dealing with the interviews, decisions and motivations relating to the preference list submitted by school governing bodies and other such structures.

4. DETERMINATION OF SALARIES

4.1 Definitions

(a) A salary band refers to a set of salary ranges which are applicable to educators on a specific post level and with a specific REQV.

Example: The salary band applicable to an educator on post level 1 with a REQV13, consists of salary ranges 6, 7 and 8.

(b) Salary ranges consist of a number of (usually 3) salaries.

(c) A salary position refers to the position of a specific salary in a salary range, eg. the third salary of range 5 will be referred to as being in salary position 5.3.

4.2 General principle

An educator is always appointed to the lowest salary position of the salary band applicable to his/her REQV and the post to which he/she is appointed: Provided that an educator who is promoted to a higher post level, shall advance at least one salary position. The salary position of an educator who is voluntarily appointed to a lower post level is determined in the same way as that of an educator who is re-appointed to a lower post level after a break in service. (See paragraph 4.4 (b) below). An appointment may only be made to a salary position in the salary band applicable to the particular post and REQV concerned.

4.3 Recognition of qualifications which are higher than the minimum required for appointment to a specific salary band

An educator with a REQV of 15, 16 or 17, who is appointed (first appointment) from outside education to post level 1 or an educator with a REQV of 14 to 17 who is appointed (first appointment) from outside education to post level 2 to 4, receives, after he/she has completed a period of one year of continuous service, one cash award calculated in terms of the provisions in paragraph 4.5(e) hereunder, for each REQV higher than 14 or 13 respectively.

[S 4.3 amended by G.N. No. 247 of 2000 published in *Government Gazette* No. 20986 dated 17 March 2000.]

4.4 Educators who are reappointed after a break in service

Note: The applicable salary position to which an educator should be appointed after a break in service, is always determined in terms of the salary position which he/she occupied before the break in service. An equivalent salary position of a person who left the service before 1 July 1996 is determined by adjusting his/her last applicable salary in accordance with all the subsequent adjustment measures up to and including the adjustment measures applicable to the salary adjustment on 1 July 1996. In order to compare the level of a post to which a person is reappointed after 1 July 1996 with the level he/she occupied before a break in service before 1 July 1996, the level of the new post must be compared with the equivalent post level of the previous post in the new post level system.

(a) *Educators who are reappointed at the same post level*

An educator who has had a break in service and who is reappointed to the same post level, shall be reappointed to the same salary position (or equivalent salary position) that he/she occupied before the break in service: Provided that if the educator has improved his/her REQV during the break in service which has the effect that a new salary band becomes applicable, the appointment shall be to the minimum of the new salary band or the same salary position occupied before, whichever is more beneficial to the educator. If such educator who has improved his/her REQV during his/her break in service is appointed to the same salary position occupied before the break in service, he/she will be entitled to a cash bonus in accordance with the measures in paragraph 4.5(e) hereunder.

(b) *Educators who are reappointed at lower post levels*

An educator who is reappointed to a lower post level than the one he/she occupied before the break in service, is appointed to the highest applicable salary position which is lower than the salary position (or equivalent salary position) occupied by the educator before the break in service by at least the number of post levels that the new post level is lower than the post level occupied before the break in service: Provided that if the educator has improved his/her REQV during the break in service which has the effect that a different salary band becomes applicable, the appointment shall be to the minimum of the applicable salary band or to the salary position determined in terms of this paragraph, whichever is more beneficial to the educator. If the appointment is to the same salary position than it would have been, had the educator not improved his/her REQV, the educator will be entitled to a cash bonus as set out in paragraph 4.5(e).

(c) *Educators who are reappointed to a higher post level*

An educator who is appointed to a higher post level than the one he/she occupied before the break in service, is appointed to the lowest applicable salary position which is higher than the salary position (or equivalent salary position) occupied by the educator before the break in service by at least the number of post levels that the new post level is higher than the post level occupied before the break in

service: Provided that if the educator has improved his/her REQV during the break in service which has the effect that a different salary band becomes applicable, the appointment shall be to the minimum of the applicable salary band or to the salary position determined in terms of this paragraph, whichever is more beneficial to the educator. If the appointment is to the same salary position than it would have been had the educator not improved his/her REQV, the educator will be entitled to a cash bonus as set out in paragraph 4.5(e).

4.5 Recognition for improvement in REQV

**Note:* An educator who improves his/her qualifications which has the effect that his/her REQV improves, will qualify for a financial benefit as set out below. An educator who qualifies for a salary adjustment, must submit proof of such a qualification to his/her employer within 12 months of obtaining it in order to receive the salary adjustment with effect from the date on which it was obtained. Should an educator fail to submit the qualification within 12 months, he/she will only qualify for such salary adjustment with effect from the date on which the qualification was submitted.

[Note to paragraph 4.5 added by G.N. 267 of 2003 published in *Government Gazette* No. 24948 dated 21 February 2003]

(a) *Educators with REQV 11 and 12*

If an educator with REQV 11 or 12, on post level 1 to 4 improves his/her education qualifications, which has the effect that his/her REQV improves, such educator's salary will adjust to the lowest notch of the next applicable salary range.

(b) *Educators with REQV 13*

If an educator with REQV 13 on post level 1 improves his/her education qualifications, which has the effect that his/her REQV improves, such an educator will receive a cash bonus, provided the educator is either on salary range 7 or 8.

If an educator with REQV 13 on post level 1 improves his/her education qualifications, which has the effect that his/her REQV improves, such educator's salary will adjust to the lowest notch of salary range 7, if the educator is presently on salary range 6.

(c) *Educators on post level 1 with REQV 14 or higher and educators on post levels 2 to 4 with REQV 13 or higher*

If an educator on post level 1 with REQV 14 or higher or an educator on post levels 2 to 4 with REQV 13 or higher improves his/her education qualifications, which has the effect that his/her REQV improves, such educators will receive a cash bonus.

(d) *Educators on REQV 10*

If an educator with REQV 10 improves his/her education qualifications, which has the effect that his/her REQV improves, such an educator's salary will adjust to the lowest notch of the applicable salary range.

(e) *Cash awards payable to educators in terms of these measures, are calculated in all cases as 10% of the minimum of salary range 7, as it was on the date that the qualification was obtained. The payment of such cash amounts came into effect from 1 July 1996, and may not be granted to an educator more than once for the same REQV improvement.*

4.6 Post levels, REQVs and salary ranges

The following table indicates the salary ranges applicable to educators in accordance with their post levels and REQVs.

POST LEVEL	REQV	APPLICABLE SALARY RANGES
1	10	3
	11	3-5
	12	4-6
	13	6-8
	14-17	7-8
2	10	5
	11	6
	12	7
	13-17	8-9
3	10	6
	11	7
	12	8
	13-17	9-10
4	11	8
	12	9
	13-17	10-11
5	13-17	12
6	13-17	13

4.7 The salary structure

The salary structure and adjustment for educators with effect from 1 July 1997 is as set out below.

Salary range	Salary position	Salary (R) 1/7/1996	Salary (R) 1/7/1997	Salary (R) 1/7/1998	Salary (R) 1/7/1999	Salary (R) 1/7/2000	Salary (R) 1/7/2001	Salary (R) 1/7/2002
3	3.1	23526	25659	27444	29355	31407	33606	36630
	3.2	24615	26823	28647	30642	32784	35079	38235
	3.3	25704	28020	29913	31995	34233	36630	39927
	3.4	26793	29205	30594	32724	35013	37464	40836
4	4.1	27882	30395	32511	34774	37035	39444	42990
	4.2	28905	31509	33639	35982	38319	40809	44481
	4.3	29928	32625	34830	37257	39678	42258	46062
	4.4	30951	33738	35310	37770	40224	42840	46695
	4.5	31974	34854	36477	39018	41553	44253	48237
5	5.1	32988	35958	38460	41139	43812	46659	50859
	5.2	34296	37386	39912	42693	45468	48423	52782
	5.3	35604	38814	41439	44325	47205	50274	54798
	5.4	36912	40236	42111	45045	47970	51090	55686
	5.5	38220	41664	43605	46644	49674	52902	57663
	5.6	39528	43089	45096	48237	51372	54711	59634
6	6.1	40836	44514	47613	50931	54240	57765	62964
	6.2	43344	47247	50442	53955	57462	61197	66705
	6.3	45852	49983	53361	57073	60786	64737	70563
	6.4	48360	52719	55176	59019	62853	66939	72963
7	7.1	50868	55449	59307	63433	67560	71952	78429
	7.2	53487	58302	62244	66532	70908	75519	82311
	7.3	56106	61155	65289	69837	74376	79212	86337
	7.4	58725	63699	66666	71310	75945	80883	88158
	7.5	61344	66540	69642	74495	79338	84495	92100
8	8.1	63963	69381	74211	78789	83910	89364	97407
	8.2	67509	73248	78201	83025	88419	94167	102642
	8.3	71055	77094	82305	87381	93060	99108	108027
	8.4	74601	80943	84714	89940	95784	102009	111189
9	9.1	78141	84423	89454	94524	100194	106707	116310
	9.2	81045	87561	92781	98040	103920	110676	120636
	9.3	83949	90696	96102	101550	107643	114639	124956
	9.4	86853	93837	99429	105066	111369	118608	129282
	9.5	89757	96972	102753	108579	115092	122574	133605
	9.6	92661	100110	104775	110715	117357	124986	136236
	9.7	95565	103248	108060	114186	121035	128904	140502
10	10.1	98463	106377	111654	117934	125061	133191	145179
	10.2	102702	110958	116463	123065	130449	138930	151431
	10.3	106941	115539	121269	128142	135828	144657	157677
	10.4	111180	120117	125715	132843	140811	147964	163461
11	11.1	115413	124692	130878	137643	145899	155382	169356
	11.2	123468	133392	140007	147243	156075	166211	181182
	11.3	131523	142098	149145	156855	166266	177075	193008
12	12.1	139578	150798	158277	165666	175605	187020	203853
	12.2	147474	159273	167172	174978	185475	197532	215310
	12.3	155370	167799	176121	184344	195402	208104	226833
13	13.1	163260	171426	179919	188319	199617		
	13.2	170373	178893	187407	196158	207927		
	13.3	177486	186363	195234	204351	216612		

[Para. 4.7 substituted by G.N. No. 1430 of 2000 published in *Government Gazette* 21950 dated 29 December 2000; further substituted by G.N. No. 1254 of 2001 published in *Government Gazette* 22878 dated 7 December 2001 and further substituted by G.N. No. 1287 of 2002 published in *Government Gazette* No. 23934 dated 11 October 2002.]

4.8 Measures in respect of salary adjustments during the period from 1 July 1992 to 1 July 1995

Salary notch (R.p.a.) 1/07/1992	Salary notch (R.p.a.) 1/07/1993	Salary notch (R.p.a.) 1/11/1993	Salary notch (R.p.a.) 1/12/1993	Salary notch (R.p.a.) 1/04/1994	Salary notch (R.p.a.) 1/07/1995
102918	108075	10875	126411	126411	131478
102603	107736	107736	107736	113772	119058
98127	103038	103038	103038	108810	114258
96492	99432	99432	99432	105003	110265
91257	95826	95826	95826	101196	106272
87822	92220	92220	92220	97389	102279
84864	89115	89115	89115	94110	98835
81906	86010	86010	86010	10831	95391
78948	82905	82905	82905	87552	91947
75990	79880	79880	79880	84273	88503
73032	76695	76695	76695	80994	85059
70074	73590	73590	73590	77715	81615
76116	70485	70485	70485	74436	78171
64269	67494	67494	67494	71277	74853
61422	64503	64503	64503	68118	71535
58575	61512	61512	61512	64959	68217
55728	58521	58521	58521	61800	64899
52881	55530	55530	55530	58641	61581
50334	52857	52857	52857	55818	58617
47787	50184	50184	50184	52995	55653
45240	47511	47511	47511	50172	52689
42693	44838	44838	44838	57349	49725
40365	42393	42393	42393	44769	47016
38037	39948	39948	39948	42189	44307
35709	37503	37503	37503	39609	41598
33381	35058	35058	35058	37029	38889
31431	33009	33009	33009	34866	36618
29481	30960	30960	30960	32703	34347
27531	28911	28911	28911	30540	32076
25581	26862	26862	26862	28377	29805
23631	24813	24813	24813	26214	27534
21831	22923	22923	22923	24216	25680
20031	21033	21033	21033	22218	23826
18231	19143	19143	19143	20220	21972
16431	17253	17253	17253	18222	20118
14841	15585				
13251	13917				
11832	12426				
10413	10935				

4.9 Salary adjustment: 1 July 1996 (Implementation of new salary and post structure)

It should be noted that:

- (a) The salary adjustments on 1 July 1996, as set out in the following table, was in accordance with a person's salary as well as his/her post level as on 30 June 1996.
- (b) In instances where two post levels were combined to a new post level, two persons on equivalent salary positions but on two different post levels before 1 July 1996, may have adjusted to different salary positions.

Post Level I

Former Qualification	REQV	Salary Notch as on 30 June 1996	Salary as on 1 July 1996	Salary Position
A2	10	20 118	23 526	3.1
A1	11	20 118	23 526	3.1
		21 972	24 615	3.2
		23 826	26 893	3.4
		25 680	28 905	4.2
		27 534	30 951	4.4
		29 805	32 988	5.1
		32 076	35 604	5.3
		34 347	38 220	5.5
		36 618	40 836	6.1
B	12	21 972	27 882	4.1
		23 826	27 882	4.1
		25 680	28 905	4.2
		27 534	30 951	4.4
		29 805	32 988	5.1
		32 076	35 604	5.3
		34 347	38 220	5.5
		36 618	40 836	6.1
		41 598	45 852	6.3
		44 307	50 568	7.1
		47 016	53 487	7.2
C	13	29 805	40 836	6.1
		32 076	40 836	6.1
		34 347	40 836	6.1
		36 618	43 344	6.2
		38 889	43 344	6.2
		41 598	45 852	6.3
		44 307	50 868	7.1
		47 016	53 487	7.2
		49 725	56 106	7.3
		52 689	58 725	7.4
		55 653	61 344	7.5
		58 617	67 509	8.2
D-G	14-17	34 347	50 868	7.1
		36 618	50 868	7.1
		38 889	50 868	7.1
		41 598	53 487	7.2
		44 307	53 487	7.2
		47 016	53 487	7.2
		49 725	56 106	7.3
		52 689	58 725	7.4
		55 653	61 344	7.5
		58 617	67 509	8.2
		61 581	71 055	8.3
		64 899	74 601	8.4
		68 217	78 141	9.1 (P)
		71 535	81 045	9.2 (P)
		74 853	83 949	9.3 (P)

Post Level 2

Former Qualification	REQV	Salary Notch as on 30 June 1996	Salary as on 1 July 1996	Salary Position
A2	10	23 826	32 988	5.1
A1	11	29 805	40 836	6.1
		32 076	40 836	6.1
		34 347	40 836	6.1
		36 618	43 344	6.2
B	12	36 618	50 868	7.1
		38 889	50 868	7.1
		41 598	50 868	7.1
		44 307	53 487	7.2
		47 016	53 487	7.2
C	13	49 725	63 963	8.1
		52 689	63 963	8.1
		55 653	63 963	8.1
		58 617	67 509	8.2
		61 581	71 055	8.3
		64 899	74 601	8.4
D-G	14-17	55 653	63 963	8.1
		58 617	67 509	8.2
		61 581	71 055	8.3
		64 899	74 601	8.4
		68 217	78 141	9.1
		71 535	81 045	9.2
		74 853	83 949	9.3
		78 171	86 853	9.4
		81 615	92 661	9.6
<u>Former Post Level 3 (New Post Level3)</u>				
A2	10	27 534	40 836	6.1
A1	11	34 347	50 868	7.1
		36 618	50 868	7.1
		38 889	50 868	7.1
		41 598	53 487	7.2
B	12	41 598	63 963	8.1
		44 307	63 963	8.1
		47 016	63 963	8.1
		49 725	67 509	8.2
		52 689	67 509	8.2
C	13	55 653	78 141	9.1
		58 617	78 141	9.1
		61 581	78 141	9.1
		64 899	81 045	9.2
		68 217	81 045	9.2
		71 535	81 045	9.2
		74 853	83 949	9.3
		78 171	86 853	9.4
		81 615	92 661	9.6
D-G	14-17	61 581	78 141	9.1
		64 899	81 045	9.2
		68 217	81 045	9.2
		71 535	81 045	9.2
		74 853	83 949	9.3
		78 171	86 853	9.4
		81 615	92 661	9.6
		85 059	95 565	9.7
		88 503	98 463	10.1

Former Post Level 4 (New Post Level 3)

Former Qualification	REQV	Salary Notch as on 30 June 1996	Salary as on 1 July 1996	Salary Position
A1	11	38 889	53 487	7.2
		41 598	53 487	7.2
		44 307	53 487	7.2
		47 016	56 106	7.3
B	12	47 016	67 509	8.2
		49 725	67 509	8.2
		52 689	67 509	8.2
		55 653	71 055	8.3
		58 617	71 055	8.3
C	13	61 581	81 045	9.2
		64 899	81 045	9.2
		68 217	81 045	9.2
		71 535	83 949	9.3
		74 853	83 949	9.3
		78 171	86 853	9.4
		81 615	92 661	9.6
		85 059	95 565	9.7
		88 503	98 463	10.1
D-G	14-17	68 217	81 045	9.2
		71 535	83 949	9.3
		74 853	83 949	9.3
		78 171	86 853	9.4
		81 615	92 661	9.6
		85 059	95 565	9.7
		88 503	98 463	10.1
		91 947	102 702	10.2
		95 391	106 941	10.3

Former Post Level 5 (New Post Level 4)

A1	11	44 307	63 963	8.1
		47 016	63 963	8.1
		49 725	63 963	8.1
		52 689	67 509	8.2
B	12	52 689	78 141	9.1
		55 653	78 141	9.1
		58 617	78 141	9.1
		61 581	81 045	9.2
		64 899	81 045	9.2
C	13	68 217	98 463	10.1
		71 535	98 463	10.1
		74 853	98 463	10.1
		78 171	102 702	10.2
		81 615	102 702	10.2
		85 059	102 702	10.2
		88 503	106 941	10.3
		91 947	106 941	10.3
		95 391	106 941	10.3
D-G	14-17	74 853	98 463	10.1
		78 171	102 702	10.2
		81 615	102 702	10.2
		85 059	102 702	10.2
		88 503	106 941	10.3
		91 947	106 941	10.3
		95 391	106 941	10.3
		98 835	111 180	10.4
		102 279	115 413	11.1

Former Post Level 6 (New Post Level 4)

102 279	115 413	11.1
106 272	123 468	11.2
110 265	123 468	11.2

Former Post Level 7 (New Post Level 5)

110 265	139 578	12.1
114 258	139 578	12.1
119 058	139 578	12.1

Former Post Level 8 (New Post Level 6)

131 478	163 260	13.1
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5. RANK CODES FOR PERSAL PURPOSES

Rank	Code Rank Description for Persal purposes
60001	EDUCATION SPECIALIST (O)
60002	EDUCATION SPECIALIST, SENIOR (O)
60003	EDUCATION SPECIALIST, FIRST (O)
60004	EDUCATION SPECIALIST, DEPUTY CHIEF (O)
60005	EDUCATION SPECIALIST, CHIEF (O)
60006	DIRECTOR (O)
60101	TEACHER (S)
60102	HEAD OF DEPARTMENT (S)
60103	PRINCIPAL: DEPUTY (SC)
60301	PRINCIPAL: PRINCIPAL (P1)
60302	PRINCIPAL: (P2)
60303	PRINCIPAL (P2 S3 T3 SS3)
60404	PRINCIPAL (P4 S4 T4 SS4)
60501	LECTURER (T)
60502	LECTURER: SENIOR (T)
60503	LECTURER: SENIOR (C)
60603	HEAD OF DIVISION (T)
60504	PRINCIPAL: SENIOR DEPUTY (T)
60703	PRINCIPAL: DEPUTY (T)
60803	PRINCIPAL (T3)
60902	LECTURER (C)
60903	HEAD OF DEPARTMENT (C)
61104	HEAD OF DEPARTMENT: SENIOR (C)
60904	RECTOR: VICE (C)
60905	RECTOR (C5)
60906	RECTOR (C6)
61004	RECTOR (C4)
61005	PRINCIPAL (T5)
60906	RECTOR (C6)
61021	EDUCATION THERAPIST
61022	SENIOR EDUCATION THERAPIST

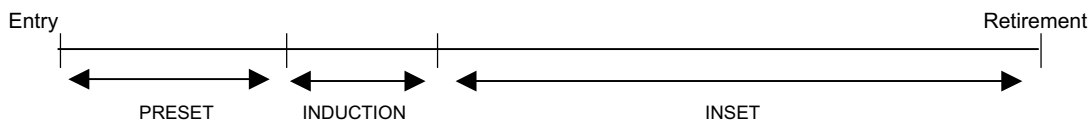
6. RANK CODES IN RESPECT OF POST LEVELS AND REQV

Post Level	Relative Education Qualification Value (REQV)	Rank Codes
1	10	36991
1	11	36992
1	12	36993
1	13	36994
1	14–17	36995
2	10	36996
2	11	36997
2	12	36998
2	13–17	36999
3	10	37000
3	11	37001
3	12	37002
3	13–17	37003
4	11	37004
4	12	37005
4	13–17	37006
5	13–17	37007
6	13–17	37008

CHAPTER C DEVELOPMENTAL APPRAISAL

1. PREAMBLE

- 1.1 The model for developmental appraisal has the following features
- simplicity: easy to understand and applies to all educators
 - feasibility: can be administered within different types of institutions
 - legitimacy: unions were involved in formulation, hence educators take ownership
 - flexibility: is used for development and confirmation of probationers.
- 1.2 In order to achieve the aims of developmental appraisal, the following requirements, *inter alia*, must be met:
- democratic organisational climate
 - learning culture at institutions
 - commitment of educators to development
 - openness and trust.
- 1.3 Developmental appraisal is part of INSET as illustrated in the career time-line.



- 1.4 The primary responsibility for development lies with the educator and the primary site for development is the workplace.

2. MANUAL FOR DEVELOPMENTAL APPRAISAL

2.1 Aim

The aim of developmental appraisal is to facilitate the personal and professional development of educators in order to improve the quality of teaching practice and education management.

2.2 Basic principle

It is based on the fundamental principle of life-long learning and development. This implies that one has to prioritise areas for development and growth throughout one's career in Education.

2.3 Process

Developmental appraisal consists of the following ongoing processes:

- reflective practice
- self appraisal
- peer appraisal (or another member of Appraisal Panel)
- collaboration
- interaction within panels

Each one is explained briefly.

- Reflective Practice*: This on-going activity requires educators to interpret and analyse the extent to which their performance meets objectives in serving the needs of clients with the intention to rethink current practice.
- Self-appraisal*: Educator undertakes self-analysis and introspection in terms of his/her own performance, client questionnaire results as well as institution development plans. This is followed by self-evaluation in order to determine priorities for personal and professional growth.
- Peer appraisal*: It is the involvement of a colleague in assisting the appraisee to review his/her performance with a view to prioritise professional development needs.
- Collaboration*: Educators working together to assist in problem solving eg teachers taking the same grade or educators from different institutions involved in teaching a particular learning field or educators consulting with the Support Services of the Education Department.
- Interaction within Panels*: Relationships have to be developed between members to work collectively to assist the appraisee to identify needs, formulate objectives, select professional development activities, implement such activities within time frames and to provide timeous feedback.

2.4 Staff development team (SDT)

Each institution shall elect a Staff Development Team (SDT) consisting of the Head of Institution, elected staff members. The SDT will initiate, co-ordinate and monitor appraisal in terms of the management plan (see paragraph 11).

2.5 Panels

The appraisal panel will consist of the appraisee and at least three others (except in small schools, where at least two are included) drawn from the following groups:

- peer
- union representative
- senior (HOD, Deputy Principal, Principal)
- outside support (for example, subject advisor, educators from other institutions recognised for expertise, district/circuit manager, NGO, University/College lecturer, other)

Appraisee	Panel members			
	Peer	Union rep	Senior	Outside
PL1 Educator (Classroom based educator)	✓	✓	✓	✓
HOD	✓	✓	✓	✓
Principal/Deputy Principal	✓	✓	✓	✓
Office based educator	✓	✓	✓	✓

2.6 Criteria

To ensure that the process of appraisal is in line with key job functions, a list of criteria (core, optional and additional) have been drawn up for the following levels:

- PL1 educator (classroom based educators)
- Head of Department
- Deputy Principal/Principal
- Office based educators (PL 1 to 6)

Three types of criteria are explained below:

- *Core criteria:* will be seen as primary elements of the responsibility of the person's job on which the person has no choice but to be appraised on. They cover the essential elements of the job descriptions of the educator.
- *Optional criteria:* These are criteria that are listed as core criteria, some of which may be made optional by the appraisal panel because of the contextual factors at institutions. A motivation for this reclassification has to be given.
- *Additional criteria:* These are criteria that may be added depending on the needs of an institution and/or individual educator. These should be discussed with the Panel, supported by staff and agreed to in the Staff Development Team. A motivation for the inclusion of additional criteria has to be given.

2.7 Self/peer rating and prioritisation

A simple scale shall be used to determine areas of priority. In this scale, each criterion is defined and the associated performance expectation is given.

A = Priority need for development in present cycle

B = Performance is in keeping with the expectation with room for further development in future cycles.

The prioritisation form contains the key development areas (criteria).

2.8 Forms

Name	Purpose	Completed by
Personal Details Form	Record personal particulars, qualifications and teaching/management/other experience.	Appraisee
Needs Identification and Prioritisation form	Self appraisal Other Panel members appraisal Panel appraisal	Appraisee Other Panel members Panel
Professional Growth Plan (PGP) Form	Shows plan for development in a cycle. Reflects objectives, activities, resources and key performance indicators. One form for each cycle. Motivation for reclassification of core criteria as optional has to be recorded.	Finalised in Panel
Discussion Paper	To review success/difficulties of PGP in this cycle.	Panel
Appraisal Report	A signed record of the entire appraisal process for the cycle, including identified needs, strengths and development plan	Appraisee and appraisal panel members

2.9 Professional growth plan (PGP) form

The appraisee’s developmental plan is recorded in this form. The parts of the form are:

Objectives/ eg *to make use of different modes of continuous learner assessment.*

Activities: eg *read literature on continuous assessment
hold discussions with peer
consult with subject advisor
learning site visit to observe learner assessment.*

Resources: eg *subject reference books, journals and other literature.*

Key performance indicators eg *integrate new methods of learner assessment in addition to existing ones.*

2.10 Confirmation of probationers

In terms of Section 3(3), Regulation No. R1742 (13 Nov. 1995) the head of an institution or office may confirm the probationary appointment of an educator after a period of at least 12 months on the basis of satisfactory performance.

The criteria, definitions and expectations shall be used to determine whether the probationer achieved a satisfactory performance level.

The appraisal of probationer will be done in terms of applicable legislation and regulations.

2.11 Management plan

Apart from probationers, half of staff in first 6 months and other half in second 6 months will be involved in appraisal. All educators have to be trained in developmental appraisal prior to implementation in order to ensure that the spirit of appraisal as stated in 1 & 2 above is observed in practice.

	Weeks in Cycle	Action	Responsibility
	Week 1	Head of an institution calls a staff meeting to elect the SDT	Head of an Institution
	Week 2–3	• Training of staff	SDT
	Week 4–6	• Identification of Appraisees for the 1 st and 2 nd phases of Cycle one • Constitution of panels and election Chairpersons • Appraisees complete Personal Details Form	SDT Staff members Identified appraisees
	Week 6–9	• Submission of educator portfolios to the Panel • Observation of educators in practice	Appraisee Panel
	Week 9–12	• Decide on optional and additional criteria and motivate for the decision on the Needs identification and Prioritisation Form. • Self-appraisal on the Needs Identification and Prioritisation Form • Peer/Union Representative/Senior appraisal Needs Identification and Prioritisation Form • Finalise Needs Identification and Prioritisation Form • Complete Professional Growth Plan (PGP) Form • Panel discusses and finalise the PGP Form	Appraisee, Panel and SDT Appraisees 2 panel members Panel Appraisee Panel
	Weeks 12–28	• Appraisee implements the Professional Growth Plan	Appraisee
	Weeks 28–32	• Appraisee fills in the discussion paper in preparation for the review • Panel works through the discussion paper • Appraisal Report is prepared	Appraisee Panel Panel

2.12 Appraisal records

A file of each educator (appraisee) will be kept at the institution for each educator which contain:

- Personal details (Filled once, unless there are changes).
- Need Identification and Prioritisation Form
- PGP
- Discussion Paper
- Appraisal Report

The records will show the nature of professional growth as well as the commitment to life-long learning and development of an educator. Such documentation could serve as part of the CV.

2.13 Glossary

Additional Criteria – are criteria that may be added depending on the needs of an institution and/or individual educator. These should be discussed with the Panel, supported by staff and agreed to in the Staff Development Team. A motivation to the inclusion of additional criteria has to be given.

Appraisal – Appraisal implies making judgements and decisions on the quality or effectiveness of a programme, project, thing or set of actions. There are two kinds of appraisal namely: Judgemental (summative) appraisal; and Developmental (formative) appraisal. Judgemental appraisal refers to those decisions that make judgements and do not necessarily help to improve things. Developmental appraisal is an appraisal process which will result in development in both the skills and career prospects of the individual educator and lead to improvement at school or institutional level.

Appraisal Instrument – is the basic procedures, methods and criteria through which the appraisal of persons will take place. This does not include the background principles, purpose, etc. of appraisal in the first place.

Appraisee – an educator who will be appraised for professional development.

Appraiser – an educator who is responsible for conducting the appraisal process of an appraisee.

Assessment – is a way of measuring what is understood/known and can be demonstrated in a variety of ways.

Confirmation – the process to which the probationer is declared permanent into the post he/she is holding, after a period of 12 months on the basis of satisfactory performance and conduct in keeping with applicable legislation and regulations.

Core Criteria – will be seen as primary elements of the responsibility of the person's job (job description) on which the person has no choice but to be appraised on.

Criteria – is the basis on which judgements of good or acceptable practice are made or targets are judged to have been met.

Cycles – will be time span between two distinct processes of appraisal. The first cycle will last for one year within which all educators must be appraised.

Data collection – is the process of providing information for the appraisal interview, and which must be seen as a professional development activity in itself.

Educator – refers to any person whose conditions of employment are regulated by the Employment of Educators Act, No. 76 of 1998.

Head of Institution – a person in charge of a work site where the educator is based for the purposes of his/her work for example, principal for school or head of education department for provincial head offices.

Institution – a site where an educator is based for the purposes of his/her work. It includes but not limited to a school, national office, provincial head offices, and regional and district offices, area and circuit offices.

Objective – statement that indicates what the appraisee sets for himself/herself in order to acquire knowledge or skill that will promote professional development.

Observation of an educator in practice – is the process through which a colleague(s) on the appraisal panel will visit the workstation of the appraisee occasionally for the sole purpose of observing methods used by the educator and to provide the necessary support.

Optional Criteria – are criteria that are listed as core criteria, some of which may be made optional by the appraisal panel because of the contextual factors at institutions. A motivation for this reclassification.

Panel – will be the full composition of individuals who are involved in the appraisal process.

Peer – will be another educator identified by the appraisee who will be able to render assistance to him/her for professional development. This could be a colleague at any level within the institution.

Portfolio – a record of an educator's ongoing professional development, learning experiences and achievements. For example short and long INSET courses, all certificates/awards obtained, research conducted, materials developed, articles written, etc.

Prioritisation – identification of areas of professional growth, indicating which are considered to be more important and achievable. These areas appear as criteria on the Needs Identification and Prioritisation form.

Probationer – is an educator who occupies a substantive post for at least 12 months but who is not yet appraised for permanent appointment in that post.

Professional Growth Plan Form – is a form in which the appraisee’s developmental plan is recorded.

Qualification – refers to a completed course of study for example Matric, B Paed, STD, HDE, MA etc.

Rating – is a scale used to determine areas of priority for developmental purposes.

Records – documentation that contains all the appraisal information gathered.

ACRONYMS

PL 1–6 – Post Level One to Six

DAS – Development Appraisal System

HOD – Head of Department

INSET – In-service Education and Training

NGO – Non-Governmental Organisation

PGP – Professional Growth Plan

SDT – Staff Development Team

SWOT – Strengths, Weaknesses, Opportunities and Threats

MTEF - Medium Term Expenditure Framework

3. INSTRUMENTS FOR DEVELOPMENTAL APPRAISAL

3.1 Needs identification and prioritisation form for PL1 educator

Criteria	Symbols A or B		
	– rating by appraisee, 2 identified appraisers and members of the panel – needs identification – prioritise the identified needs in the order of importance for the PGP		
1. CORE	APPRAISEE	PEER/HOD/DP/PRIN.	PANEL
1.1 Curriculum development			
1.2 Creation of a learning environment			
1.3 Lesson presentation and methodology			
1.4 Classroom management			
1.5 Learner assessment			
1.6 Recording and analysing data			
1.7 Development of learning field competency			
1.8 Professional development in field of work/career and participation in professional bodies			
1.9 Human Relations			
1.10 Leadership			
1.11 Community			
1.12 Extra-curricular work			
1.13 Contribution to school development			
1.14 Generation of the departmental policy			
1.15 Professional support to colleagues			

Criteria	Symbols A or B		
	APPRAISEE	PEER/HOD/DP/PRIN.	PANEL
2. OPTIONAL			
3. ADDITIONAL			

MOTIVATION FOR CHANGING CORE CRITERIA TO OPTIONAL CRITERIA

POST LEVEL ONE EDUCATOR

Criteria	Definition	Expectation
1.1 Curriculum development	Interpretation of learning programmes, development of learning materials and assessment methods and selection of appropriate teaching strategies.	The educator plans and designs teaching and learning activities where learning is a collective enterprise, integrative, and goal-oriented.
1.2 Creation of a learning environment	The tone and spirit in the classroom. The atmosphere in which teaching and learning takes place. General attitude to learners and the expectations which are aroused. The relationship between routines, stimulation, industrious activity and creativity. The establishment of a productive, encouraging, demanding and supportive environment for learners.	Mutual interest and enthusiasm between teacher and learners create the learning environment. Learners expect to work hard at valid and satisfying tasks as a result of the open and critical discussion based upon rich and diverse materials. The classroom atmosphere encourages the exchange of ideas, questions and experiences and learning is understood as a co-operative and productive activity. Learning opportunities take place at different levels at the same time.

Criteria	Definition	Expectation
1.3 Lesson presentation and methodology	Educator's knowledge and experience of the learning area that is presented to learners in ways that produce learning, interest, involvement, questions and critical thinking. This relies upon the teacher's skills in planning and organising individual lessons as well as programmes of learning based upon insight into the learning area to be taught.	The teacher has an excellent grasp of the learning area and is highly skilled at using many ways to promote the needs and expectations of learners. Each lesson has strong links with those before and after, and learner involvement is an integral part of their own education and development. Learners emerge with a confident and broad understanding of the learning at their level.
1.4 Classroom management	There is evidence of discipline, guidance and support, leading to sound rapport with learners, positive reinforcement, encouragement and appropriate admonition and effective, fair, regular and varied assessment of learner's efforts. The ability to inspire and encourage learners to produce their best performance and maintain high standards of behaviour and ethics.	Demonstrates effective ability to encourage, guide and support learners. Self motivated to the extent that it influences other people positively. Noticeable drive, enthusiasm and tenacity. Encourages staff to achieve excellence in the in the classroom.
1.5 Learner assessment	The ability to assess the progress as well as the potential and actual learning through using a variety of assessment procedures. The extent to which the evaluation of learner development is managed continuously in ways of the learners and the learning area. The ability to use the result of learner performance for diagnostic purposes, remedial work and for adapting teaching programmes.	Uses the assessment of learners creatively so that it serves many constructive purposes. Sets high but achievable standards consistent with the levels and abilities of the learners. Has a lively interest in assessment and its possibilities and is aware of new methods. Learners receive constructive and frequent feed back as a consequence of continuous and varied assessment. Keeps complete and comprehensive records of learners' progress.
1.6 Recording and analysing data	Recording and analysis of data achievement and performance, the level attained in terms of reaching departmental objectives.	Records and analyses of data are exceptionally well kept. Analysis of data is accurate/shows exceptional ability for utilization of the data for problem solving and development.
1.7 Development of learning field competency	Deliberate efforts by the teacher to keep up with developments, research and publications in his and her learning area. This includes how the learning area fits into the learning area, its relation to other learning fields and developments in methodologies for teaching the learning area effectively.	Sustains a lively interest in her or his learning area to the extent that, in addition to teaching it well, this teacher leads learning area committees, contributes to workshops and is capable of lecturing to trainee teachers in the learning area.
1.8 Professional development in field of work/career and participation in professional bodies	Extent to which the teacher acquires further and new skills and expertise in, not only his/her own learning area but more particularly in educational thinking, administration, management, vocational and/or technical areas.	Has a lively sense of the need for educators to acquire new knowledge and additional skills if they are to make Departmental policy succeed. Uses all opportunities to become familiar with fresh and further thinking in a number of educational areas. Uses the experience of implementing new thinking to report to colleagues and the Department on the effects of such new approaches to education in an actual school situation.
1.9 Human relations	Quality of personal and professional relations with all members of the school community. Support given to colleagues and learners. Ability to inspire and encourage people to seek and maintain high standards of performance. Ability to establish relationships based upon respect and trust.	Has excellent personal and professional relationships with most members of the community. Is regarded as honest and accessible and can offer advice and criticism without causing offence or discomfort. Is very supportive of colleagues and learners. Enjoys the confidence of parents and members of the community.

Criteria	Definition	Expectation
1.10 Leadership	The ability to take the initiative and act decisively. Degree of influence on colleagues in making decisions, determining aims and objectives. Extent to which he/she acts in terms of priorities and opportunities and the degree to which others rely on the insight, point of view, judgement and will of this teacher.	Shows well-developed leadership qualities in an educational environment. Is able to influence colleagues with decisive recommendations and has a clear sense of how decisions can be implemented. Leadership qualities are demonstrated in stepping forward and holding back. Is expected by the community to play a leadership role in many of the school's activities.
1.11 Community	Appreciation and support of institution's needs/exercise of initiative on institution's behalf/voluntary commitment/willingness to get actively involved in learner, staff and parent matters by participating in committee meetings, workshops and projects. Knowledge of values and customs of the community. Contribution to building links between the school and the broader community.	Very good attitude to the community/is sensitive to the norms and customs of the community/serves the community across a very broad front/promotes a very good image of education/is held in high regard by the community/encourages strong links between the school and the community.
1.12 Extra-curricular	Involvement in and availability for school activities outside the classroom and outside teaching hours. This includes sports, cultural activities, meetings with parents and students school committee work, attendance at courses and workshops arranged by the Department and educational agencies.	Makes active use of after-hours time for cultural, sporting and instructional purposes. Plays a leading role in encouraging staff and students to arrange extracurricular activities. Participates in school and Departmental meetings after school hours and assists with organising meetings of the school community. Available to students and parents in the afternoons.
1.13 Contribution to school development	Understanding of and contributions to school, the implementation of departmental development policies and circulars, the new curriculum and whole school development initiatives.	Is familiar with current policies, the new curriculum and the processes of school change and whole school development. Is able to apply this understanding.

HEAD OF DEPARTMENT

Criteria	Definition	Expectation
1.1 Curriculum development	Interpretation of learning programmes, development of learning materials and assessment methods and selection of appropriate teaching strategies.	The educator plans and designs teaching and learning activities where learning is a collective enterprise, integrative, active and goal-oriented.
1.2 Creation of a learning environment	The tone and spirit in the classroom. The atmosphere in which teaching and learning takes place. General attitude to learners and the expectations which are aroused. The relationship between routines, stimulation, industrious activity and creativity. The establishment of a productive, encouraging, demanding and supportive environment for learners.	Mutual interest and enthusiasm between teacher and learners create the working environment. Learners expect to work hard at valid and satisfying tasks as a result of the open and critical discussion based upon rich and diverse materials. The classroom atmosphere encourages the exchange of ideas, questions and experiences and learning is understood as a co-operative and productive activity. Learning opportunities take place at different levels at the same time.
1.3 Lesson presentation and methodology	Educator's knowledge and experience of the learning area that is presented to learners in ways that produce learning, interest, involvement, questions and critical thinking. This relies upon the teacher's skills in planning and organising individual lessons as well as programmes of learning based upon insight into the learning area to be taught.	The teacher has an excellent grasp of the learning area and is highly skilled at using many ways to promote the needs and expectations of learners. Each lesson has strong links with those before and after, and learner involvement is an integral part of their own education and development. Learners emerge with a confident and broad understanding of the learning area at their level.
1.4 Classroom management	There is evidence of discipline, guidance and support, leading to sound rapport with learners, positive reinforcement, encouragement and appropriate admonition and effective, fair, regular and varied assessment of learner's efforts. The ability to inspire and encourage learners to produce their best performance and maintain high standards of behaviour and ethics.	Demonstrates effective ability to encourage, guide and support learners. Self motivated to the extent that it influences other people positively. Noticeable drive, enthusiasm and tenacity. Encourages staff to achieve excellence in the classroom.
1.5 Learner assessment	The ability to assess the progress as well as the potential and actual learning through using a variety of assessment procedures. The extent to which the evaluation of learner development is managed continuously in ways of the learners and the learning area. The ability to use the result of learner performance for diagnostic purposes, remedial work and for adapting teaching programmes	Uses the assessment of learners creatively so that it serves many constructive purposes. Sets high but achievable standards consistent with the levels and abilities of the learners. Has a lively interest in assessment and its possibilities and is aware of new methods. Learners receive constructive and frequent feed back as a consequence of continuous and varied assessment. Keeps complete and comprehensive records of learners' progress.
1.6 Recording and analysing data	Recording and analysis of data achievement and performance, the level attained in terms of reaching departmental objectives.	Records and analyses of data are exceptionally well kept. Analysis of data is accurate/shows exceptional ability for utilization of the data for problem solving and development.
1.7 Development of learning field competency	Deliberate efforts by the teacher to keep up with developments, research and publications in his and her learning area. This includes how the learning area fits into the learning area, its relation to other learning fields and developments in methodologies for teaching the learning area effectively.	Sustains a lively interest in her or his learning area to the extent that, in addition to teaching it well, this teacher leads learning area committees, contributes to workshops and is capable of lecturing to trainee teachers in the learning area.

Criteria	Definition	Expectation
1.8 Professional development in field of work/career and participation in professional bodies	Extent to which the teacher acquires further and new skills and expertise in, not only his/her own learning area but more particularly in educational thinking, administration, management, vocational and/or technical areas.	Has a lively sense of the need for educators to acquire new knowledge and additional skills if they are to make Departmental policy succeed. Uses all opportunities to become familiar with fresh and further thinking in a number of educational areas. Uses the experience of implementing new thinking to report to colleagues and the Department on the effects of such new approaches to education in an actual school situation.
1.9 Human relations	Quality of personal and professional relations with all members of the school community. Support given to colleagues and learners. Ability to inspire and encourage people to seek and maintain high standards of performance. Ability to establish relationships based upon respect and trust.	Has excellent personal and professional relationships with most members of the community. Is regarded as honest and accessible and can offer advice and criticism without causing offence or discomfort. Is very supportive of colleagues and learners. Enjoys the confidence of parents and members of the community.
1.10 Leadership	The ability to take the initiative and act decisively. Degree of influence on colleagues in making decisions, determining aims and objectives. Extent to which he/she acts in terms of priorities and opportunities and the degree to which others rely on the insight, point of view, judgement and will of this teacher.	Shows well-developed leadership qualities in an educational environment. Is able to influence colleagues with decisive recommendations and has a clear sense of how decisions can be implemented. Leadership qualities are demonstrated in stepping forward and holding back. Is expected by the community to play a leadership role in many of the school's activities.
1.11 Community	Appreciation and support of institution's needs/exercise of initiative on institution's behalf/ voluntary commitment/willingness to get actively involved in learner, staff and parent matters by participating in committee meetings, workshops and projects. Knowledge of values and customs of the community. Contribution to building links between the school and the broader community.	Very good attitude to the community/is sensitive to the norms and customs of the community/serves the community across a very broad front/promotes a very good image of education/is held in high regard by the community/ encourages strong links between the school and the community.
1.12 Extra-curricular	Involvement in and availability for school activities outside the classroom and outside teaching hours. This includes sports, cultural activities, meetings with parents and students school committee work, attendance at courses and workshops arranged by the Department and educational agencies.	Makes active use of after-hours time for cultural, sporting and instructional purposes. Plays a leading role in encouraging staff and students to arrange extracurricular activities. Participates in school and Departmental meetings after school hours and assists with organising meetings of the school community. Available to students and parents in the afternoons.
1.13 Contribution to school development	Understanding of and contributions to school, the implementation of departmental development policies and circulars, the new curriculum and whole school development initiatives.	Is familiar with current policies, the new curriculum and the processes of school change and whole school development. Is able to apply this understanding.
1.14 Generation of departmental policy	The use of learning programmes, study guides, Departmental circulars, current policy research and publications to develop departmental policy.	Insights gained from Departmental sources, current theory, educational change and the experience of staff are used to develop policy that is reviewed regularly.

Criteria	Definition	Expectation
1.15 Professional support to colleagues	Works supportively with colleagues on learner needs and supports colleagues in committees. Ability to inspire and encourage colleagues and others to produce and maintain their best performance and behaviour. Enables staff to teach to their strengths and offers guidance with policy and personal matters.	Succeeds very well in building and maintaining healthy relations with colleagues. A popular and valued colleague, a leader in a team context, a person who is very well able to deal with conflict rather than one who causes conflict, a professional educator with excellent professional relationships, high degree of mediation skills. Open to ideas, assists with personal and professional matters.

3.3 Need identification and prioritisation form for deputy principal/principal

Criteria	Symbols A or B		
	<ul style="list-style-type: none"> - rating by appraisee, 2 identified appraisers and members of the panel - needs identification - prioritise the identified needs in the order of importance for the PGP 		
1. CORE	APPRAISEE	PEER/HOD/DP/PRIN.	PANEL
1.1 Curriculum development			
1.2 Creation of a learning environment			
1.3 Lesson presentation and methodology			
1.4 Classroom management			
1.5 Learner assessment			
1.6 Recording and analysing data			
1.7 Development of learning field competency			
1.8 Professional development in field of work/career and participation in professional bodies			
1.9 Human Relations			
1.10 Leadership			
1.11 Community			
1.12 Extra-curricular work			
1.13 Contribution to school development			
1.14 Communication			
1.15 Decision-making and accountability procedures			
1.16 Establishment and servicing of representative bodies			
1.17 Servicing the governing body			
1.18 Establishing and maintaining a learning environment			
1.19 Record keeping			
1.20 Strategic Planning and Transformation			
1.21 Financial Planning and Management			
1.22 Educational Management Development (EMD)			
1.23 Programmes for appraisal			
2. OPTIONAL			
3. ADDITIONAL			

MOTIVATION FOR CHANGING CORE CRITERIA TO OPTIONAL CRITERIA

DEPUTY PRINCIPAL/PRINCIPAL

<i>Criteria</i>	<i>Definition</i>	<i>Expectation</i>
1.1 Curriculum development	Interpretation of learning programmes, development of learning materials and assessment methods and selection of appropriate teaching strategies.	The educator plans and designs teaching and learning activities where learning is a collective enterprise, integrative, active and goal-oriented.
1.2 Creation of a learning environment	The tone and spirit in the classroom. The atmosphere in which teaching and learning takes place. General attitude to learners and the expectations which are aroused. The relationship between routines, stimulation, industrious activity and creativity. The establishment of a productive, encouraging, demanding and supportive environment for learners.	Mutual interest and enthusiasm between teacher and learners create the learning environment. Learners expect to work hard at valid and satisfying tasks as a result of the open and critical discussion based upon rich and diverse materials. The classroom atmosphere encourages the exchange of ideas, questions and experiences and learning is understood as a co-operative and productive activity. Learning opportunities take place at different levels at the same time.
1.3 Lesson presentation and methodology	Teacher's knowledge and experience of the learning area that is presented to learners in ways that produce learning, interest, involvement, questions and critical thinking. This relies upon the teacher's skills in planning and organising individual lessons as well as programmes of learning based upon insight into the learning area to be taught.	The teacher has an excellent grasp of the learning area and is highly skilled at using many ways to promote the needs and expectations of learners. Each lesson has strong links with those before and after, and learner involvement is an integral part of their own education and development. Learners emerge with a confident and broad understanding of the learning at their level.
1.4 Classroom management	There is evident of discipline, guidance and support, leading to sound rapport with learners, positive reinforcement, encouragement and appropriate admonition and effective, fair, regular and varied assessment of learner's efforts. The ability to inspire and encourage learners to produce their best performance and maintain high standards of behaviour and ethics.	Demonstrates effective ability to encourage, guide and support learners. Self motivated to the extent that it influences other people positively. Noticeable drive, enthusiasm and tenacity. Encourages staff to achieve excellence in the classroom.
1.5 Learner assessment	The ability to assess the progress as well as the potential and actual learning through using a variety of assessment procedures. The extent to which the evaluation of learner development is managed continuously in ways of the learners and the learning area. The ability to use the result of learner performance for diagnostic purposes, remedial work and for adapting teaching programmes.	Uses the assessment of learners creatively so that it serves many constructive purposes. Sets high but achievable standards consistent with the levels and abilities of the learners. Has a lively interest in assessment and its possibilities and is aware of new methods. Learners receive constructive and frequent feed back as a consequence of continuous and varied assessment. Keeps complete and comprehensive records of learners' progress.
1.6 Recording and analysing data	Recording and analysis of data achievement and performance, the level attained in terms of reaching departmental objectives.	Records and analyses of data are exceptionally well kept. Analysis of data is accurate/shows exceptional ability for utilization of the data for problem solving and development.

Criteria	Definition	Expectation
1.7 Development of learning field competency	Deliberate efforts by the teacher to keep up with developments, research and publications in his and her learning area. This includes how the learning area fits into the learning area, its relation to other learning fields and developments in methodologies for teaching the learning area effectively.	Sustains a lively interest in her or his learning area to the extent that, in addition to teaching it well, this teacher leads learning area committees, contributes to workshops and is capable of lecturing to trainee teachers in the learning area.
1.8 Professional development in field of work/career and participation in professional bodies	Extent to which the teacher acquires further and new skills and expertise in, not only his/her own learning area but more particularly in educational thinking, administration, management, vocational and/or technical areas.	Has a lively sense of the need for educators to acquire new knowledge and additional skills if they are to make Departmental policy succeed. Uses all opportunities to become familiar with fresh and further thinking in a number of educational areas. Uses the experience of implementing new thinking to report to colleagues and the Department on the effects of such new approaches to education in an actual school situation.
1.9 Human relations	Quality of personal and professional relations with all members of the school community. Support given to colleagues and learners. Ability to inspire and encourage people to seek and maintain high standards of performance. Ability to establish relationships based upon respect and trust.	Has excellent personal and professional relationships with most members of the community. Is regarded as honest and accessible and can offer advice and criticism without causing offence or discomfort. Is very supportive of colleagues and learners. Enjoys the confidence of parents and members of the community.
1.10 Leadership	The ability to take the initiative and act decisively. Degree of influence on colleagues in making decisions, determining aims and objectives. Extent to which he/she acts in terms of priorities and opportunities and the degree to which others rely on the insight, point of view, judgement and will of this teacher.	Shows well-developed leadership qualities in an educational environment. Is able to influence colleagues with decisive recommendations and has a clear sense of how decisions can be implemented. Leadership qualities are demonstrated in stepping forward and holding back. Is expected by the community to play a leadership role in many of the school's activities.
1.11 Community	Appreciation and support of institution's needs/exercise of initiative on institution's behalf/ voluntary commitment/willingness to get actively involved in learner, staff and parent matters by participating in committee meetings, workshops and projects. Knowledge of values and customs of the community. Contribution to building links between the school and the broader community.	Very good attitude to the community/is sensitive to the norms and customs of the community/serves the community across a very broad front/promotes a very good image of education/is held in high regard by the community/ encourages strong links between the school and the community.
1.12 Extra-curricular	Involvement in and availability for school activities outside the classroom and outside teaching hours. This includes sports, cultural activities, meetings with parents and students school committee work, attendance at courses and workshops arranged by the Department and educational agencies.	Makes active use of after-hours time for cultural, sporting and instructional purposes. Plays a leading role in encouraging staff and students to arrange extracurricular activities. Participates in school and Departmental meetings after school hours and assists with organising meetings of the school community. Available to students and parents in the afternoons.
1.13 Contribution to school development	Understanding of and contributions to the implementation of departmental development policies and circulars, the new curriculum and whole school development initiatives.	Is familiar with current policies, the new curriculum and the processes of school change and whole school development. Is able to apply this understanding.

Criteria	Definition	Expectation
1.14 Communication	The ability to interact with all members of the school's community in ways which promote understanding, clarity, mutual recognition and a general sense of purpose. This is linked to Human Relations and Leadership. It involves working relations with the Department, the governing body, parents, staff and learners. It has to do with the language policy of the school, relations with the school community and with the style of management. It also involves receptivity to concerns of members of the school as well as the ability to articulate persuasively the school policies and the need for action.	Multiple means of communication are employed in the school to ensure that everyone is well informed and understands the bases for decisions and action. The principal is open to criticism and alternative viewpoints and is able to express a good grasp of the nature of what is being discussed and debated. Information is easily available and there is regular and open reporting back. Frequent interchanges with all members of the school's community are facilitated and all ideas are given due consideration. All sectors of the school's community inform the principal of issues, concerns and developments. The school's language policy makes maximum use of the linguistic resources of the community.
1.15 Decision-making and accountability procedures	The interest and concerns of all sectors within a school's community as well as those of the Department are vitally affected by the ways in which decisions at schools are made. Forms of democratic decision-making and accountability must emerge in schools. The principal's role in establishing those procedures is crucial.	In co-operation with all sectors of the school's community, the principal creates dynamic structures that ensure the full participation of all in the decision-making processes of the school. Contributions by the sectors are of a high order and there is an established culture of participation. The different centres of power in the schools life - Department, governing body, teachers and other staff, parents and students – interact co-operatively towards realising the overall vision for the school. The principal plays a facilitating role, ensuring that his/her leadership empowers all participants.
1.16 Establishment and servicing of representative bodies	The principal needs to establish and service the school's governing body, students' representative council, and the parents' body and provide opportunity for teacher organisations to play their part. Elections, democratic procedures, functioning of committees, powers and the conduct of meetings all need to be learned and practised, often by people unfamiliar with these forms of democratic practice.	The principal has succeeded in establishing democratic and procedural practices for all sectors of the school's community. Each year new elected bodies are provided with appropriate training and guidance and familiarity with democratic practice has become widespread. Skills of negotiation, consultation and accountability are required from candidates for election and the basis of democracy are regarded as normal practice at the school.
1.17 Servicing the governing body	The democratic form of school governance requires the principal to give attention to the governing body's needs as well as implement the policy decided there. This is a relatively new responsibility for principals, but is a most important dimension to the post of principal.	Ensures that the governing body is increasingly empowered to take major policy decisions for the school. Supplies the governing body with proposals, reports and position papers that enable the governing body to take decisions which create the best possible learning and teaching environment in the school. The principal keeps the governing body fully informed of national, provincial and local educational developments and of their implications. Enables the governing body to make policy decisions in the confidence that they will be well implemented and well managed.

Criteria	Definition	Expectation
1.18 Establishing and maintaining a learning environment	Political, social, economic and educational changes require the re-conceptualisation of schools as centres of learning. New curricula, different forms of discipline, changed approaches to teaching, and different kinds of relationships are needed for schools from now on. Principals will be required to manage the process of whole school change.	Seizes the opportunity to establish a changed learning environment in the school. Recognises that change brings conflict, tension as well as the release of new energies, and puts mechanisms in place to make the best use of them. Intensifies supportive elements. Involves the school's the schools community in the process of change by focusing on active whole school development. Draws on multiple resources inside and outside the school to ensure coherence and stability.
1.19 Record keeping	This is a brute bureaucratic requirement but an essential element in keeping track of the school's development. Though eventually a means of corroboration, verification and reporting, records of the school's activities are part of managerial control, accountability, access to information and optimum use of resources, including the use of funds.	Has established efficient storage and retrieval systems. All school meetings are recorded and reports retained. Information on students and staff is extensive and complete. Uses modern technology where possible. Administrative staff are well trained and are seldom over-extended. The principal has full access to all information whenever it is required and is able to produce complete reports at short notice. Financial records are complete and always up-to-date.
1.20 Strategic planning and transformation	It is the process of planning to use resources (human, physical, financial) guided by goals and strategic priorities to facilitate teaching & learning and transformation of education.	Collecting background information to assess current and future needs, conducting stakeholder analysis, reviewing previous plans, conducting SWOT analysis and determination of goals, objectives, activities, time frames and performance indicators.
1.21 Financial Planning and Management	Process of budgeting for costs to undertake activities that are part of the strategic plans. It also includes management of the budget.	Budget determined according to strategic plans as part of MTEF. Budget managed through careful and on-going monitoring.
1.22 Educational Management Development (EMD)	Acquisition of expertise and skills for the management of the school as a whole. Incorporation of democratic procedures, accountability to the school's community as well as the Department, and a grasp of human resource development within a new educational context.	Is acutely aware of the importance of appropriate management procedures in the school, including consultation, decision-making, leadership, and accountability and staff development. Recognises that a human resources development policy for the school is necessary and uses appraisal procedures. Departmental and other resources as well as other educational institutions are used to assist with staff development. Achieves a sophisticated understanding of managing the school change process. Seeks and implements strategies which enhance the earning and teaching capacity of the school through appropriate democratic management.
1.23 Programmes for appraisal	All staff need to be offered the opportunity for developmental appraisal. It is the principal's task to ensure that these procedures are carried out regularly, fairly and thoroughly. Appraisal/evaluation procedures should be conducted as part of whole school change, school development and for the benefit of staff.	The overall results of developmental appraisal are used to measure the strengths and shortcomings of the school as a whole and to strengthen the development plans of the Head of Department for staff development in conjunction with Departmental officials. Furthermore, appraisal procedures are used to promote co-operation and collaboration between and among staff, including management, administration and maintenance staff. In short, this principal makes imaginative and constructive use of the developmental procedures.

OFFICE-BASED EDUCATORS

Criteria	Definition	Expectation
1.1 Human relations	This includes the educator's attitude to people, especially the degree to which they are valued and the extent to which their qualities are respected and regarded. It has to do with acknowledgement, dignity, professional and educational respect. It includes providing constructive criticism as well as necessary support. The balance between personal and professional relations is an important factor, as is the combination of an openness and directiveness with restraint and sensitivity.	Demonstrates understanding, concern and empathy for colleagues, maintains sound interpersonal relationships. Enjoys the respect of colleagues based not only on professional expertise but also on relationships.
1.2 Leadership	The ability to provide institutions with direction in such a way that they share the educators' vision, support its development plans, make best use of resources, co-operate in generating ethos and cultivate a learning and teaching environment which fully satisfies all its members, supporters and associates. Leadership requires the combination of many qualities, directed towards the enhancement of the school and the Education Department as a whole.	The governance, administrative, managerial, developmental and teaching sectors of the institutions are co-ordinated by the educator within a vision and plan for the institution. Departmental policies, regulations and resources, as well as those obtained elsewhere, are combined to provide the institution with the capacity to be a high-quality centre of learning. This coherence is provided by the educator whose relationship is seen as an opportunity for all to engage with the realisation of educational ideals. Furthermore, this educator is in demand by many community organisations and demonstrates leadership qualities across many sectors of society.
1.3 Communication	The ability to interact with others in ways which promote understanding, clarity, mutual recognition and general sense of purpose. This is linked to Human Relations and Leadership. It also involves working relations with language policy of institutions, relations with the institutions and with the style of management. It also involves receptivity to concerns of colleagues as well as the ability to articulate policies and the need for action.	Multiple means of communication are employed to ensure that everyone is well informed and understands the bases of decisions and action. The educator is open to criticism and alternative viewpoints and is able to express a good grasp of the nature of what is being discussed and debated. Information is easily available and there is regular and open reporting back. Frequent interchanges with all stakeholders is facilitated and all ideas given due consideration. Vision and goals of the Department are communicated to stakeholders and institutions.
1.4 Record keeping	This is a brute bureaucratic requirement but an essential element in keeping track of the school's development. Though eventually a means of corroboration, verification and reporting, records of activities are part of managerial control, accountability, access to information and optimum use of resources, including use of funds.	Has established sufficient storage and retrieval systems. All meetings are recorded and reports retained. Information is complete and extensive. Uses modern technology where possible. Administrative staff are well trained and are seldom over-extended. The educator has full access to all information whenever it is required and is able to produce complete reports at short notice. Financial records are complete and always up-to-date.
1.5 Strategic Planning and transformation	It is the process of planning to use resources (human, physical, and financial) based on goals and strategic priorities to facilitate teaching & learning and transformation of education.	Collecting background information to assess current and future needs, conducting stakeholder analysis, reviewing previous plan, conducting SWOT analysis and determination of goals, objectives, activities, time frames and performance indicators.

Criteria	Definition	Expectation
1.6 Financial Planning and Management	Process of budgeting for costs and to undertake activities that are part of the strategic plans. It also includes management of the budget.	Budget determined according to strategic plans as part of MTEF. Budget managed through careful and on-going monitoring.
1.7 Educational Management Development (EMD)	Acquisition of expertise and skills for the management of the school as a whole. Incorporation of democratic procedures, accountability to the school's community as well as the Department, and a grasp of human resource development within a new educational context.	Is acutely aware of the importance of appropriate management procedures in the school, including consultation, decision-making, leadership, and accountability and staff development. Recognises that a human resources development policy for the school is necessary and uses appraisal procedures. Departmental and other resources as well as other educational institutions are used to assist with staff development. Achieves a sophisticated understanding of managing the school change process. Seeks and implements strategies which enhance the earning and teaching capacity of the school through appropriate democratic management.
1.8 Staff development	Contribution to staff development programmes and the co-ordination of resources to support them.	Is particularly adept at drawing up staff development programmes that are directly appropriate to the needs and conditions of each office. Has a sound grasp of the many alternatives available for such programmes and has access to manifold resources to give body and direction to staff development. Works very closely with stakeholders in sustaining the programmes.
1.9 Policy assimilation, co-ordination and implementation	Process of formulating policy through wide consultation and consensus, and co-ordination of the implementation thereof. Also includes monitoring of policy implementation and review.	Policy vacuum is identified based on review of performance, problems etc. Policy is developed and communicated to relevant parties. Implementation is monitored and policy review is conducted and amendments made where necessary.
1.10 Research and development	The degree to which the educator is familiar with and contributes to educational research, curriculum development and policy formulation.	Keenly interested in what is happening in the district and elsewhere. Uses a lively theoretical grasp of issues to generate ideas relevant to schooling in the district. Writes articles, attends seminars and is influential in encouraging policy development.

3.5 Forms for developmental appraisal

(a) *Personal details*

Surname	
First Name	
Employing Department	
Persal Number	
Name of Institution	
Rank/Post Level	
Nominal Date of appointment	
Type of Appraisal	
Probation	
In-service Development	

Qualifications				
Qualifications(s) Certificates	Where obtained (Institution)	When obtained (Year)	Major learning area(s) Direction(s)	Secondary learning area(s) (at least second year courses)

Learning area and Grade currently being taught (School based only)

Learning area	Grade

Other relevant certificates/diplomas/credits			
Certificates/ Credits	Where obtained	When obtained	Content and nature of qualification

Teaching experience			
Period (Dates)		Department/Institution/ School/Other	Nature of experience (Primary/Secondary/ Other)

Management and administration experience			
Period (Dates)		Department/Institution/ School/Other	Nature of experience (Primary/Secondary/ Other)

Non-teaching experience			
Period (Dates)		Department/Institution/ School/Other	Nature of experience (Primary/Secondary/ Other)

(b) Professional growth plan (PGP)

This section is to be completed by the appraisee and finalised in consultation with appraisal Panel. A new form will be used for each cycle.

- Formulate objectives.
- Identify specific activities that will be necessary to achieve these objectives.
- State resources needed to achieve these objectives.
- State your key performance indicators.

	PERIOD
OBJECTIVES	
PROFESSIONAL DEVELOPMENT ACTIVITIES	
RESOURCES NEEDED	
KEY PERFORMANCE INDICATORS	

(c) Discussion paper with Panel

Form to be completed by appraisee before the post appraisal meeting

1. Were your objectives for the period under review realistic?

2. Given your programme, what has not been completed?

3. What are the reasons for the backlog or shortfall if any?

4. What have been the most difficult problems you have had to cope with during this period?

- 5. To what extent have you managed to improve your skills?
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- 6. Is there anything you need that could help you develop your job and become more effective?
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- 7. Do you receive sufficient support from your colleagues/senior staff/principal/governing body/departmental officials ?
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.....
- 8. Are there any other general matters you would like to discuss? eg factors affecting your work?
Refer to Contextual Factors
.....
.....
.....

(d) **The appraisal report**

- All forms that have been filled during appraisal form part of the Appraisal Report
- The following information must also be filled
- This Report must be signed by all parties to the Appraisal panel

1. Prioritised Criteria
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2. Identified Needs
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3. Strengths of the Educator
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4. Suggested Development Programme
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5. Suggested Provider of Developmental Programme

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6. Dates for developmental programme delivery

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.....
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Signatures:

Appraisee: Date:

Appraisal Panel Members:

1. Date:

2. Date:

3. Date:

(e) **Feedback questionnaire**

TO BE COMPLETED BY LEARNERS

The following are some statements about our teaching/learning practices. Indicate your personal opinion about each statement by writing one of the following responses

Agree [A], Uncertain [U], Disagree [D]

- 1. Learners have a clear understanding of what the lesson is all about
- 2. Our teacher finds out what we know and understand about the topic.
- 3. My teacher helps me to make sense of new ideas through his/her explanations.
- 4. Our teacher encourages learners to work in co-operation to share ideas and solutions.
- 5. Our teacher gives praise for achievements, however small.
- 6. We are free to contradict the views of others including that of our teacher, provided we give good reasons for doing so.
- 7. Our teacher encourages us to ask questions in class.

Teaching/learning in our class could be improved if:

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CHAPTER D

1. ALLOWANCES
2. MEASURES IN CONNECTION WITH EDUCATORS WHO ARE PAID ON A PER HOUR BASIS FOR TUITION, FULL-TIME EDUCATORS WHO PERFORM PAID OVERTIME DUTIES OR EDUCATORS WHO ARE APPOINTED ON A PROPORTIONAL BASIS

Note: An educator may only earn additional income with the written approval of the head of department or the official to whom he/she has delegated this authority.

1. ALLOWANCES

1.1 Differentiated allowance

A non-pensionable allowance equal to the difference between the salaries applicable to the educator's salary position and the next salary position, is payable to an educator at post level 1 who holds the post of principal.

1.2 Allowance to educators who perform supervisory duties at hostels

(a) The level of supervisory duties at hostels

There are, at most, three levels of work, but it is not essential that all three levels have to be utilised everywhere. The levels and the functions attached to them are as follows:

(i) LEVEL 1

Normally the head of the educational institution (eg principal of the school) is classified under level 1 and he/she is in overall control of all the hostels.

(aa) General

- Responsible for every aspect of the hostel's activities in accordance with the relevant department's policy.
- Determines policy in respect of the educational, economic and administrative matters within the framework as prescribed by the department concerned.
- Exercises the necessary control to ensure that the policy is implemented.

(bb) Educational

Exercises overall control in respect of the discipline and spirit in the hostel, including the welfare, study and recreation of boarders.

(cc) Economic

Controls the economic function in accordance with the policy of the department and bears the final responsibility. Responsibility is thus accepted for the compilation of the budget, the obtaining of certain tenders and the control and management of all supplies to ensure the most efficient and economic utilisation thereof.

(dd) Administrative

Responsible for all administrative duties that are necessary for the efficient running of a hostel. This includes, inter alia, and where applicable, the following:

- Recommendations in respect of the appointment of staff.
- Periodic reports and recommendations in respect of buildings, equipment, etc.
- General management of staff.
- Handling of applications for admission of boarders.
- Collection of boarding fees.
- Compilation of duty sheets for staff.

(ii) LEVEL II

Normally every hostel has a supervisor on level II.

(aa) General

Practically implements the educational, economic and administrative policy as laid down.

(bb) Educational

Responsible for the spirit and discipline in the hostel in respect of the welfare, study and recreation of boarders.

(cc) Economic

Responsible for the controlling of supplies, accounts, bookkeeping, registers, the obtaining of tenders and all other duties connected with the post.

(dd) Administrative

Responsible for all administrative duties necessary for the efficient running of a hostel. This includes inter alia, the following:

- Recommendations in respect of the appointment of staff.
- Periodic reports and recommendations in respect of buildings, equipment, grounds, etc.
- Management of staff.
- Handling of applications for admission of boarders.
- Collection of boarding fees.

(iii) LEVEL III

The number of persons that are utilised at this level is directly related to the number of hostel enrolments. Those persons concerned perform educational and other duties such as:

(aa) Carrying out the educational programme.

(bb) Maintenance of general discipline in the hostel, neatness of boarders, their rooms, the buildings and grounds.

(b) Grading scales

(i) Hostels are distinguished according to the following numbers of hostel enrolments:

- 0 – 60
- 61 – 120
- 121 – 300
- 301 and more.

(ii) Where, in terms of approved educational policy in respect of post provision scales, weighting on the actual pupil numbers occurs at specific institutions in order to determine the number of posts, a corresponding weighting of the actual hostel enrolment is made with a view to determining the number of hostel enrolments for the purposes of item (i).

(c) Basis for remuneration

(i) Payment is in the form of a non-pensionable allowance based on a specific percentage of the basic payment (salary position plus any pensionable allowance) of the educator concerned. The percentage paid is as follows:

Level	Hostel enrolments			
	0–60	61–120	121–300	301 and more
I	12,5%	13,5%	14,5%	15,5%
II	12,5%	13,5%	14,5%	15,5%
III	12,5%	12,5%	12,5%	12,5%

(ii) The basic remuneration in respect of levels I and II must be reduced by the following percentages in those cases where not all the functions mentioned in sub-paragraph (1) above are performed:

Function	Percentage reduction
Educational	50%
Administrative	25%
Economic	25%

(d) Rounding off of non-pensionable allowances

The amount determined in terms of item 3 must be rounded off to the nearest higher five cents per month.

(e) An educator who performs supervisory duties at a hostel may be remunerated for duties performed at only one of the above-mentioned three levels of work.

1.3 Acting Allowances

(a) General measures

(i) Educators employed on post level 6 and those on SMS do not qualify for the payment of acting allowances.

(ii) An educator, complying *with* the minimum requirements in paragraph 2(2) of Chapter B, shall be appointed in writing by the employer to act.

(iii) An educator may only be appointed to act in a post that is one post level higher than his/her current position.

(iv) Within fourteen days of notification by the employer, a School Governing Body (SGB)/Council for Further Education and Training institution shall be requested to recommend to the employer the educator to be appointed to act in a higher post.

- (v) In extraordinary circumstances, the employer may deviate from paragraphs (ii) and (iii) above (including instances where the Governing Body/Council for a Further Education and Training institution fails to make a recommendation).
 - (vi) The acting allowance that will apply is the difference between the acting person's current salary (without benefits) and the commencing notch of the higher post (without benefits) that applies to the position in which the person is acting. Where the acting person's current salary (without benefits) equals or exceeds the commencing notch of the higher post (without benefits) that applies to the position in which the person is acting, the acting allowance that will apply is a notch increase.
 - (vii) Where the acting is to be performed at an institution or office that is geographically removed from the person's current place of work, an applicable subsistence and travel allowance shall also be paid to him/her.
 - (viii) An educator who has been appointed to act in a certain post will be subject to all the responsibilities appropriate to the post for the period during which he/she is appointed.
- (b) Acting allowance for an educator acting in a higher vacant and funded post
- (i) This measure is effective from 1 January 2002.
 - (ii) An acting allowance may only be paid if the educator is appointed to act for a period longer than six weeks, but limited to a maximum of twelve months.
 - (iii) Compensation shall be backdated to the date on which the educator commenced acting provided that the acting is six consecutive weeks or longer.
- (c) Acting allowance for an educator acting in a higher post where the permanent incumbent is absent
- (i) This measure is effective from 1 April 2003.
 - (ii) An acting allowance will only be paid to an educator who acts if the period of appointment is longer than twelve (12) weeks, but limited to a maximum of twelve months in a post where the permanent incumbent is absent due to the following:
 - (aa) Maternity leave;
 - (bb) Sick leave;
 - (cc) Study leave;
 - (dd) Suspension; or
 - (ee) Secondment.
 - (iii) Compensation shall be backdated to the date on which the educator commenced acting provided that the acting is twelve (12) consecutive weeks or longer.

[Paragraph 1.3 added by G.N. 267 of 2003 published in *Government Gazette* No. 24948 dated 21 February 2003.]

2. MEASURES IN CONNECTION WITH EDUCATORS WHO ARE PAID ON A PER-HOUR BASIS FOR TUITION, FULL-TIME EDUCATORS WHO PERFORM PAID OVERTIME DUTIES OR EDUCATORS WHO ARE APPOINTED ON A PROPORTIONAL BASIS

2.1 Per-hour tariffs

The following tariffs are applicable in respect of formal tuition contact hours:

- (a) Tuition in an educational context up to and including Grade 12 (excluding in respect of self-financing courses):

- (i) Qualifications of REQV 13 and higher

Formula: $\frac{\text{First salary position of range 8}}{900}$

rounded off to the nearest five cents

- (ii) Qualifications lower than REQV 13

Formula:

$\frac{\text{The maximum salary position of the salary band connected with the applicable REQV at post level 1}}{900}$

rounded off to the nearest five cents.

Note: In the case of educators on a personal salary position: The last salary position of the prior salary range is applicable.

- (b) Tuition in an educational context beyond Grade 12 (excluding in respect of self-financing courses):

Formula:
$$\frac{\text{Second salary position of range 9}}{900}$$

rounded off to the nearest five cents.

Note: In the case of educators on a personal salary position – The last salary position of the prior salary range is applicable.

2.2 Measures in respect of Educators who are paid on a per hour basis or full-time Educators who perform overtime duties

- (a) In principle the existing practices whereby full-time educators receive additional remuneration on a per-hour basis or overtime remuneration, must be phased out as soon as possible.
- (b) Overtime remuneration/remuneration on a per-hour basis to full-time educators for tuition over and above the normal timetable load can be made only if –
- (i) the required authorisation has been specifically given; and
 - (ii) such tuition does not prejudice any obligations, including the normal timetable load, that is expected from the educator; or
 - (iii) such an educator must conduct tuition during his vacation leave on a part time basis because a substitute is not available and after the head of the Department has satisfied himself/herself that no other arrangement is possible.
- (c) Existing authorisations remain in force for the time being but under no circumstances may the measure contained in item (2.1) above be interpreted as being an extension of the existing authorisation for overtime remuneration or additional per-hour payment. Attention is again directed to the fact that additional payment, in whatever form, has to be discontinued as soon as possible.

2.3 Educators who are appointed on a proportional basis

- (a) *Pro-rata* remuneration basis

The following formula applies:

$$\frac{\text{Number of hours per week for which appointed}}{25} \times \text{Salary position as determined for full-time educators}$$

Provided that the *pro-rata* earning so determined does not exceed the salary which would have been received if a full-time educator had been appointed in a temporary capacity.

- (b) Recognition of experience

Experience gained during periods of *pro-rata* appointments is converted to full-time experience as follows:

$$\frac{\text{Number of hours per week for which appointed}}{1300} \times 365 = \text{Equivalent number of days full time tuition per week}$$

- (c) Other aspects

In the case of part-time appointments, not only basic remuneration must be calculated on a *pro-rata* basis, but also all other remunerative payments.

2.4 Educators who perform educational supervisory duties at institutions for learners with behaviour problems or at special schools dealing with children committed in terms of the Child Care Act during institution closure periods that are outside of scheduled working time

- (a) For each day of at least seven hours that an educator performs duties in respect of the conducting of educational programmes or performing educational supervisory duties at an institution for learners with behaviour problems he or she shall be additionally remunerated at the rate of the educator's current annual salary, without benefits, divided by 365.
- (b) The additional remuneration shall only apply in respect of duties performed on days during an institution closure period that is outside of the scheduled working timetable as determined by the Minister.
- (c) Days on which an educator is required to perform duties for a shorter period than seven hours, a *pro rata* portion of the amount calculated in terms of the formula in paragraph (a), shall be applicable. For this purpose the number of full hours that the educator was required to work must be taken into account.

[Para. 2.4 inserted by G.N. No. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001.]

3.

[Para. 3 deleted by G.N. No. 267 of 2003 published in *Government Gazette* No. 24948 dated 21 February 2003.]

**CHAPTER E
PUBLIC EXAMINATIONS**

1. DUTIES PERFORMED IN RESPECT OF PUBLIC EXAMINATIONS

1.1 A person who has been appointed to perform duties in respect of a public examination shall be remunerated for actual work done in respect of a specific category of examination-related work. This remuneration, as well as compensation for travel and subsistence expenses, are expressed in terms of a standard tariff which, in certain cases, relates to the level at which the work is done and which is defined as follows:

- (a) Level I: Examination-related work in respect of instructional offerings at a level lower than that mentioned in paragraph (b).
Standard tariff = 0,10% of the first salary position of range 7 rounded off to the nearest five cents.
- (b) Level II: Examination-related work in respect of instructional offerings for Grade 12, N3 and N4.
Standard tariff = 0,13% of the first salary position of range 7 rounded off to the nearest five cents.
- (c) Level III: Examination-related work in respect of instructional offerings at a level higher than that mentioned in paragraph (b).
Standard tariff = 0,15% of the first salary position of range 7, rounded off to the nearest five cents.

2. REMUNERATION FOR THE PERFORMANCE OF EXAMINATION-RELATED DUTIES

2.1 In order to calculate a person's remuneration for examination related work, the tariff, as it applied on the day that the work should have been completed, must be used.

2.2 For each of the following categories of examination-related work the corresponding remuneration tariff, expressed in terms of the applicable standard tariff, shall apply:

- (a) Setting of question paper and accompanying memorandum
8 x (standard tariff) x (duration of question paper in hours)
Provided that where use is made of more than one examiner for a question paper, at most the equivalent of two examiners may be compensated. In the case of an examination paper set at national level, at most the equivalent of four examiners may be compensated.

[Para. 2.2(a) amended by G.N. No. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001.]

- (b) Moderating of question paper and accompanying memorandum
1,8 x (standard tariff) x (duration of question paper in hours)
- (c) Translation of question paper and accompanying memorandum
1,0 x (standard tariff) x (duration of question paper in hours)
- (d) Marking and control marking of examination scripts
The following hourly rates apply in respect of marking and control marking of examination scripts, provided that in the opinion of the head of the education department, a satisfactory pace of marking and control marking is maintained:
Duties performed as a:

Marker:	0,6 x (standard tariff)
Senior Marker:	0,65 x (standard tariff)
Deputy Chief Marker:	0,7 x (standard tariff)
Chief Marker:	0,75 x (standard tariff)
- (e) Duties performed as Internal Moderator:
0.75 x (standard tariff) per hour
- (f) Remarking of examination scripts on appeal
0,1 x (standard tariff) x (duration of question paper in hours) x (number of scripts remarked for the question paper).
- (g) Practical and oral examinations
0,6 x (standard tariff) x (number of hours spent on examining) with a minimum remuneration per day based on 3 hours' examining.
- (h) Invigilation work
Note: No remuneration will apply to persons conducting invigilation at their own institutions or in situations that are regarded as being part of their official duties.
0,9 x (standard tariff for level 1) for the invigilator per examination session irrespective of the duration, and
0,6 x (standard tariff for level 1) for the assistant invigilator per examination session irrespective of the duration.

- (i) Duties performed as:
- Marking centre manager:
0,75 x (standard tariff for level ii) per hour. A maximum of twelve hours per day may be claimed for each day during which the marking is in process at the marking centre.
- Deputy marking centre manager:
0,5 x (standard tariff for level ii) per hour. A maximum of twelve hours per day may be claimed for each day during which the marking is in process at the marking centre.
- In respect of National Examinations for technical college subjects, it may be difficult to apply the proposed hourly norm for the remuneration of marking centre managers, especially in respect of small marking centres where the marking is normally not performed during a fixed continuous period. An alternative norm may therefore be applied in respect of centres where technical college examination scripts are marked, based on the number of scripts marked at such a centre, as follows:
0,005 x (standard tariff for level ii) per script.
- (j) Duties performed as an Examination assistant:
0,2 x (standard tariff for level ii) per hour.

3. COMPENSATION FOR TRAVEL AND SUBSISTENCE EXPENSES

The following measures regarding the compensation for travel and subsistence expenses apply in respect of duties performed at a marking centre:

3.1 Travel allowance

A travel allowance is payable to all applicable persons who either make use of their private vehicles or of public transport and is calculated in terms of the actual number of kilometres travelled between their homes and the marking centre. The maximum distance for which a person may claim who travels daily between his/her home and the marking centre, is 75 km per trip (150 km per return journey). Where accommodation is provided at the marking centre, a person may only claim for one return trip between his/her home and the marking centre unless otherwise approved by the employer. Persons who make use of public transport may claim their actual expenses (subject to the approval of the relevant department) and may be required to provide proof of such expenses. Persons who make use of their private vehicles may be compensated at the following rate, irrespective of the engine capacity of such vehicle. Such persons may not claim for passengers.

Travel allowance: 0,01 x (standard tariff for level ii), rounded to the nearest 1 cent per kilometre.

3.2 Subsistence allowance

- (a) Persons who make use of accommodation at marking centre

(Note: Such a person may only claim for one return journey between his/her home and the marking centre and may not claim for any travelling between the place of accommodation and the marking centre)

- (i) If accommodation and meals are provided at no cost to the employee

No allowance.

- (ii) If only accommodation is provided by the department at no cost to the employee

Meal allowance: 0,5 x (standard tariff for level ii) per day of at least 5 hours work.

- (iii) If no accommodation is provided by the department

The following accommodation allowance may be paid to a person who, with the approval of the department, makes use of private accommodation near the marking centre:

0,8 x (standard tariff for level ii) per night stayed at such private accommodation. A meal allowance as in paragraph (ii) may also be applicable.

- (b) Persons who travel daily between their homes and the marking centre

- (i) If at least lunch is provided

No meal allowance.

- (ii) If no meals are provided

Meal allowance: 0,3 x (standard tariff for level ii) per day of at least 5 hours work.

4. CRITERIA FOR THE APPOINTMENT OF EDUCATORS FOR EXAMINATION-RELATED WORK

- 4.1 In selecting and appointing persons to the various examination-related positions, cognisance must be taken of the general need to build capacity among serving educators in order to attain equity in respect of race and gender, also taking into account the special needs of educators in rural areas. This should be pursued by reserving a certain minimum number of appointments for this purpose. The number of appointments that needs to be reserved for this purpose should correspond with the department's identified needs in this regard.

- 4.2 In addition to the general criterion referred to in paragraph 4.1, the following criteria shall apply with regard to the selection and appointment of examiners (for the setting and moderation of question papers and accompanying memoranda) and internal moderators:
- (a) Advertisements should be included in a departmental circular or provincial gazette as well as in the national and/or local press.
 - (b) A selection panel shall be appointed by the education department.
Teacher unions that are members of the Education Labour Relations Council shall be allowed observer status on such a panel.
 - (c) The following criteria will apply in respect of the selection and appointment of candidates:
The appointee must
 - (i) Have at least a recognised three year post matric qualification which must include the subject concerned at second or third year level.
 - (ii) have extensive experience as an educator in the particular subject or a related area and at least two years teaching or other curriculum-related experience within the last 5 years at the appropriate level.
 - (iii) have experience as a marker

[Para. 4.2(c)(ii) amended by G.N. No. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001.]
 - (d) In addition to the above criteria, preference should be given to serving school and college-based educators.
- 4.3 In respect of an examination paper where no suitable candidate can be recruited with the set minimum qualifications or experience, the head of the education department concerned may approve the appointment of a suitable candidate with other appropriate post school qualifications or with less than the required experience after consultation in this regard with the relevant teacher unions. The final decision with regard to the appointment of examiners and internal moderators rests with the Head of Department.
- 4.4 The criteria to qualify for appointment as markers (including senior markers, deputy chief markers and chief markers) should, in addition to those referred to in paragraph 4.1, include the following:
- (a) A recognised three year post school qualification which must include the subject concerned at second or third year level or other appropriate post matric qualifications.
 - (b) Appropriate teaching experience, including teaching experience at the appropriate level, in the subject concerned
 - (c) Language competency
 - (d) In addition to the above criteria, preference should be given to serving educators who are presently teaching the subject concerned.
- The provision in paragraph 4.3 for the relaxation of requirements in respect of qualifications and experience, also applies in respect of these appointments
- 4.5 The selection of markers for a specific examination paper should be carried out by a panel comprising of
- (a) Chief examiner
 - (b) Relevant departmental officials
 - (c) Teacher unions (As observers)

**CHAPTER F
SERVICE BENEFIT AWARDS**

1. DEPARTMENT-SPECIFIC AWARDS
2. RETIREMENT PACKAGE

1. DEPARTMENT-SPECIFIC AWARDS

1.1 Purpose

To provide for the granting of non-pensionable awards for achievement to educators other than by means of the normal performance and merit systems and to supplement remuneration on a non-pensionable basis in cases where specific difficulties are experienced, which awards and supplements will be restricted to the particular financial year within which they are made. The purpose thereof is therefore to address short-term needs/problems that cannot be met by means of general staff systems and measures.

1.2 Scope of application

All educators on post levels 1 to 6 are eligible for a department-specific award. The award to educators on post level 6 must however be granted with prudence, since a Director in the Public Service does not qualify therefor.

1.3 Powers

- (a) The head of education or his/her delegate may, on the advice of a committee, grant a department-specific award to an educator.
- (b) The advisory committee is designated by the head of education or by his/her delegate and must include at least two members of the management corps.

1.4 Conditions

- (a) The expenditure relating to the awards is restricted to the financial year concerned and the awards cannot therefore place a financial obligation on the following financial year.
- (b) The total amount expended by an education department on department-specific awards may not exceed 0,537% of the total salary account of the education department concerned as at 1 April of the relevant financial year. This percentage may be zero, in which case no awards have been made.
- (c) The size of the award must relate to the need identified.
- (d) The award or awards made to an educator may not, in total, exceed 25% of the pensionable salary notch of the educator concerned on 1 April of the relevant financial year.
- (e) The award must, in the opinion of the head of education or his delegate, be in the interest of the particular education department or the State.
- (f) In the case of a function shift suitable arrangements must be made between the education departments concerned for the purpose of transferring a portion of the amount mentioned in subparagraph (b) together with the function.

1.5 Monitor

With a view to monitoring the success of the awards, provincial education departments may be requested to furnish the Department of Education with particulars regarding the utilisation of these awards.

2. RETIREMENT PACKAGE

2.1 The following retirement benefits will apply to an educator who, because of rationalisation, has been retrenched by the department in which he/she is appointed, before reaching retirement age:

- (a) Payment of pension benefits in terms of the regulations of the pension fund of which the educator is a member.
- (b) Payment of the leave credit due to the educator, calculated on the basis applicable to retirement on reaching the prescribed age.
- (c) Payment of a service bonus on a *pro rata* basis.
- (d) Continued payment of the monthly house owners allowance for a maximum period of six months after termination of service. Those educators who received this benefit and who are re-employed by any government department within the six months period, will not qualify for a house owner allowance for the remaining period of the six months.
- (e) Continued occupation of official quarters, where possible, for a period of three months after termination of service.
- (f) Payment to the educator who will not have medical aid cover after termination of service, an amount equal to the rand value of government's contribution to the applicable medical aid scheme if the person had remained a member of the scheme, for a period not exceeding six months.
- (g) The cancellation of any service commitments that the educator may have on termination of service.
- (h) In cases where the educator enjoys the benefit of a motor vehicle scheme, the rules of the scheme must be applied.
- (i) Application of the rules in respect of resettlement costs.

**CHAPTER G
TIME OFF AND SECONDMENT**

1. INTRODUCTION

The measures contained in this chapter are based on the following principles:

- 1.1 The acknowledgement of labour rights entrenched in the Constitution of the Republic of South Africa, 1996, (Act No. 108 of 1996), the Labour Relations Act, 1995 (Act No. 66 of 1995) (LRA) and the Constitution of the Education Labour Relations Council (ELRC) which seeks to promote labour peace.
- 1.2 That an educator's role in the education process is dynamic and developmental, and therefore requires the active participation of educators at school, provincial and national level.
- 1.3 That the amount of time off and the frequency thereof should at all times be reasonable and fair.
- 1.4 That arrangements for time off should consider:
 - (a) the need for the process of teaching and learning to be uninterrupted;
 - (b) the importance of high productivity levels;
 - (c) efficiency and effectiveness in services rendered to the general public;
 - (d) the need for order in the education system; and
 - (e) the constitutional rights of the child.

2. GENERAL

2.1 When requiring time off:

- (a) a reasonable period of notice must be given to the responsible person designated by the employer for time off to attend meetings, training courses, and other agreed to activities;
- (b) in respect of urgent meetings arising from the collective bargaining process, the employee organisation should advise the responsible person designated by the employer timeously of such urgent meetings;
- (c) when requesting time off for workplace and other such like meetings, every effort should be made to hold them before or after official school hours, or during lunch breaks;
- (d) an efficient record system must be kept in respect of time off allowed for all educators; and
- (e) management must be informed timeously of any resignation of members/representatives.

2.2 Applications for time off must be considered on its merits and the principle of reasonableness and fairness must apply.

2.3 It is the responsibility of managers identified by the provincial education departments to keep separate registers of employee members and representatives in good standing, as well as details of time off allowed with full pay and without pay, and to forward such records annually, but before 31 December, to both the employee organisations concerned and the responsible personnel offices.

3. TIME OFF

3.1 Time off for collective bargaining purposes

(a) Entitlement

Duly elected, identified employee organisation representatives are allowed time off, including during school hours, to attend meetings at national and provincial levels for collective bargaining purposes. Furthermore, such employee organisation representatives are entitled to take reasonable time off for preparatory meetings during the collective bargaining process.

(b) Provisions

- (i) Identified representatives must give their supervisors reasonable notice of meetings to be attended and proof that they have been nominated to attend such meetings.
- (ii) Confirmation of meetings must be submitted by the representative to his or her supervisor for record and auditing purposes.
- (iii) Subsequent to representatives attending meetings, confirmation must be given by the employee organisation to the representative's supervisor that he/she had attended such meetings.
- (iv) In addition, representatives are allowed a maximum of 1 additional school day per event, which should be regarded as special leave with full pay, for preparatory meetings during the collective bargaining process; provided that the employee organisation confirms that such preparation is essential to the collective bargaining process and that the duration of such preparation necessitates the maximum or a lesser amount of hours required.

(c) Payment for time off

In terms of this entitlement, the duly elected, identified employee representative is allowed time off with full pay.

3.2 Time off for employee organisation duties

(a) Entitlement

Duly elected, identified representatives of an employee organisation may take reasonable time off, including during school hours, to carry out employee organisation duties which have been agreed to between the parties of the ELRC.

(b) Provisions

(i) The following employee organisation duties are provided for:

- representing members in good standing during –
 - disciplinary hearings
 - grievance and dispute procedures
 - retrenchment/redundancy procedures
 - dismissals;
- attending labour relations training; and
- attending, participating in and organising workplace forums.

(ii) The amount of time off to be allowed must not exceed a maximum of 3 school days at a time and the entitlement is limited to a maximum of 12 school days per annum. Should additional time off be essential and in the interest of labour peace, the employer may, with due regard to the principles of reasonableness and fairness, consider a motivated request for additional time off.

(c) Payment for time off

In terms of this entitlement, and subject to the limitations of the entitlement, representatives are allowed time off with full pay.

3.3 Time off for employee organisation activities

(a) Entitlement

Subject to the academic programme not being interrupted, an employee who is a registered member, in good standing with an employee organisation, may take reasonable time off during working hours to participate in agreed to employee organisation activities.

(b) Provisions

The following employee organisation duties are provided for:

- (i) Attending pre-arranged workplace meetings, other than those arising out of industrial action, which have been agreed to between the employee organisation affected and the employer, and which cannot be held outside working hours.
- (ii) Meeting full-time officials, by arrangement and agreement between the employee organisation and the employer, to discuss bona-fide employee organisation matters.
- (iii) Voting during employee organisation elections where voting cannot take place outside working hours.
- (iv) Voting in respect of procedural/lawful strike action.

(c) Payment for time off

Employee organisation members, in good standing, are allowed a maximum of 8 school hours per annum, calculated from 1 January to 31 December of each year, with full pay to engage in the activities indicated above.

Note: Where there is a dispute relating to time off, the provisions of the Constitution of the ELRC will apply. Time off with full pay is permitted for employee organisation members/representatives to engage in this process.

4. SECONDMENT

4.1 Entitlement

The employer recognise the need for employee organisations to utilize the skills and expertise of their members to manage the affairs of the organisation. Employee organisations are therefore entitled to have educators seconded to organisations registered with the ELRC, to occupy full time positions to which they have been duly elected.

This entitlement applies only to employee organisations in good standing, and who comply with the provisions of the LRA and the Constitution of the ELRC.

4.2 Basis upon which the number of employee organisation members, in good standing, will be allowed to be seconded for a contracted period of one year

- (a) Consideration must be given to the teaching and learning program. It is important that the entitlement does not disrupt the school program or the management of education.
- (b) For this purpose this entitlement is structured in such a manner that it applies to a calendar year, that is, from 1 January to 31 December of each year.

- (c) Employee organisations will have to elect or appoint their officials on the basis of a calendar year.
- (d) The following formula will apply in respect of the secondment of employee members, in good standing, to full-time positions in an employee organisation for a period of 1 year:

Number of audited employee organisation members (i.r.o. a federation, membership can only be counted once)	Number of members to be allowed to be seconded to full-time positions in an employee organisation
0– 3 000	0
3 001– 5 000	1
5 001– 8 000	2
8 001–12 000	3
12 001–17 000	4
17 001 upwards	4
	AN ADDITIONAL 1 MEMBER FOR EVERY 6 000 ABOVE 17 000 TO A MAXIMUM OF 7 ADDITIONAL MEMBERS

4.3 Payment in respect of seconded educators

- (a) Members of employee organisations, in good standing, who have been seconded to employee organisations in accordance with this entitlement, will retain all their benefits.
- (b) Employee organisations must be responsible for refunding the full package payable to members seconded in terms of this entitlement. The full amount owing to the relevant employer will be disbursed monthly from the amount accrued to employee organisations from the levies raised.
- (c) The Secretary of the ELRC must keep separate and accurate records of payments made in terms of this entitlement.

4.4 Entitlement in respect of national negotiators

- (a) This entitlement shall apply only to national negotiators of employee organisations in the Bargaining Committee of the Council, who are educators at schools or colleges and who are representatives of the Council in terms of the provisions of clause 7(1)(b) of the constitution of the Council;
- (b) In addition to the entitlement provided for in paragraphs 4.2 and 4.3 above, employee organisations are entitled to have such national negotiators seconded;
- (c) Such secondment shall be for a maximum period of one (1) year at a time, renewable for such longer period as may be agreed to between the employer and relevant employee organisation;
- (d) The Secretary of the Council shall from time to time, furnish provincial heads of departments with the names and particulars of national negotiators;
- (e) An employee returning to duty, upon completion of the period of secondment, shall be assigned:
- (i) in the case of a period of secondment of up to two (2) years, to the position/post that he/she would have held if the secondment had not been taken, or at his/her request, to another post/position agreeable to the employer, and
 - (ii) in the case of a period of secondment of more than two (2) years, to an equivalent position/post to that held prior to the secondment, which is acceptable to the employee, and which shall be reasonable and fair;
- (f) The employer shall remain responsible for the seconded employee's full remuneration package which is not subject to the provisions of paragraph 4(3)(b) above, while the relevant employee organisation shall be responsible for 50% of the full remuneration package of the temporary substitute; and
- (g) The provisions relating to the retention of benefits and method of payment, as provided for in paragraph 4.3 above apply *mutatis mutandis*.

CHAPTER H GRIEVANCE PROCEDURE

1. OBJECTIVE

1.1 The objective of this grievance procedure is to seek to resolve a complaint at the personal level as quickly and as close to the source of the complaint as possible. It is aimed at avoiding a grievance becoming a dispute. In the case where a grievance cannot be resolved through this process and is consequently registered as a dispute in terms of the provisions of the constitution of the Education Labour Relations Council, such registered dispute shall be dealt with in terms of the dispute resolution procedure as set out in the said constitution.

2. DEFINITION

2.1 A grievance is a complaint by an employee or employees affecting the employment relationship of the person or persons concerned, or where there is an alleged misinterpretation, or violation of his or her, or their rights.

3. DEALING WITH GRIEVANCES

3.1 Grievances shall be dealt with in the following manner.

- (a) Oral interview
 - (i) A sincere attempt should be made to resolve any grievance by oral interview between a grievant or grievants and the head of a school or college (herein after referred to as "the head"), and in the case of an educational institution outside a school or college or the head of a school or college, the supervisor(hereinafter referred to as "the supervisor"), before differences become formalised grievances.
 - (ii) During this process no records will be kept of proceedings which will be without prejudice to either of the parties.
- (b) Formal written grievance: Institutional level, (school/college) and departmental level
 - (i) A grievant or grievants may lodge a grievance or grievances with the head or the supervisor in writing within a reasonable period of time, but in any event not later than 90 calendar days following on the time and date on which the alleged grievance or grievances occurred. Full details of the nature of the grievance or grievances must be relayed to the head or the supervisor, as the case may be. The grievance or grievances must bear the signature or signatures of the grievant or the grievants and a copy thereof shall be filed with the relevant office of the provincial department of education by the head or supervisor, as the case may be, which office shall be identified by the relevant head of a provincial department in each province.
 - (ii) The head or the supervisor, as the case may be, shall confer with the grievant or grievants, and others involved, within 3 working days of receipt of the formal written grievance in order to resolve the grievance. At this meeting the facts shall be presented and considered and an effort shall be made to resolve the matter to the satisfaction of all parties.
 - (iii) The head or the supervisor, as the case may be, shall communicate the outcome to the relevant office of the provincial department of education within 5 working days of the resolution or non resolution of a grievance.
 - (iv) If an action or lack of an action, or a decision or lack of a decision, concerns the head or the supervisor, the grievant or grievants may refer the matter directly to the regional/district level in respect of a school/college and departmental level in respect of an institution outside a school/college, provided that a sincere attempt has been made to resolve the grievance or grievances in terms of the provisions of paragraph 3 (a) above.
- (c) Regional/district level in respect of a school/college and departmental level in respect of an institution outside a school/college
 - (i) If the grievant or grievants is/are not satisfied with the outcome referred to in sub-clause (b) above, the grievant or grievants may refer the matter in writing, by hand or registered mail, together with the decision of the head or the supervisor, as the case may be, to the regional/district head of education in the case of an educator at a school/college and in the case of an educator outside a school/college to the office referred to in sub-clause (b)(i), within 5 working days of the parties failing to resolve the grievance or grievances. A copy of the referral must be presented to the head or supervisor, as the case may be, and where applicable, to the grievant or grievants' trade union.
 - (ii) The head or the supervisor shall forward his or her comments together with all relevant information on the grievance or grievances to the regional/district head or the office referred to in sub-clause (b)(i), as the case may be, within 5 working days after receiving the referral mentioned in sub-clause (c)(i) above.
 - (iii) The head of the region/district or the head of the relevant provincial education department, or his or her delegate in respect of an educator outside an educational institution, shall within 5 working days from the date of receipt of all the parties' referrals, attempt to resolve the grievance or grievances and communicate his or her decision in writing to all parties.

- (iv) Should the grievant or grievants not be satisfied with the outcome, he or she may register a formal dispute with the Executive Officer of the Education Labour Relations Council (hereinafter referred to as the "Council") in terms of the provisions of the Council's constitution.
- 3.2 A trade union registered with the Council may register a grievance with the head or supervisor or the head of a relevant department of education, as the case may be, on behalf of its members individually or collectively and represent such member or members during any stage of this grievance procedure. A non-member or nonmembers may be represented by another employee.
- 3.3 The parties to a grievance or grievances may by agreement extend the periods referred to in sub-clauses (b)(i) and (c)(ii) and (iii) above.

CHAPTER I
MEASURES PRESCRIBED BY LEGISLATION NOT ADMINISTERED BY THE MINISTER OF EDUCATION AND
OTHER MEASURES WHICH APPLY TO ALL EMPLOYEES OF THE STATE

1. The measures in respect of the following matters apply to educators, *mutatis mutandis*, as they apply to other employees of the State:
 - (a) Application of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941);
 - (b) Application of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
 - (c) Subsistence, Camp and special allowances;
 - (d) Official travelling and transport;
 - (e) The Government's housing loan guarantee scheme;
 - (f) The motor financing scheme for senior personnel;
 - (g) Medical assistance to educators at retirement or termination of service as well as all amounts applicable to medical assistance;
 - (h) The maximum rent in respect of standard married housing as well as the measures applicable should an educator be obliged to remove his or her personal possessions from the relevant housing;
 - (i) The basis, conditions and limitations of the allowance payable under the house owners allowance scheme; and
 - (j) Compensation in respect of educators doing parliamentary duty.

**CHAPTER J
LEAVE MEASURES**

DEFINITIONS

“**education institution**” is a public school, further education and training institution or adult basic education centre as defined in the Employment of Educators Act or any other institution that provides specialised tuition and where learning activities are discontinued during institution closure periods.

“**institution closure period**” is the scheduled period that education institutions close at the end of each term and during which period teaching and learning activities are discontinued.

“**institution-based educator**” means an educator who is employed at an education institution and whose normal duties are discontinued during institution closure periods.

“**office-based educator**” means an educator who is not an institution-based educator.

“**scheduled working time**” in respect of institution-based educators means –

- (i) all the time during a school/college term, both during and outside the formal school/college day, that institution-based educators must perform duties in terms of the measures in Chapter A; and
- (ii) days during an institution closure period that have been scheduled by the Minister, in accordance with the National Education Policy Act 27 of 1996, for these educators to report for administrative duties or by the head of a provincial department for these educators to report for in-service training in terms of paragraph 3.2 of Chapter A of these measures.

ANNUAL LEAVE

1. GENERAL MEASURES

- 1.1. Educators are entitled to annual leave with full pay during each leave cycle of 12 months, commencing on 01 January of each year.
- 1.2. An educator retains all her or his leave credit when she or he is transferred within a department or between State departments without a break in service.
- 1.3. Unless indicated otherwise in these measures, days of leave granted in respect of any category of leave, other than annual leave, shall not be deducted from an educator’s leave provision in respect of annual leave.
- 1.4. An educator shall not be considered to be on leave if she or he:
 - a) must appear as a witness
 - i) in any court;
 - ii) in misconduct proceedings or in a misconduct investigation in terms of any law;
 - iii) at inquest proceedings; or
 - iv) before a commission or committee appointed by the State or before any committee or institution instituted by or in terms of any Act;
 - b) appears as defendant or co-defendant in civil proceedings arising from his or her official duties and in which the State or any statutory body or institution has a direct interest;
 - c) is taken into custody or must appear in any court on a criminal charge and the offence he or she is charged with is withdrawn or if he or she is acquitted of such offence; or
 - d) attends or participates in a training programme required by the employer or the professional body with whom s/he is required to register in order to remain registered or with the approval of the employer attends or participates in a training programme or other activity that is in the employer’s interest.

2. ANNUAL LEAVE ENTITLEMENT OF INSTITUTION-BASED EDUCATORS

- 2.1 An institution-based educator will be regarded as being on annual leave during institution closure periods that are outside of scheduled working time, provided that the measures regarding the workload, duties and responsibilities of educators may require such an educator to perform some of his or her normal duties, such as preparation for the new school term or the marking of internal examination scripts, during such periods. However, such an educator will not be required to report at any work place to perform any of these duties.
- 2.2 If, after sufficient notice, an institution-based educator is required by the employer to report for official duty during an institution closure period outside the scheduled working time, s/he will be remunerated additionally for the performance of such duties in terms of the applicable measures in Chapter D or E. Such remuneration will not apply in respect of the voluntary performance of duties by an educator during an institution closure period.
- 2.3 Save for leave accrued in terms of paragraph 5.1, an institution-based educator does not accrue any leave credit for purposes of payments, for carry over to a next leave cycle, or for extending other forms of leave.

3. ANNUAL LEAVE ENTITLEMENTS AND MEASURES IN RESPECT OF OFFICE-BASED EDUCATORS

- 3.1 The main purpose of annual leave is to provide periods of rest to an office-based educator but, subject to these measures, may also be used to extend periods of other categories of leave as provided in these measures.
- 3.2 An application for annual leave may not be unreasonably refused, taking into consideration service delivery requirements.
- 3.3 The full year leave entitlement of an office-based educator is –
 - 3.3.1 22 working days in respect of an educator with less than 10 years service;
 - 3.3.2 26 working days in respect of an educator with 10 or more years of service; and
 - 3.3.3 28 working days in respect of an educator appointed prior to 1 July 1966.
- 3.4 An educator who is appointed after the commencement of an annual leave cycle or whose service is terminated during a leave cycle shall, in respect of such cycle, be entitled to annual leave calculated as one twelfth of the full year entitlement for each completed month of service.
- 3.5 Temporary educators appointed for a fixed period shall be granted annual leave that is proportional to their term of employment at a rate of one-twelfth of their full year entitlement per month of service.
- 3.6 Educators appointed in a part-time or shared capacity shall be granted annual leave that is proportional to their appointment.
- 3.7 For each 15 consecutive days' leave taken without pay, the educator's annual leave entitlement is reduced by one-twelfth.
- 3.8 For the purpose of granting annual leave, working days mean Monday to Friday, excluding public holidays.
- 3.9 At least 10 working days must be taken as leave days during the annual leave cycle.
- 3.10 All leave not taken during a leave cycle must be taken no later than 6 months after the expiry of the relevant leave cycle, whereafter, unused leave credits shall be forfeited.
- 3.11 An employing department must inform office-based educators at the end of each annual leave cycle of the number of leave days that the educator has to his or her credit.
- 3.12 If due to the employer's service delivery requirements an office-based educator's application for leave is denied by the employer and not rescheduled, such leave must, upon request, in terms of paragraph 4, be paid out to the educator at the end of the 6 months' period referred to in sub-paragraph 3.10 above. An educator's request for payment of unused leave credits must be:
 - 3.12.1 in writing;
 - 3.12.2 accompanied by written proof of refusal of leave by the employer or of instruction to report for duty as the case may be; and
 - 3.12.3 lodged by no later than the end of the relevant 6 months' period.
- 3.13 Heads of Department shall, at the end of the relevant 18 months' period, report to the relevant legislature on the number of educators denied annual leave, reasons for such denial and the amount paid in this regard.

4. PAYOUT OF UNUSED LEAVE CREDIT

- 4.1 Office-based educators shall be paid the cash value in respect of unused leave credit upon termination of service and in terms of subparagraph 3.12 above. Other than in cases of termination of service referred to in sub-paragraph 5.2, the payment will be limited to a maximum of 22 working days.
- 4.2 Payment of annual leave credits shall be calculated using the educator's basic salary (with the exclusion of benefits).
- 4.3 When an office-based educator's employment is terminated for any reason other than a reason referred to in paragraph 5.2 and at the expiry of the 6 months period mentioned in paragraph 3.10 above, leave payouts shall be computed in terms of the following formula:

$$\frac{\{(A - B) + (C - D)\} \times E}{261}$$

Where:

A = Educator's pro rata leave entitlement in respect of the previous leave cycle

B = Leave taken in the previous leave cycle

C = Pro rata leave entitlement in the current leave cycle

D = Leave taken in the current leave cycle

E = Educator's annual basic or pensionable salary as at the last day of duty or at the end of the 6 months period mentioned in 3.10 above, whichever is applicable.

Note: (a) If an educator has been in service for the full leave cycle, his or her pro rata leave entitlement will be equal to the full year entitlement.

(b) After 30 June, A – B = 0.

5. ANNUAL LEAVE ACCRUED PRIOR TO 1 JULY 2000 AND DURING THE PERIOD 1 JULY 2000 TO 31 DECEMBER 2001

5.1 Educators shall retain all audited leave credits accrued prior to 1 July 2000. The number of accrued leave days prior to 1 July 2000 shall be converted to working days by multiplying such accrued leave days by 5, divided by 7. During the periods 1 July 2000 to 31 December 2000 and 1 January 2001 to 31 December 2001 all institution-based educators accrued 5 and 10 working days leave respectively or a pro rata number of such days calculated in accordance with paragraph 3.4. Any of these days that were not granted to such an educator since 1 July 2000 shall be added to the number of leave days accrued prior to 1 July 2000.

5.2 The payouts in respect of such leave credits shall be made in the event of:

5.2.1 Death;

5.2.2 Retirement, including early retirement; or

5.2.3 Medical boarding.

5.3 The leave payout of leave credits in respect of an educator whose service is terminated in terms of 5.2 above is calculated as follows:

$$\frac{\{(A - B) + (C - D) + F\} \times E}{261}$$

Where:

A = Educator's pro rata leave entitlement in respect of the previous leave cycle

B = Leave taken in the previous leave cycle

C = Pro rata leave entitlement in the current leave cycle

D = Leave taken in the current leave cycle

E = Educator's annual basic or pensionable salary as at the last day of duty or at the end of the 6 months period mentioned in 3.10 above, whichever is applicable.

F = Accrued leave credits in terms of sub-paragraph 5.1 above less all leave taken from these accrued leave credits since 1 July 2000 in respect of office-based educators and 31 December 2001 in respect of institution-based educators.

[Definition of F amended by G.N. 3417 of 2002 published in *Government Gazette* No. 24140 dated 12 November 2002.]

Note: (a) If an educator has been in service for the full leave cycle, his or her pro rata leave entitlement will be equal to the full year entitlement.

(b) After 30 June, $A - B = 0$.

(c) The sum total of $A - B$ and $C - D$ may not exceed 22 days.

5.4 The Head of Department shall determine whether there are periods which are unaudited and in such instances, the educator's leave payout shall be paid on the basis of 6 days per completed year of service up to a maximum of 100 days in respect of the unaudited leave period. The formula in calculating the payout in respect of these days shall be as per sub-paragraph 4.3 above.

5.5 The Head of Department shall determine procedures and measures in keeping with service delivery needs, on how educators will be allowed to utilise their leave credits accrued prior to the applicable dates referred to in paragraph 5.1 above over and above the normal vacation entitlements.

6. NOMINATION OF BENEFICIARIES AND LEAVE PAYOUTS

6.1 An educator may, if he or she so desires, designate one or more beneficiaries to whom their leave credits may be paid in the event of their death.

6.2 If an educator dies and has not nominated a beneficiary, the leave credits may be paid:

6.2.1 In full to the spouse/life partner of that educator; or

6.2.2 If there is no spouse/life partner, in equal shares for the benefit of minor and other children (including legally adopted children) of the deceased who, at the time of her or his death, were fully dependant on the educator; or

6.2.3 If there are no children, to the educator's estate.

7. ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS

7.1 An educator may not be granted annual leave with full pay in excess of that which the educator has to his or her credit, including leave credit in terms of paragraph 5.1 above.

7.2 If due to a *bona fide* error, an educator has been granted annual leave with full pay in excess of that which stood to her or his credit at that time, such excess grant must be deducted from the subsequent leave cycle.

7.3 If an educator who has been granted excess annual leave with full pay exits the service of the State, such leave granted in excess of what stood to the educator's credit on such last day of duty must be regarded as an overpayment that must be recovered from her or him.

8 NORMAL SICK LEAVE

- 8.1 Educators are entitled to 36 working days sick leave with full pay over a three-year cycle. Unused sick leave shall lapse at the expiry of the three-year cycle.
- 8.2 If an educator is unable to report for duty due to sudden illness, she or he must immediately notify his/her immediate supervisor of her or his inability to report for duty.
- 8.3 Educators who apply for three or more sick leave days must submit a certificate from a registered and recognised medical practitioner as defined by the Health Professionals' Council of South Africa, citing the reason for and duration of absence.
- 8.4 In instances where a pattern in the utilisation of sick leave has been established, a certificate may be required for absences of less than three working days. Notwithstanding the submission of a certificate, the employer may, on the grounds of further medical advice, refuse to grant sick leave for any absence from duty to which the certificate relates, and the absence shall be considered as leave without pay.
- 8.5 For every 15 consecutive days' leave taken without pay, an educator's sick leave entitlement shall be reduced by 1/36th per sick leave cycle.
- 8.6 If an educator falls ill whilst on annual leave with full pay, such leave may be converted to sick leave provided that a certificate from a registered medical practitioner is submitted within 30 days to substantiate the indisposition.
- 8.7 Vacation leave without pay may not be converted into sick leave.

9 TEMPORARY INCAPACITY LEAVE

- 9.1 An educator who has exhausted her or his sick leave credit in a three-year cycle and who, according to the relevant medical practitioner, requires to be absent due to incapacity that is not permanent may be granted additional sick leave with full pay.
- 9.2 Such a condition must have been certified in advance by the attending medical practitioner as a temporary incapacity except where conditions do not permit.
- 9.3 The Head of Department may require the educator to obtain a second opinion before granting approval for additional sick leave. Expenditure in this regard will be met from the departmental budget.
- 9.4 The Head of Department may grant a maximum of 30 consecutive working days leave with full pay during which period an investigation must be conducted into the nature and extent of the incapacity. The investigation shall be conducted in accordance with item 10(1) of Schedule 8 of the Labour Relations Act, 1995.
- 9.5 On the basis of medical evidence, the Head of Department may approve the granting of additional sick leave days on conditions that she or he shall determine.
- 9.6 If the educator is of the view that she or he has been unfairly treated as regards the granting of additional sick leave, she/he has the right to follow the grievance procedure and the relevant dispute resolution procedures in order to settle the matter.

10 PERMANENT INCAPACITY

- 10.1 Educators whose degree of incapacity has been certified by a competent medical practitioner as permanent shall, with the approval of the Head of Department, be granted a maximum of 30 working days paid sick leave, or such additional number of days required by the employer to finalise processes mentioned below.
- 10.2 The employer shall, within 30 working days, ascertain the feasibility of:
 - 10.2.1 Alternative employment; or
 - 10.2.2 Adapting duties or work circumstances to accommodate the educator.
- 10.3 An educator, whose degree of incapacity has been certified as permanent but who can still render a service, may, in terms of the applicable measures, be redeployed horizontally with retention of her or his benefits.
- 10.4 If the redeployment necessitates reallocation to a job of a lower grading, such action should be explained well in advance and the continued utilisation of such an educator should, in this regard, be with her or his consent.
- 10.5 In instances where the educator's redeployment entail retraining, the employer shall take requisite resources (time and financial) and potential returns into consideration before approving redeployment.
- 10.6 The redeployment of an educator's services should ensure the optimal utilisation of her or his competencies and should not compromise service delivery.
- 10.7 If the employer or the educator is convinced that the educator will never be able to render an effective service at her or his level or rank, the educator may proceed with an application for termination of service due to ill health.

11 LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES

- 11.1 Educators who, as a result of their work, suffer occupational injuries or contract occupational diseases, shall be granted occupational and disease leave for the duration of the period they cannot work.

- 11.2 If an educator suffers a work-related injury as a result of an accident involving a third party, the Head of Department shall grant her or him occupational injury leave provided that the educator:
- 11.2.1 Brings a claim for compensation against the third party.
 - 11.2.2 Undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the employer's contribution to the cost arising from the accident.
- 11.3 The Head of Department shall take reasonable steps to assist an educator to claim compensation according to sub-paragraph 11.2 above.

12 SPECIAL LEAVE FOR QUARANTINE PURPOSES

- 12.1 Special leave with full pay may be granted to an educator who has been exposed to a medical condition that requires such person to be placed under quarantine.
- 12.2 Application for such leave must be accompanied by a certificate from a medical practitioner stating the period of quarantine as well as the reasons necessitating such leave.

13 MATERNITY LEAVE

- 13.1 An educator is entitled to 4 consecutive months' maternity leave on full pay to commence at least 14 days prior to the expected date of birth but not later than the actual date of birth in a case of a premature confinement.
- 13.2 Maternity leave may be extended upon application by one or more of the following:
- 13.2.1 the granting of sick leave as a result of a medical complication;
 - 13.2.2 the granting of up to 184 consecutive days unpaid leave; and
 - 13.2.3 the granting of annual leave, including leave accrued in terms of paragraph 5.1, if applicable.
- 13.3 An Educator who experiences a miscarriage, still birth or termination of the pregnancy after starting paid maternity leave, shall be eligible for six consecutive weeks paid maternity leave, where-after sub-paragraph 13.2.1 shall apply in the event of a medical complication.
- 13.4 For at least six weeks after the birth, no educator may commence with normal official duty unless the attending practitioner certifies that the educator is fit to do so.
- 13.5 Where it is practically feasible and subject to paragraph 13.4, an employer may allow an educator to interrupt her maternity leave by letting her return to work temporarily if the baby is hospitalised for a period longer than a month during the maternity leave due to premature birth or illness.

14 ADOPTION LEAVE

- 14.1 An educator who adopts a child that is younger than two years, qualifies for adoption leave to a maximum of 45 working days where-after sub-paragraphs 13.2.2 and 13.2.3 shall apply.
- 14.2 If both spouses or life partners are employed in the Public Service, both partners qualify for adoption leave provided that the combined leave taken does not exceed 45 working days.

15 FAMILY RESPONSIBILITY LEAVE AND SPECIAL LEAVE FOR URGENT PRIVATE AFFAIRS

- 15.1 An educator shall be granted 3 working days leave per annual leave cycle if:
- 15.1.1 the educator's spouse or life partner gives birth; or
 - 15.1.2 the educator's child, spouse or life partner is sick.
- 15.2 An educator shall be granted 5 working days leave per annual leave cycle if:
- 15.2.1 the educator's child, spouse or life partner dies; or
 - 15.2.2 the educator's immediate family member dies.
- 15.3 An institution-based educator may, during a scheduled working period, be granted special leave to attend to: an urgent private matter, the nature of which is such that it warrants such an educator's absence from work.

[Para. 15.3 amended by G.N. No. 244 of 2002 published in *Government Gazette* No. 23187 dated 1 March 2002.]

- 15.4 The number of leave days taken in terms of sub-paragraphs 15.1 and 15.2 shall, in respect of an office-based educator, not exceed five working days in an annual leave cycle.
- 15.5 The number of leave days taken in terms of sub-paragraphs 15.1 to 15.3 shall, in respect of an institution-based educator, not exceed 12 working days in an annual leave cycle.
- 15.6 An educator who has used all his or her leave in respect of subparagraphs 15.1 to 15.3 may apply to:
- 15.6.1 Use available annual leave, including leave accrued in terms of paragraph 5.1; or
 - 15.6.2 Use up to 184 calendar days of unpaid leave.

16 SPECIAL LEAVE FOR PROFESSIONAL AND PERSONAL DEVELOPMENT AND FOR RELIGIOUS OBSERVANCES

- 16.1 Special leave with full pay may be granted to an institution-based educator
- (a) to engage in activities aimed at his or her professional development;

- (b) to engage in activities aimed at his or her personal development where such personal development is also in the interest of the employer; or
- (c) for a religious observance.

16.2 The total number of leave days granted to an institution-based educator in terms of paragraph 16.1 may not exceed 3 working days per annual leave cycle.

17 SPECIAL LEAVE FOR STUDY PURPOSES

17.1 Special leave may be granted to an educator for an approved course of study and for a period approved by the employer, on conditions as approved by the employer, including leave with full or partial pay or without pay.

17.2 If special leave with full or partial pay for study purposes is granted to an educator in terms of sub-paragraph 17.1 the employer may call for periodic progress reports in respect of the educator's studies and such educator shall enter into an agreement with the employer in a form approved by the employer in terms of which he or she undertakes to serve the employer immediately after completion of the period of special leave for study purposes for a period (hereinafter referred to as the service period) equal to at least the period for which special leave for study purposes on full pay has been granted to him or her, or for a service period proportional to the person's pay during the period of special leave for study purposes, as the case may be.

18 SPECIAL LEAVE FOR EXAMINATION PURPOSES:

An educator may be granted special leave for examination purposes with full pay for each day on which such educator sits as a candidate for an examination approved for this purpose by the employer plus one additional day of special leave for study purposes for each such day of examination which may be taken on the working days immediately prior to the days of examination.

19 SPECIAL LEAVE FOR PARTICIPATING IN SPORTING, CULTURAL AND OTHER EVENTS

Special leave for a period and on conditions approved by the head of a department, in terms of policy of such department, may be granted to an educator for participating in sports, cultural, local council and other relevant activities. Participation for which leave may be granted may include representation of the country, province or other comparable level as an actual participant, referee, adjudicator, course or group leader, or for participating in or attending a relevant conference, meeting or other event approved for this purpose by the employer.

20 SPECIAL LEAVE IN EXTRAORDINARY CIRCUMSTANCES

20.1 Subject to section 14 of the Act and notwithstanding any disciplinary measures that may apply, unauthorised absence by an educator shall be regarded as special leave in extraordinary circumstances and shall be without pay unless the employer in a specific case determines otherwise.

20.2 If, in the opinion of the employer, circumstances justify it, it may grant or place an educator on special leave in extraordinary circumstances for any reasonable purpose and for any reasonable period, and such leave shall be without pay unless the employer determines otherwise.

21 UNPAID LEAVE

21.1 If an educator has utilised all her or his accrued annual leave, the Head of Department may grant her or him unpaid leave up to a maximum of 184 consecutive days.

21.2 Absences from work due to arrest, imprisonment or appearance in court on a criminal charge that leads to a conviction must be recorded as unpaid leave.

22 UNPAID LEAVE FOR CONTINUITY OF SERVICE

22.1 Unpaid leave for a maximum of 120 consecutive days may be granted to an institution-based educator who was previously employed as an institution-based educator by the same or another education department for the purpose of retaining the continuity of the educator's service.

22.2 The unpaid leave shall commence on the day immediately following the date on which the educator last received salary from his or her previous employer and shall expire on the day preceding the date of assumption of duty with the present employer.

22.3 The limitation of 120 days referred to in sub-paragraph 22.1 shall not apply to an educator in cases where the period concerned extends from the day immediately following the last day of a term to the day immediately preceding the first day of the term after a full term has elapsed.

22.4 Where unpaid leave for continuity of service has been granted to an educator, the service of the educator is regarded as continuous for all purposes of determining his or her period of service.

[Chapter J inserted by G.N. No. 1400 of 2001 published in *Government Gazette* No. 22961 dated 19 December 2001.]

ANNEXURES

AGREEMENT SPECIAL LEAVE FOR STUDY PURPOSES

1. I, _____ (full name) hereby undertake towards the head of the education department of _____
_____ (name of education department)
immediately after expiry of the period of special leave for study purposes granted to me in terms of general education policy for the period _____ to _____,
to serve in an education department (hereinafter referred to as my service obligation) for a continuous period of _____ days.
2. I hereby further undertake, during this leave, periodically and as determined by the head of my education department to obtain progress reports in respect of my study courses from the institution at which I am studying and to submit such reports to the head of my education department, and I understand that he retains the right on the basis of such progress reports to instruct me to resume service immediately and to renounce the privileges of this leave granted to me and to convert such leave into vacation leave or special leave in extraordinary circumstances and in the latter case to recover any excess payment from me which might have occurred as a result thereof, and to transfer such payment to the education department with which this contract has been concluded.
3. I hereby declare that I understand that authorised leave with full or partial pay normally counts as service towards the fulfilment of my service obligation and that, if leave without pay is granted to me before my service obligation is fulfilled, my service obligation will be extended by the number of days equal to the periods for which leave without pay was granted to me.
4. I hereby further undertake, if in any manner whatsoever, except in the event of my death, or as a result of my permanent disability not caused by me, fail to fulfil this agreement fully, irrespective of whether such failure is the result of discharge owing to misconduct, to immediately repay on written request the service bonus and salary which I received during the above-mentioned period of special leave for study purposes on a pro rata basis together with the interest thereon at the interest rate as prescribed in the Financial Hand Book of the Department of Finance, calculated from the date of breach of contract, to the education department with which this contract has been concluded.

Signed at _____ this _____ day of _____ 19 _____

Signature of Educator _____

WITNESSES:

1. _____
2. _____

AGREEMENT: SPECIAL LEAVE FOR MILITARY TRAINING

1. I, _____ (full name) hereby undertake towards the head of the education department of _____
_____ (name of education department)
immediately after expiry of the period of special leave for study purposes granted to me in terms of general education policy for the period _____ to _____,
to serve in an education department (hereinafter referred to as my service obligation) for a continuous period of _____ days.
2. I hereby declare that I understand that authorised leave with full or partial pay normally counts as service towards the fulfilment of my service obligation and that, if leave without pay is granted to me before my service obligation is fulfilled, my service obligation will be extended by the number of days equal to the periods for which leave without pay was granted to me.

3. I hereby further undertake, if in any manner whatsoever, except in the event of my death, or as a result of my permanent disability not caused by me, I fail to fulfil this agreement fully, irrespective of whether such failure is the result of discharge owing to misconduct, to immediately repay on written request the service bonus and salary which I received during the above-mentioned period of special leave for military training on a pro rata basis together with the interest thereon at the interest rate as prescribed in the Financial Hand Book of the Department of Finance, calculated from the date of breach of contract, to the education department with which this contract has been concluded.

Signed at _____ this _____ day of _____ 19 _____

Signature of Educator _____

WITNESSES:

1. _____

2. _____

**SECTION 4:
FURTHER EDUCATION AND TRAINING ACT
98 OF 1998**

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FURTHER EDUCATION AND TRAINING ACT 98 of 1998

[ASSENTED TO 20 OCTOBER, 1998]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]]

[DATE OF COMMENCEMENT: 2 NOVEMBER, 1998]

as amended by

Education Laws Amendment Act, No. 53 of 2000

Education Laws Amendment Act, No. 57 of 2001

Education Laws Amendment Act, No. 50 of 2002

ACT

To regulate further education and training; to provide for the establishment, governance and funding of public further education and training institutions; to provide for the registration of private further education and training institutions; to provide for quality assurance and quality promotion in further education and training; to provide for transitional arrangements and the repeal of laws; and to provide for matters connected therewith.

Preamble

WHEREAS it is desirable to –

ESTABLISH a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based further education and training;

RESTRUCTURE AND TRANSFORM programmes and institutions to respond better to the human resources, economic and development needs of the Republic;

REDRESS past discrimination and ensure representivity and equal access;

ENSURE access to further education and training in the work-place by persons who have been marginalised in the past, such as women, the disabled and the disadvantaged;

PROVIDE optimal opportunities for learning, the creation of knowledge and the development of intermediate to high level skills in keeping with international standards of academic and technical quality;

PROMOTE the values which underline an open and democratic society based on human dignity, equality and freedom;

ADVANCE strategic priorities determined by national policy objectives at all levels of governance and management within the further education and training sector;

RESPECT and encourage democracy and foster an institutional culture which promotes fundamental human rights and creates an appropriate environment for teaching and learning;

PURSUE excellence, promote the full realisation of the potential of every student and member of staff, tolerance of ideas and appreciation of diversity;

RESPOND to the needs of the Republic, the labour market and of the communities served by the institutions;

COMPLEMENT the Skills Development Strategy in co-operation with the Department of Labour;

AND WHEREAS IT IS DESIRABLE for further education and training institutions to perform specific functions within the context of public accountability and the national need for intermediate to high level skills and knowledge and to provide access to work and higher education;

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**Chapter 1
DEFINITIONS AND APPLICATION**

Definitions

1. In this Act, unless the context shows that another meaning is intended –

“**academic board**” means the body contemplated in section 11;

“**applicant**” means any person who makes an application contemplated in section 25;

“**auditor**” means any person registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991);

“**council**” means the governing body of a public further education and training institution;

“**Department**” means the Government department responsible for education at national level;

“**Director-General**” means the Director-General of the Department;

“**educator**” means an educator as defined in the Employment of Educators Act, 1998, and for purposes of sections 9 and 11, includes an educator employed in terms of section 14(2);

“**financial year**” in respect of a public further education and training institution means a year commencing on the first day of January and ending on the 31st day of December of the same year;

“**foreign juristic person**” means a person –

- (i) registered or established as a juristic person in terms of a law of a foreign country; and
- (ii) recognised or registered as an external company in terms of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition “foreign juristic person” inserted by s. 14(a) of Act No. 50 of 2002.]

“**further education and training**” means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education;

“**further education and training institution**” means any institution that provides further education and training on a full-time, part-time or distance basis and which is –

- (a) established or regarded as having been established as a public further education and training institution under this Act;
- (b) declared as a public further education and training institution under this Act; or
- (c) registered or provisionally registered as a private further education and training institution under this Act;

[Para. (c) substituted by s. 14(b) of Act No. 50 of 2002.]

“**general education**” means the compulsory school attendance phase as referred to in section 3 of the South African Schools Act;

“**grade**” means a grade as defined in section 1 of the South African Schools Act;

“**grade 10**” means one grade higher than the highest grade in general education;

“**grade 12**” means the highest grade in which education is provided by a school;

“**Head of Department**” means the head of a provincial department of education;

“**higher education**” means higher education as defined in the Higher Education Act, 1997 (Act No. 101 of 1997);

“**local juristic person**” means a person established as a juristic person in South Africa in terms of the Companies Act, 1973 (Act No. 61 of 1973);

[Definition “local juristic person” inserted by s. 14(c) of Act No. 50 of 2002.]

“**Member of the Executive Council**” means the Member of the Executive Council of a province who is responsible for education in that province;

“**Minister**” means the Minister of Education;

“**NBFET**” means the National Board for Further Education and Training, established by regulations in terms of section 11 of the National Education Policy Act, 1996 (Act No. 27 of 1996);

“**organ of State**” means an organ of State as defined in section 239 of the Constitution;

“**policy**” means –

- (a) policy determined by the Minister in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996); or
- (b) policy determined by the Member of the Executive Council in terms of a provincial law;

“**prescribed**” means prescribed by regulation;

“**principal**” means the chief executive and accounting officer of a public further education and training institution and includes a rector;

“**private further education and training institution**” means any institution registered or conditionally registered as a private further education and training institution in terms of Chapter 5;

“**public further education and training institution**” means any further education and training institution that is established, deemed to be established or declared as a public further education and training institution under this Act;

“**registrar**” means the registrar referred to in section 23(1);

[Definition “registrar” substituted by s. 14(d) of Act No. 50 of 2002.]

“**SAQA**” means the South African Qualifications Authority, established by section 3 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“**school**” means a school as defined in the South African Schools Act;

“**South African Schools Act**” means the South African Schools Act, 1996 (Act No. 84 of 1996);

“**staff**” means persons employed at a public further education and training institution;

“**student**” means any person registered as a student at a further education and training institution;

“**this Act**” includes the regulations made under this Act;

“**to provide further education and training**” means –

- (a) the registering of students for all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education but below higher education; and
- (b) the taking of responsibility for the registration of students, the provision and delivery of the curriculum and assessment of students.

[Definition “to provide further education and training” inserted by s. 14(e) of Act No. 50 of 2002.]

“**vice-principal**” includes a vice-rector.

Purpose of Act

2. The purpose of this Act is to establish a national co-ordinated further education and training system which promotes co-operative governance and provides for programme-based further education and training.

Chapter 2
PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

Establishment of public further education and training institutions

3. (1) The Member of the Executive Council may, by notice in the *Provincial Gazette* and from money appropriated for this purpose by the provincial legislature, establish a public further education and training institution.
- (2) Every public further education and training institution is a juristic person.
- (3) Notwithstanding subsection (2), a public further education and training institution may not, without the concurrence of the Member of the Executive Council, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

Declaration of institution as public further education and training institution

4. (1) The Member of the Executive Council may, subject to national policy by notice in the *Provincial Gazette*, declare any institution providing further education and training as a public further education and training institution.
- (2) The notice contemplated in subsection (1) must determine –
- (a) the date on which the institution becomes a public further education and training institution;
- (b) the name of the public further education and training institution; and
- (c) the physical location and the official address of the public further education and training institution.
- (3) The Member of the Executive Council may act under subsection (1) only –
- (a) after consulting the governing body of the institution, if it is a public institution; or
- (b) with the concurrence of the responsible Minister, Member of the Executive Council or authority of the institution, if the institution is administered, controlled or funded by an organ of State other than the provincial department of education;
- (c) after having –
- (i) published a notice in one or more newspapers circulating in the area in which the institution provides further education and training, containing the reasons for the declaration referred to in subsection (1), in all the official languages determined in terms of section 9(2)(b);
- (ii) given any interested person an opportunity to make representations; and
- (iii) considered such representations; and
- (d) if it is a private institution, with the concurrence of the owner of the institution and the Member of the Executive Council responsible for finance.
- (4) No public school which offers further education and training programmes may be declared a further education and training institution in terms of subsection (1) until after a date determined by the Minister by notice in the *Gazette*, after consultation with the Council of Education Ministers and the NBFET.

Consequences of declaration as public further education and training institution

5. (1) From the date determined in terms of section 4(2)(a) –
- (a) the institution is regarded as being a public further education and training institution established under this Act;
- (b) the assets, liabilities, rights and obligations of the institution vest in the public further education and training institution; and
- (c) any agreement lawfully entered into by or on behalf of the institution is regarded as having been concluded by the public further education and training institution.
- (2) Immovable property vesting in the public further education and training institution in terms of subsection (1)(b) must, subject to the concurrence of the Minister of Finance, be transferred into its name without payment by it of transfer duty, stamp duty or any other duty or costs due to the State, but subject to any existing right, encumbrance or trust on or over that property.
- (3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public further education and training institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer in question.
- (4) The declaration of an institution as a public further education and training institution under section 4(1) does not affect anything lawfully done by the institution prior to the declaration.
- (5) All funds which, immediately prior to the date determined in terms of section 4(2)(a), were vested in the institution by virtue of a trust, donation or bequest must be applied by the public further education and training institution in accordance with the trust, donation or bequest, as the case may be.

- (6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

Merger of public further education and training institutions

6. (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the *Provincial Gazette*, merge two or more public further education and training institutions into a single institution.
- (2) Before merging two or more public further education and training institutions the Member of the Executive Council must –
- (a) give written notice to the institutions in question of the intention to merge them;
 - (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area in which the institutions in question are situated;
 - (c) give the councils of the institutions in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);
 - (d) consider such representations; and
 - (e) be satisfied that the employers of staff at the public further education and training institutions in question have complied with their obligations in terms of the applicable labour law.
- (3) The single institution contemplated in subsection (1) is regarded as a public further education and training institution established under this Act.
- (4) Paragraph (b) of section 5(1) and subsections (2) to (6) of section 5 apply with the necessary changes required by the context, to a merger referred to in subsection (1).

Closure of public further education and training institution

7. (1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public further education and training institution.
- (2) If a public further education and training institution is closed under subsection (1), all assets and liabilities of such institution must, after such closure, be dealt with according to law by the Member of the Executive Council and any assets remaining after payment of all liabilities vest in the Member of Executive Council.
- (3) Subsections (2) to (6) of section 5 and section 6(2) apply with the necessary changes required by the context, to a closure referred to in subsection (1).

Chapter 3
GOVERNANCE OF PUBLIC FURTHER EDUCATION AND TRAINING INSTITUTIONS

Institutional governance structures

8. (1) Every public further education and training institution must establish a council, an academic board, a student representative council and such other structures as may be determined by the council subject to the approval of the Member of the Executive Council.
- (2) A structure referred to in subsection (1) must elect a chairperson, vice-chairperson and other office bearers from among its members in the manner determined by the Member of the Executive Council by notice in the *Provincial Gazette* or in terms of a provincial law.
- (3) The chairperson, vice-chairperson or other office bearers of the council may not be students or members of the staff of the institution, but the secretary may be a member of staff.
- (4) The Member of the Executive Council must, by notice in the *Provincial Gazette* or in terms of a provincial law, determine in respect of members in any of the structures referred to in subsection (1) –
- (a) the terms of office;
 - (b) procedures for the disqualification or removal;
 - (c) procedures for the filling of vacancies; and
 - (d) any other matter necessary for the election, appointment or assumption of office.
- (5)

[Sub-s. (5) deleted by s. 12 of Act No. 57 of 2001.]

Council of public further education and training institution

9. (1) The council of a public further education and training institution must perform all the functions, including the provision of public adult learning centres, which are necessary to govern the public further education and training institution, subject to this Act and any applicable national or provincial law.

[Sub-s. (1) substituted by s. 18 of Act No. 53 of 2000.]

- (2) Subject to policy, the council must, with the concurrence of the academic board –
 - (a) develop a strategic plan for the institution which must –
 - (i) incorporate the mission, vision, goals and planning for funding of the institution;
 - (ii) address past imbalances and gender and disability matters; and
 - (iii) be approved by the Member of the Executive Council;
 - (b) determine the language policy of a public further education and training institution and must publish it and make it available on request; and
 - (c) ensure that the further education and training institution is accredited to provide learning against standards and qualifications as registered on the National Qualifications Framework.
- (3) The council, after consultation with the student representative council, must provide for a suitable structure to advise on the policy for student support services within the public further education and training institution.
- (4) The council of a public further education and training institution must consist of –
 - (a) the principal;
 - (b) the vice-principal or vice-principals;
 - (c) not more than five persons appointed by the Member of the Executive Council;
 - (d) members of the academic board elected by the academic board;
 - (e) members of the educator staff of the public further education and training institution, elected by such staff;
 - (f) students of the public further education and training institution, elected by its student representative council;
 - (g) staff other than educator staff, elected by such staff of the public further education and training institution; and
 - (h) such additional persons as may be determined by the council in consultation with the Member of the Executive Council.
- (5) The number of persons contemplated in subsection (4)(b) and (d) to (h) and the manner in which they are elected, where applicable, must be determined by the Member of the Executive Council by notice in the *Provincial Gazette* or in terms of a provincial law.
- (6) At least 60 per cent of the members of a council must be persons who are not employed by or who are not students of the public further education and training institution in question.
- (7) The members of a council –
 - (a) must be persons with knowledge and experience relevant to the objects and governance of the public further education and training institution in question; and
 - (b) must participate in the deliberations of the council in the best interest of the public further education and training institution in question.
- (8) The selection of the members contemplated in subsection (4)(c) and (h) must be undertaken in such a manner as to ensure, in so far as it is practically possible, that –
 - (a) the functions of the council are performed according to the highest professional standards;
 - (b) the council is broadly representative of the further education and training system and related interests;
 - (c) the members have a thorough knowledge and understanding of the further education and training sector;
 - (d) such members appreciate the role of further education and training in reconstruction and development; and
 - (e) the council is broadly representative of the community served by the institution in respect of race, gender and disability.
- (9) The Member of the Executive Council must, by notice in the *Provincial Gazette*, and by any other reasonably practicable means, invite nominations for the members contemplated in subsection (4)(c) and (h) from –
 - (a) the public;
 - (b) organised business; and
 - (c) organised labour.
- (10) The Member of the Executive Council must consider the nominations received and from the persons so nominated must appoint the number of members as determined in terms of subsection (5).

Single council for two or more public further education and training institutions

10. (1) The Member of the Executive Council may determine that the governance of two or more public further education and training institutions must vest in a single council if –

- (a) it is in the best interests of education and the institutions;
 - (b) it is in the public interest; or
 - (c) he or she was so requested by the councils of such institutions, if such councils exist.
- (2) The Member of the Executive Council may not act in terms of subsection (1) unless he or she has –
- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
 - (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
 - (c) considered all such submissions.
- (3) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the composition of the single council in a manner that ensures that –
- (a) each public further education and training institution is equitably represented; and
 - (b) it complies with section 9(5), (6) and (8).
- (4) Any council which is the subject of a notice in terms of subsection (2) continues to exist until the first meeting of the council constituted in terms of this section.

Academic board of public further education and training institution

11. (1) The academic board of a public further education and training institution is accountable to the council for –
- (a) the academic functions of the public further education and training institution and the promotion of the participation of women and the disabled in the learning programmes;
 - (b) establishing internal academic monitoring and quality assurance procedures;
 - (c) ensuring that the requirements of accreditation to provide learning against standards and qualifications registered on the National Qualifications Framework are met; and
 - (d) performing such other functions as may be delegated or assigned to it by the council.
- (2) Subject to the approval of the council and to policy, the academic board must determine the learning programmes provided by the public further education and training institution.
- (3) The academic board of a public further education and training institution must consist of –
- (a) the principal;
 - (b) the vice-principal or vice-principals;
 - (c) members of the educator staff of the institution;
 - (d) members of the council;
 - (e) members of the student representative council; and
 - (f) such additional persons as may be determined by the council.
- (4) The number of persons contemplated in subsection (3)(c), (d), (e) and (f) and the manner in which they are appointed or elected, as the case may be, must be determined by the council.
- (5) The majority of members of the academic board must be members of the educator staff of the public further education and training institution in question.

Committees of council and academic board

12. (1) The council and the academic board of a public further education and training institution may each establish committees to perform any of their functions and may appoint persons who are not members of the council or the academic board, as the case may be, as members of such committees.
- (2) The chairperson of a committee must be a member of the council or academic board, as the case may be.
- (3) The council and the academic board are not divested of responsibility for the performance of any function delegated or assigned to a committee.
- (4) The council and the academic board of a public further education and training institution may jointly establish committees to perform functions which are common to the council and the academic board.
- (5) The composition, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the council or the academic board, or both the council and the academic board, as the case may be.

Principal of public further education and training institution

13. The principal of a public further education and training institution is responsible for the management and administration of the institution.

Staff at public further education and training institutions

14. (1) (a) The educator establishment of a public further education and training institution is determined by the allocation of posts by the Head of Department from the provincial educator post establishment created

- by the Member of the Executive Council in terms of section 5 of the Employment of Educators Act, 1998 and educators appointed in such posts are employed in terms of that Act.
- (b) The non-educator establishment of a public further education and training institution is determined in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).
- (2) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public further education and training institution may establish posts for educators and employ educators additional to the establishment referred to in subsection (1)(a).
- (3) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public further education and training institution may establish posts for non-educators and employ non-educator staff additional to the establishment referred to in subsection (1)(b).
- (4) (a) The Council must determine the functions, conditions of service and privileges of the staff contemplated in subsections (2) and (3), subject to the applicable labour law and paragraph (b).
- (b) The salary payable to an educator contemplated in subsection (2) shall not be less than the salary paid to an educator –
- (i) contemplated in subsection (1)(a); and
 - (ii) who performs the same or equivalent work as such educator,
- unless collectively agreed to in a bargaining council established in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (c) If a dispute arises about the salary of an educator as contemplated in paragraph (b) any party to the dispute may refer the dispute in writing to –
- (i) a bargaining council established in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), if the employer or employee parties to the dispute fall within the registered scope of a bargaining council; or
 - (ii) the Commission for Conciliation, Mediation and Arbitration as established by section 12 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if no bargaining council has jurisdiction.
- (d) The party referring the dispute must satisfy the bargaining council or the Commission for Conciliation, Mediation and Arbitration that a copy of the referral has been served on the other party.
- (e) The bargaining council or the Commission for Conciliation, Mediation and Arbitration must attempt to resolve the dispute through conciliation.
- (f) If the bargaining council or the Commission for Conciliation, Mediation and Arbitration is satisfied that the dispute remains unresolved, a party may refer the dispute to the Labour Court as established in terms of section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995) for adjudication.
- (5) When presenting the annual budget contemplated in section 18(4) the Council must provide sufficient details of any posts envisaged in terms of subsections (2) and (3), including the estimated cost relating to the employment of staff in such posts and the manner in which it is proposed that such cost will be met.
- (6) The staff contemplated in subsections (2) and (3) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and factors to be taken into account when making appointments include but are not limited to –
- (a) the ability of the candidates;
 - (b) the principle of equity;
 - (c) the need to redress past injustices; and
 - (d) the need for representivity.

Student representative council

15. The establishment, composition, manner of election, term of office, functions and privileges of the student representative council of a public further education and training institution must be determined by the council after consultation with the students and educators of that institution, subject to provincial policy.

Disciplinary measures

16. (1) Every student at a public further education and training institution is subject to a code of conduct, disciplinary measures and procedures as may be determined by the council subject to provincial policy but the code of conduct, disciplinary measures and procedures may only be made after consultation with the academic board and the student representative council of the institution concerned.
- (2) The policy contemplated in subsection (1) must in particular deal with measures to curb racism, sexual violence and sexual harassment.

Prohibition of corporal punishment and initiation practices

- 16A.(1) A person may not administer corporal punishment to a student at a further education and training institution.

- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which may be imposed for assault.
- (3) A person may not conduct or participate in initiation practices at public and private further education and training institutions.
- (4) Any person who contravenes subsection (3) is guilty of misconduct and disciplinary action must be instituted against such a person.
- (5) In addition to subsection (4), a person may institute civil action against a person or a group who manipulated and forced that person to conduct or participate in any initiation practices.
- (6) For the purposes of this Act, "initiation practices" 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) undermines 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.
- (7) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (6), the relevant disciplinary authority referred to in subsection (4) must take into account the right of the student not to be subjected to such practices.

[S. 16A inserted by s. 15 of Act No. 50 of 2002.]

Admission to public further education and training institutions

17. (1) Subject to policy the council of a public further education and training institution determines the admission policy of the institution after consulting the academic board of the institution.
- (2) The council must publish the admission policy and make it available on request.
- (3) The admission policy of a public further education and training institution may not unfairly discriminate in any way and must provide appropriate measures for the redress of past inequalities.
- (4) The council may, subject to provincial policy and after consultation with the academic board –
 - (a) determine admission requirements in respect of particular further education and training programmes;
 - (b) determine the number of students who may be admitted for a particular further education and training programme and the manner of their selection;
 - (c) determine the minimum requirements for re-admission to study at the public further education and training institution concerned; and
 - (d) refuse re-admission of a student who fails to satisfy such minimum requirements for re-admission.
- (5) The council of a public further education and training institution must ensure that the institution is accessible to disabled students where reasonably practicable.

Chapter 4 FUNDING OF PUBLIC FURTHER EDUCATION AND TRAINING

Responsibility of State

18. (1) The Member of the Executive Council must from money appropriated for this purpose by the provincial legislature fund public further education and training on a fair, equitable and transparent basis, apart from further education and training offered in a school which is governed and funded in terms of the South African Schools Act.
- (2) The Member of the Executive Council may, subject to the norms and standards determined in terms of section 19, impose –
 - (a) any reasonable condition in respect of an allocation of funding contemplated in subsection (1); and
 - (b) different conditions in respect of different public further education and training institutions, different further education and training programmes or different allocations, if there is a reasonable basis for such differentiation.
- (3) The Member of the Executive Council must, after consultation with the appropriate advisory body in a province, determine appropriate measures for the redress of past inequalities.

- (4) The Member of the Executive Council must, on an annual basis, provide sufficient information to public further education and training institutions regarding the funding referred to in subsection (1) to enable the institutions to prepare their budgets for the next financial year.

Norms and standards for funding of public further education and training

19. Subject to the Constitution and this Act, the Minister must, in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996), determine norms and standards for the funding of public further education and training, after consultation with the Council of Education Ministers, the Financial and Fiscal Commission, the Minister of Finance and the NBFET.

Funds of public further education and training institutions

20. (1) The funds of a public further education and training institution consist of –
- (a) funds allocated by the State;
 - (b) any donations or contributions received by the institution;
 - (c) money raised by the institution;
 - (d) money raised by means of loans subject to the approval of the Member of the Executive Council;
 - (e) income derived from investments;
 - (f) money received for services rendered to any other institution or person;
 - (g) money payable by students for further education and training programmes provided by the institution;
 - (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
 - (i) other funds from any other source.
- (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.

[S. 20 amended by s. 13 of Act No. 57 of 2001. Sub-s. (2) substituted by s. 13 of Act No. 57 of 2001.]

Financial records and statements of public further education and training institutions

21. (1) The council of a public further education and training institution must, in the manner determined by the Member of the Executive Council –
- (a) keep records of all its proceedings; and
 - (b) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the public further education and training institution as a whole, of its substructures and of other bodies operating under its auspices.
- (2) The council of a public further education and training institution must appoint an auditor to audit the records and financial statements referred to in this section.
- (3) The council of a public further education and training institution must, in respect of the preceding financial year and by a date or dates and in the manner determined by the Member of the Executive Council provide the Member of the Executive Council with –
- (a) a report on the overall governance of the institution;
 - (b) a duly audited statement of income and expenditure; and
 - (c) a balance sheet and cash flow statement.
- (4) The council of a public further education and training institution must provide the Member of the Executive Council with such additional information as the Member of the Executive Council may reasonably require.

Action on failure of council to comply with Act or certain conditions

22. (1) If the council of a public further education and training institution fails to comply with any provision of this Act under which an allocation from money appropriated by the provincial legislature is paid to the institution, or with any condition subject to which any allocation is paid to the institution, the Member of the Executive Council may call upon the council to comply with the provision or condition within a specified period.
- (2) If the council thereafter fails to comply with the provision or condition timeously, the Member of the Executive Council may withhold payment of any portion of any allocation appropriated by the provincial legislature in respect of the public further education and training institution concerned.
- (3) Before taking action under subsection (2), the Member of the Executive Council must –
- (a) give notice to the council of the public further education and training institution concerned of the intention so to act;
 - (b) give such council a reasonable opportunity to make representations; and
 - (c) consider such representations.

- (4) If the Member of the Executive Council acts under subsection (2), a report regarding the action must be tabled in the provincial legislature by the Member of the Executive Council as soon as reasonably practical after the action.

Chapter 5 PRIVATE FURTHER EDUCATION AND TRAINING INSTITUTIONS

Designation of registrar

- 23.** (1) The Director-General is the registrar of private further education and training institutions.
[Sub-s. (1) substituted by s. 16 of Act No. 50 of 2002.]
- (2) The Minister may designate any other employee of the Department of Education to assist the registrar in the performance of his or her functions in terms of this Act.
[Sub-s. (2) substituted by s. 16 of Act No. 50 of 2002.]
- (3) The registrar may delegate any of his or her functions in terms of this Act to any employee contemplated in subsection (2).

Registration of private further education and training institution

- 24.** (1) A person other than a public further education and training institution or an organ of state may not provide further education and training unless that person is –
- (a) registered or recognised as a juristic person in terms of the Companies Act, 1973 (Act No. 61 of 1973); and
 - (b) registered or provisionally registered as a private further education and training institution in terms of this Act.
- [S. 24 substituted by s. 17 of Act No. 50 of 2002.]

Application for registration

- 25.** An application for registration as a private further education and training institution must be made to the registrar in the manner determined by the registrar and must be accompanied by the prescribed fee.

Requirements for registration

- 26.** (1) The registrar must register an applicant as a private further education and training institution if the registrar has reason to believe that the applicant –
- (a) is financially capable of satisfying its obligations to prospective students;
 - (b) with regard to all its further education and training programmes –
 - (i) will maintain acceptable standards that are not inferior to standards at comparable public further education and training institutions;
 - (ii) will comply with the requirements of the General and Further Education and Training Quality Assurance Council; and

[Sub-para. (ii) substituted by s. 18 of Act No. 50 of 2002.]

 - (iii) complies with any other reasonable requirement prescribed by the Minister; and
- [Sub-para. (iii) substituted by s. 18 of Act No. 50 of 2002.]
- (c) will not unfairly discriminate against any person on the grounds of race, gender or disability.
- (2) The registrar may require further information, particulars and documents in support of any application for registration.

Determination of application for registration

- 27.** (1) The registrar –
- (a) must consider any application for registration as a private further education and training institution and any further information, particulars or documents provided by the applicant;
 - (b) may, when considering the application, differentiate between a foreign juristic person and local juristic person with regard to matters such as its scope and range of operations, its size and its institutional configuration; and
 - (c) may register the applicant as a private further education and training institution if the requirements for registration contemplated in section 26 are fulfilled.
- [Sub-s. (1) substituted by s. 19(a) of Act No. 50 of 2002.]

- (2) (a) If the registrar decides to grant the application, the registrar must –
- (i) enter the applicant's name in the appropriate register of private further education and training institutions;
 - (ii) issue a certificate of registration, stating the terms of such registration;
 - (iii) furnish the certificate to the applicant; and
 - (iv) as soon as practicable after the decision, publish the certificate of registration in the *Gazette*.
- (b) The registrar must notify the relevant Head of Department of the registration of a private further education and training institution in that province.
- (c) If the registrar decides not to grant the application, the registrar must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.
- (3) Notwithstanding subsection (1), the registrar may provisionally register an applicant, other than a foreign juristic person, who does not fulfill the requirements for registration contemplated in section 26, if the registrar believes that the applicant will be able to fulfill the relevant requirements within a reasonable period.

[Sub-s. (3) substituted by s. 19(b) of Act No. 50 of 2002.]

- (4) If the registrar provisionally registers an applicant under subsection (3), the registrar must –
- (a) determine the period within which the applicant must satisfy the requirements for registration;
 - (b) enter the applicant's name in the appropriate register of private further education and training institutions;
 - (c) issue a certificate of provisional registration, stating the terms and the duration of such registration;
 - (d) provide the certificate of provisional registration to the applicant; and
 - (e) as soon as practicable after the decision, publish the certificate of provisional registration in the *Gazette*.

[Sub-s. (4) substituted by s. 19(b) of Act No. 50 of 2002.]

- (5) The registrar may, on good cause shown, extend the period referred to in subsection (4)(a).
- (6) (a) If, on the expiry of the period referred to in subsection (4)(a) or any extension thereof, the applicant satisfies the requirements for registration specified by the registrar, the registrar must register the applicant in accordance with subsection (2)(a).
- (b) If, by the expiry of the period, the applicant fails to satisfy the requirements for registration specified by the registrar, the applicant's provisional registration lapses.

[Para. (b) substituted by s. 19(c) of Act No. 50 of 2002.]

Certificate of registration

28. (1) A private further education and training institution must conspicuously display –
- (a) its certificate of registration or provisional registration or a certified copy thereof on its premises; and
 - (b) its registration number and an indication that it is registered or provisionally registered on all its official documents.

[Sub-s. (1) substituted by s. 20 of Act No. 50 of 2002.]

- (2) If the registrar has cancelled the registration or provisional registration of a private further education and training institution in terms of section 35, the private further education and training institution must return the original certificate of registration or provisional registration to the registrar within 14 days of such cancellation.

[Sub-s. (2) substituted by s. 20 of Act No. 50 of 2002.]

Access to information

29. (1) Any person may inspect the register of private further education and training institutions and the auditor's report contemplated in section 30.
- (2) The registrar must furnish a certified copy of, or extract from, any of the documents referred to in subsection (1) to any person who has paid the prescribed fee.

Records and audits

30. (1) Every private further education and training institution must, in accordance with generally accepted accounting practice, principles and procedures –
- (a) keep books and records of income, expenditure, assets and liabilities; and
 - (b) prepare financial statements within three months after the end of its financial year including at least –
 - (i) a statement of income and expenditure for the previous year;
 - (ii) a balance sheet as at the end of the previous year; and
 - (iii) such other information as the registrar may reasonably require.

- (2) Every private further education and training institution must, within the period determined by the registrar –
 - (a) ensure that an annual audit of its books, records of account and financial statements is carried out by an auditor, who must conduct the audit in accordance with generally accepted auditing standards;
 - (b) furnish the registrar with a certified copy of the auditor's report in respect of the financial statements referred to in subsection (1); and
 - (c) furnish the registrar with any additional information, particulars or documents in the manner determined by the registrar.

Amendment of registration

31. A private further education and training institution may apply to the registrar to amend its registration or provisional registration –

- (a) in the manner determined by the registrar; and
- (b) by paying the prescribed fee.

[S. 31 amended by s. 21 of Act No. 50 of 2002.]

Requirements for amendment of registration and determination of application

32. (1) The registrar may not amend the registration of a private further education and training institution unless he or she is satisfied that such amendment is in the interests of further education and training and is compatible with the provisions of this Act.

(2) The registrar may require further information, particulars or documents in support of any application for such amendment.

(3) (a) If the registrar decides to grant the application, he or she must –

- (i) amend the certificate of registration or provisional registration accordingly;

[Sub-para. (i) substituted by s. 22 of Act No. 50 of 2002.]

- (ii) furnish a copy of the amended certificate to the applicant; and

- (iii) as soon as reasonably practicable after the decision, publish the amended certificate in the *Gazette*.

(b) If the registrar decides not to grant the application, he or she must advise the applicant in writing of the decision and furnish the applicant with written reasons for the decision.

Conditions for registration

33. (1) The registrar may impose any reasonable condition on a private further education and training institution in respect of –

- (a) its registration;
- (b) its provisional registration; or

[Para. (b) substituted by s. 23 of Act No. 50 of 2002.]

- (c) any amendment of its registration or provisional registration.

[Para. (c) substituted by s. 23 of Act No. 50 of 2002.]

(2) The registrar may impose different conditions under subsection (1) in respect of different institutions, if there is a reasonable basis for such differentiation.

Amendment or cancellation of conditions

34. Subject to section 36, the registrar may, on reasonable grounds, amend or cancel any condition imposed under section 33 or impose new conditions under that section.

Cancellation of registration

35. (1) Subject to section 36, the registrar may, on reasonable grounds, cancel any registration or provisional registration in terms of this Act.

[Sub-s. (1) substituted by s. 24 of Act No. 50 of 2002.]

(2) If the accreditation of any further education and training programme offered by a private further education and training institution is withdrawn, the registrar must review such further education and training institution's registration.

Steps before amendment or cancellation

36. The registrar may not act under section 34 or 35 unless he or she –

- (a) has informed the private further education and training institution of the intention so to act and the reasons therefor;

- (b) has granted the private further education and training institution and other interested persons an opportunity to make representations in relation to such action; and
- (c) has considered such representations.

Appeal to Minister

- 37.** (1) Any person having an interest may appeal to the Minister against any decision of the registrar in terms of this Chapter.
- (2) An appeal referred to in subsection (1) must be lodged with the Minister within 60 days of the date of the registrar's decision.
- (3) The Minister may, on good cause shown, extend the period within which an appeal may be noted against the decision of the registrar.
- (4)

[Sub-s. (4) deleted by s. 25 of Act No. 50 of 2002.]

Chapter 6 QUALITY ASSURANCE AND PROMOTION

Quality assurance and promotion in further education and training

- 38.** Subject to the norms and standards set by the Minister in terms of section 3 of the National Education Policy Act, 1996 (Act No. 27 of 1996), and by SAQA, the Director-General must –
- (a) promote quality assurance in further education and training; and
 - (b) assess and report on the quality of education and training provided at further education and training institutions.

Advice by NBFET

- 39.** (1) The NBFET must advise the Minister on quality promotion and assurance.
- (2) The Minister must –
- (a) consider any advice given by the NBFET; and
 - (b) provide reasons in writing to the NBFET if the Minister does not accept the advice.
- (3) The Minister may act without the advice of the NBFET if –
- (a) the matter is urgent; or
 - (b) the NBFET has failed to provide the advice within a reasonable time.
- (4) If the Minister acts as contemplated in subsection (3) the Minister must –
- (a) notify the NBFET of such action; and
 - (b) provide reasons in writing to the NBFET for such action.

Report on quality assurance

- 40.** An annual report on the quality of further education and training must be made within a reasonable time after the end of the academic year –
- (a) in respect of the country as a whole –
 - (i) by the Director-General; and
 - (ii) by NBFET; and
 - (b) in respect of a province, by the Head of Department.

Chapter 7 GENERAL

Duty of institutions to provide information

- 41.** (1) A further education and training institution must make information available for inspection by any person, in so far as such information is required for the exercise and protection of such person's rights.
- (2) Every further education and training institution must provide such information about the institution as is reasonably required by the Head of Department or the Director-General in consultation with the Head of Department.
- (3) The Head of Department, Director-General, any further education and training institution and any education institution which offers further education and training programmes must provide such information about the institution or quality of further education and training as is reasonably required by the NBFET.

Investigation at public further education and training institution

42. (1) The Member of the Executive Council may appoint a person to conduct an investigation at a public further education and training institution if –
- (a) the council of the institution requests the appointment of such a person; or
 - (b) circumstances arise at the institution that –
 - (i) involve financial or other maladministration of a serious nature; or
 - (ii) seriously undermine the effective functioning of the institution; and
 - (c) the council of the institution has failed to resolve such circumstances; and
 - (d) the appointment is in the interest of further education and training in an open and democratic society.
- (2) The person appointed in terms of subsection (1) must, within 30 days after appointment and on the terms of reference specified by the Member of the Executive Council –
- (a) conduct an investigation at the public further education and training institution concerned;
 - (b) report in writing to the Member of the Executive Council on the findings of his or her investigation; and
 - (c) suggest appropriate measures to resolve the matter.
- (3) The Member of the Executive Council must as soon as practicable furnish a copy of the report referred to in subsection (2) to the council concerned.

Name change of public further education and training institution

43. The council of a public further education and training institution may, with the approval of the Member of the Executive Council and by notice in the *Provincial Gazette*, change the name of such public further education and training institution.

Offences

44. (1) Any person other than a further education and training institution, organ of state or a school, who, without the authority of a further education and training institution –
- (a) offers or pretends to offer any further education and training programme or part thereof;
 - (b) confers a qualification which purports to have been granted by a further education and training institution, or in collaboration with a further education and training institution; or
 - (c) purports to perform an act on behalf of a further education and training institution,
- is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.
- (2) Any person who pretends that a qualification has been awarded to him or her by a further education and training institution, whereas in fact no such qualification has been so awarded, is guilty of an offence and is liable on conviction to any sentence which may be imposed for fraud.
- (3) Any person who contravenes section 24 or 28(2), is guilty of an offence and is liable on conviction to a fine or imprisonment not exceeding five years or to both such fine and imprisonment.
- (4) Any private further education and training institution which does not comply with section 28(1) is guilty of an offence and is liable on conviction to a fine not exceeding R20 000.

Limitation of liability

45. Neither the State, the NBFET nor any person appointed in terms of this Act is liable for any loss or damage suffered by any person as a result of any act performed or omitted in good faith in the course of performing any function for which that person was appointed in terms of this Act.

Delegation of powers

46. (1) The Minister may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act to –
- (a) the NBFET;
 - (b) any employee of the Department; or
 - (c) any organ of State.
- (2) The Member of the Executive Council may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act, to –
- (a) any employee in a provincial department responsible for education and training; or
 - (b) any organ of State.
- (3) The Director-General may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under this Act and the performance of any of his or her duties in terms of this Act to any employee in the Department.

- (4) The council of a further public education and training institution may, on such conditions as it may determine, delegate the exercise of any of its powers under this Act and the performance of any of its duties in terms of this Act, to other internal structures, or members of staff of such institution.

Regulations

47. The Minister may make regulations consistent with this Act on –
- (a) safety measures at public and private further education and training institutions;
 - (b) a national process and procedures for the assessment of student achievement for public and private further education and training institutions;
 - (c) a national process for the assessment, monitoring and evaluation of education in public and private further education and training institutions;
 - (d) initiation practices at public and private further education and training institutions;
 - (e) any matter which the Minister is empowered or required to prescribe by regulation in terms of this Act; or
 - (f) any other matter in respect of which regulations are necessary or expedient in order to achieve the purpose of this Act.

[S. 47 substituted by s. 26 of Act No. 50 of 2002.]

Conflict with other laws

48. This Act prevails over the South African Certification Council Act, 1986 (Act No. 85 of 1986), if there is a conflict between any provisions dealing with further education and training.

Chapter 8 TRANSITIONAL AND OTHER ARRANGEMENTS

Existing institutions, structures and bodies

49. (1) An existing institution which provides further education and training programmes, continues to exist under the authority and governance by which it was established, or is regarded as having been established prior to the commencement of this Act until such institution is declared to be a further education and training institution under section 4.
- (2) Any structure or body which existed at an institution offering further education and training programmes prior to the commencement of this Act continues to exist until it is replaced by a structure contemplated in section 8.
- (3) Further education and training programmes provided in a school or a higher education institution, contemplated in the Higher Education Act, 1997 (Act No. 101 of 1997), are subject to the quality assurance and promotion as determined in Chapter 6 of this Act.
- (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.

[Sub-s. (4) added by s. 14 of Act No. 57 of 2001.]

- (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.

[Sub-s. (5) added by s. 14 of Act No. 57 of 2001.]

Abolition of Correspondence College Council Fidelity Guarantee Fund and Committee of Technical College Principals

50. (1) The Correspondence College Council established in terms of section 2 of the Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and the Fidelity Guarantee Fund established by section 20 of that Act, continue to exist and to perform their functions as if that Act had not been repealed, until a date determined by the Minister by notice in the *Gazette*.
- (2) The manner of winding up the Correspondence College Council and Fidelity Guarantee Fund, and the manner in which existing claims against the Fund and any remaining balance in the Fund are to be dealt with, must be determined by the Minister by notice in the *Gazette*.
- (3) The Committee of Technical College Principals established in terms of section 36 of the Technical Colleges Act, 1981 (Act No. 104 of 1981), continues to exist and to perform its functions as if that section had not been repealed, until a date determined by the Minister by notice in the *Gazette*.

Exemption of existing private institutions

51. Sections 24 and 44(3) and (4) do not apply to a person who was providing further education and training programmes at a private institution immediately prior to the date determined by the Minister by notice in the *Gazette*.

[S. 51 substituted by s. 19 of Act No. 53 of 2000.]

Repeal of laws

52. The Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and sections 1B and 36 of the Technical Colleges Act, 1981 (Act No. 104 of 1981), are hereby repealed.

Short title

53. This is the Further Education and Training Act, 1998.
-

**SECTION 5:
SOUTH AFRICAN COUNCIL FOR
EDUCATORS ACT
31 OF 2000**

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SOUTH AFRICAN COUNCIL FOR EDUCATORS ACT 31 of 2000

[ASSENTED TO 26 JULY, 2000]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 2 AUGUST, 2000]

ACT

To provide for the continued existence of the South African Council for Educators; to provide anew for the functions of the said council; and to provide anew for the composition of the said council; and to provide for matters incidental thereto.

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

ARRANGEMENT OF SECTIONS

Chapter 1 INTERPRETATION AND OBJECTS OF ACT

1. Definitions
2. Objects of Act
3. Application of Act

Chapter 2 CONTINUATION, POWERS AND DUTIES, COMPOSITION AND GOVERNANCE OF COUNCIL

4. Continuation of council
5. Powers and duties of council
6. Composition of council
7. Chairperson and deputy chairperson of council
8. Term of office of members
9. Termination of office of chairperson, deputy chairperson or member
10. Filling of vacancies
11. Executive committee
12. Registration committee
13. Professional development committee
14. Disciplinary committee
15. Committees of council
16. Meetings, and procedure at meetings of council and committees
17. Appointment and functions of chief executive officer and staff
18. Remuneration and allowances of members of council and committees
19. Funds of council
20. Annual report

Chapter 3 REGISTRATION OF EDUCATORS

21. Compulsory registration of educators
22. Application for registration
23. Removal of name from register
24. Registration certificates

Chapter 4 GENERAL

25. Transitional provisions
26. Information to be furnished to council
27. Offences and penalties
28. Repeal of law
29. Short title.

Chapter 1 INTERPRETATION AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise –

“**adult learning centre**” means a public or private centre which provides basic education to adults and of which the educators are employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

“**council**” means the South African Council for Educators referred to in section 4;

“**educator**” means any person referred to in section 3 and who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and educational psychological services, at an institution;

“**further education and training institution**” means a public or private further education and training institution defined in section 1 of the Further Education and Training Act, 1998 (Act No. 98 of 1998), or any technical college, youth college, community college, state college or other college which is wholly or partly funded by the state;

“**institution**” means any school, further education and training institution or adult learning centre;

“**member**” means a member of the council appointed in terms of section 6;

“**Minister**” means the Minister of Education;

“**organised profession**” means all trade unions or federations of trade unions which are members of the Education Labour Relations Council;

“**school**” means a public or independent school defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996).

Objects of Act

2. The objects of this Act are –

- (a) to provide for the registration of educators;
- (b) to promote the professional development of educators; and
- (c) to set, maintain and protect ethical and professional standards for educators, by means of the functioning of the council.

Application of Act

3. This Act applies to all educators appointed –

- (a) in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998);
- (b) in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);
- (c) at an independent school;
- (d) in terms of the Further Education and Training Act, 1998 (Act No. 98 of 1998);
- (e) at a further education and training institution;
- (f) at an adult learning centre.

Chapter 2 CONTINUATION, POWERS AND DUTIES, COMPOSITION AND GOVERNANCE OF COUNCIL

Continuation of council

4. The South African Council for Educators referred to in section 27 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), continues to exist as a juristic person despite the repeal of that section by section 28 of this Act.

Powers and duties of council

5. Subject to this Act and the National Education Policy Act, 1996 (Act No. 27 of 1996), the council –

- (a) with regard to the registration of educators –
 - (i) must determine minimum criteria and procedures for registration or provisional registration;
 - (ii) must consider and decide on any application for registration or provisional registration;
 - (iii) must keep a register of the names of all persons who are registered or provisionally registered;
 - (iv) must determine the form and contents of the registers and certificates to be kept, maintained or issued in terms of this Act, the periods within which they must be reviewed and the manner in which alterations thereto may be effected; and
 - (v) may prescribe the period of validity of the registration or provisional registration;

- (b) with regard to the promotion and development of the education and training profession –
 - (i) must promote, develop and maintain a professional image;
 - (ii) must advise the Minister on matters relating to the education and training of educators, including but not limited to –
 - (aa) the minimum requirements for entry to all the levels of the profession;
 - (bb) the standards of programmes of pre-service and in-service educator education;
 - (cc) the requirements for promotion within the education system;
 - (dd) educator professionalism;
 - (iii) must research and develop a professional development policy;
 - (iv) must promote in-service training of all educators;
 - (v) may develop resource materials to initiate and run, in consultation with an employer, training programmes, workshops, seminars and short courses that are designed to enhance the profession;
 - (vi) may compile, print and distribute a professional journal and other publications;
 - (vii) may establish a professional assistance facility for educators;
- (c) with regard to professional ethics –
 - (i) must compile, maintain and from time to time review a code of professional ethics for educators who are registered or provisionally registered with the council;
 - (ii) must determine a fair hearing procedure;
 - (iii) subject to subparagraph (ii), may –
 - (aa) caution or reprimand;
 - (bb) impose a fine not exceeding one month's salary on; or
 - (cc) remove from the register for a specified period or indefinitely, or subject to specific conditions, the name of,
an educator found guilty of a breach of the code of professional ethics; and
 - (iv) may suspend a sanction imposed under subparagraph (iii) (bb) or (cc) for a period and on conditions determined by the council;
- (d) with regard to fees –
 - (i) must, in consultation with the Minister, determine fees payable to the council by registered educators and educators applying for registration;
 - (ii) may require from the relevant employers to deduct fees from the salaries of educators and to pay it over to the council;
 - (iii) may, after a fair hearing –
 - (aa) caution or reprimand; or
 - (bb) remove from the register for a specified period or indefinitely, or subject to specific conditions, the name of,
an educator found guilty of failing to pay the fees determined by the council; and
 - (iv) may suspend a sanction imposed under subparagraph (iii) (bb) for a period and on conditions determined by the council; and
- (e) in general –
 - (i) must advise the Minister on any educational aspect which the Minister may request it to advise on;
 - (ii) may appoint staff and determine their conditions of service;
 - (iii) may establish committees and assign duties to them;
 - (iv) must perform any duty which is necessary for the proper functioning of the council; and
 - (v) may advise the Minister on any relevant educational aspect.

Composition of council

6. (1) The council consists of the following members, appointed by the Minister with due consideration to representation in respect of race, gender, disability and geographic distribution:
- (a) The chairperson, subject to section 7;
 - (b) 18 educators collectively nominated by the organised profession;
 - (c) five persons nominated by the Department of Education;
 - (d) two persons nominated by the national associations representing school governing bodies contemplated in section 20 (3) of the South African Schools Act, 1996 (Act No. 84 of 1996);
 - (e) one person nominated by the Council on Higher Education established by section 4 of the Higher Education Act, 1997 (Act No. 101 of 1997);

- (f) one person nominated by the councils of further education and training institutions contemplated in section 8 of the Further Education and Training Act, 1998 (Act No. 98 of 1998);
 - (g) one person nominated by national bodies representing independent or private institutions recognised by the Minister; and
 - (h) the chief executive officer of the council, subject to section 17.
- (2) The members referred to in subsection (1) (b) must consist of educators, including principals, employed at or in each of the following institutions or sectors:
- (a) A public ordinary school;
 - (b) an independent school;
 - (c) a public further education and training institution;
 - (d) a private further education and training institution;
 - (e) early childhood development sector;
 - (f) an adult learning centre;
 - (g) learners with special education needs sector.
- (3) If the organised profession is unable to reach agreement collectively with regard to the 18 nominations referred to in subsection (1) (b), the Minister must appoint 18 members from the nominations by individual organisations from the organised profession.
- (4) When any nomination becomes necessary in terms of subsection (1), the council must invite the relevant bodies or authorities in writing to nominate persons who qualify for nomination within a specified period of at least 30 days.
- (5) No person may be nominated or appointed as a member of the council if that person –
- (a) is removed from an office of trust by a court of law; or
 - (b) is convicted of an offence involving dishonesty or an offence for which the sentence imposed is imprisonment without the option of a fine.
- (6) If the council receives any nomination it must, within 30 days after the expiry date specified in the invitation, submit the nomination to the Minister.
- (7) If the council receives no nominations or receives insufficient nominations within the period specified in the invitation, the Minister may, after consultation with the council, appoint persons who meet the requirements up to the number required, as members.
- (8) The Minister must by notice in the *Gazette*, as soon as practicable after the appointment of the members, publish the name of every person appointed as a member, together with the date from which the appointment takes effect and the period for which the appointment is made.

Chairperson and deputy chairperson of council

7. (1) (a) At the first meeting in a new term of office of members, the members must nominate five persons, of whom one must be appointed by the Minister as chairperson.
- (b) A person who is not a member may be nominated by the council for appointment as chairperson.
- (2) The chief executive officer must act as chairperson until such time as a chairperson is appointed.
- (3) After the appointment of the chairperson by the Minister, the members must elect one of their number as deputy chairperson of the council to act as chairperson when the chairperson is not available.
- (4) The chairperson and deputy chairperson hold office during the term of office of the members.
- (5) In the event of the chairperson being appointed from the members of the council, the vacancy that arises must be filled in accordance with section 10.
- (6) Whenever both the chairperson and the deputy chairperson are not available, the members must, from among themselves, elect a member to act as chairperson.

Term of office of members

8. Subject to section 10 (2), all members, excluding the chief executive officer, hold office for a period of four years.

Termination of office of chairperson, deputy chairperson or member

9. The term of office of the chairperson, deputy chairperson or any other member is terminated if the member –
- (a) resigns by giving notice in writing to the Minister and the council;
 - (b) is absent from three consecutive meetings of the council or from a committee of which the member is a member without leave of the relevant chairperson, or in the case of the chairperson, the leave of the executive committee of the council;
 - (c) brings the council or the profession into disrepute;
 - (d) no longer meets the requirements referred to in section 6 (1) and (2);
 - (e) (i) is declared insolvent;

- (ii) is removed from an office of trust by a court of law;
- (iii) is convicted of an offence involving dishonesty or an offence for which the sentence imposed is imprisonment without the option of a fine; or
- (iv) is declared by a competent court to be of an unsound mind or under a legal disability.

Filling of vacancies

10. (1) If the term of office of a member is terminated in terms of section 9, the vacancy must be filled, with the necessary changes, in accordance with section 6.
- (2) The term of office of a member appointed in terms of subsection (1), is the remainder of the term of office of the relevant predecessor.
- (3) (a) If the office of chairperson becomes vacant in terms of section 9, the remaining members and the Minister must act in accordance with section 7 (1).
- (b) The person so appointed as chairperson holds office for the remainder of the term of office of the relevant predecessor.

Executive committee

11. (1) The executive committee of the council consists of –
- (a) the chairperson of the council, who is the chairperson of the committee;
 - (b) six other members appointed by the council of whom at least one is a member referred to in section 6 (1) (c); and
 - (c) the chief executive officer.
- (2) The council must, subject to this Act, determine the functions of the executive committee.
- (3) A decision of the executive committee is regarded as a decision of the council, unless the decision is revoked by the council at its ensuing meeting.
- (4) Anything done in implementing the decision of the executive committee before it is revoked by the council, is not invalid by reason only of the fact that the decision is subsequently revoked by the council.

Registration committee

12. (1) The registration committee of the council consists of –
- (a) the chairperson, who is a member of, and appointed by, the council;
 - (b) four other members appointed by the council; and
 - (c) the chief executive officer.
- (2) Subject to Chapter 3, the registration committee must –
- (a) consider and make recommendations to the council on minimum criteria and procedures for the registration or provisional registration of educators;
 - (b) consider and make recommendations to the council on any application for registration or provisional registration;
 - (c) recommend the period of validity of the registration of an educator to the council; and
 - (d) exercise or perform any other power or duty delegated or assigned to it by the council.
- (3) The registration committee must keep a record of its proceedings.

Professional development committee

13. (1) The professional development committee of the council consists of –
- (a) the chairperson, who is a member of, and appointed by, the council;
 - (b) four other members appointed by the council, of whom at least one must be a member referred to in section 6 (1) (c); and
 - (c) the chief executive officer.
- (2) The professional development committee must, subject to this Act –
- (a) consider and make recommendations to the council in relation to powers and duties contemplated in section 5 (b); and
 - (b) exercise or perform any other power or duty delegated or assigned to it by the council.
- (3) The professional development committee must keep a record of its proceedings.

Disciplinary committee

14. (1) The disciplinary committee of the council consists of –
- (a) the deputy chairperson of the council, who is the chairperson of the committee;

- (b) four other members appointed by the council, of whom at least one must be a member referred to in section 6 (1) (c); and
 - (c) the chief executive officer.
- (2) The disciplinary committee must –
- (a) compose, maintain and from time to time review a code of professional ethics;
 - (b) ensure that an alleged breach of the code of professional ethics is investigated;
 - (c) establish panels to investigate and hear complaints against educators;
 - (d) ensure that a fair hearing, in accordance with the procedure determined by the council in terms of section 5 (c) (ii), is conducted;
 - (e) on the basis of a recommendation of the relevant panel, recommend a finding and appropriate action, if any, to the council; and
 - (f) exercise or perform any other power or duty delegated or assigned to it by the council.
- (3) A relevant panel must make a recommendation to the disciplinary committee in regard to a finding, and, if any, disciplinary action concerning a complaint referred to it.
- (4) For the purposes of the investigation and hearing, a panel may summon any person who –
- (a) may be able to give information of material importance concerning the subject of the investigation or hearing; or
 - (b) has possession, custody or control of or over any book, document or object which may have a bearing on the matter,
- to appear before the panel and to produce the book, document or object, if any.
- (5) The summons must be in a form prescribed by the council and be signed by the chairperson of the disciplinary committee or the chief executive officer and be served on a person by way of –
- (a) delivery by hand;
 - (b) telefax; or
 - (c) registered post.
- (6) The date on which the summons is served is regarded as, in a case of –
- (a) service by hand, the date of delivery;
 - (b) service by telefax, the dispatching date reflected on the telefax; and
 - (c) service by registered post, the date on which the letter was signed for,
- in the absence of proof to the contrary.
- (7) The disciplinary committee and a panel must keep a record of the proceedings of every investigation and disciplinary hearing.

Committees of council

15. (1) The council may establish other committees to assist in the performance of its functions and may co-opt other persons to attend committee meetings on the basis of their expertise.
- (2) Any committee, other than the executive committee, may include persons who are not members of the council.
- (3) Subject to sections 11 and 14 the chairperson of a committee must be appointed by the council from among its members.
- (4) Members of committees referred to in subsection (1) may be appointed for such period as the council may determine.
- (5) Members of a panel referred to in section 14 (2) (c) need not be members of the council.

Meetings, and procedure at meetings of council and committees

16. (1) The council must hold at least two meetings during each calendar year at its head office, and may in addition hold such other meetings as the chairperson of the council may determine.
- (2) The council may make rules relating to the procedure at meetings of the council and its committees, and on any other matter necessary for the performance of its functions.
- (3) A majority of the members of the council or a committee constitutes a quorum at any meeting of the council or committee.
- (4) (a) A decision of the majority of the members of the council or of a committee present at any meeting constitutes a decision of the council or committee.
- (b) In the event of an equality of votes, the presiding member has a casting vote in addition to a deliberative vote.
- (5) A decision taken by the council or a committee is not invalid by reason only of a vacancy on the council or a committee, as the case may be, at the time when the decision was taken.

Appointment and functions of chief executive officer and staff

17. (1) The council must appoint a chief executive officer and may appoint other employees as it may deem necessary to assist it in the performance of its functions.
- (2) The chief executive officer is the accounting officer of the council.
- (3) The chief executive officer is, subject to the directions and in accordance with the policy of the council, responsible for the –
- (a) formation and development of an efficient administration;
 - (b) organisation, control, management and discipline of the staff; and
 - (c) implementation of the decisions of the council.
- (4) As accounting officer the chief executive officer is responsible for –
- (a) all income and expenditure of the council;
 - (b) all assets and the discharging of all liabilities of the council; and
 - (c) the proper and diligent implementation of the operational plans of the council.
- (5) The council is the employer and must determine the conditions of service of its employees.

Remuneration and allowances of members of council and committees

18. The chairperson of the council, the deputy chairperson, every member and any person appointed as a member of a committee or panel who is not in the service of the State may, in respect of services rendered by them in connection with the affairs of the council, a committee or panel, be paid by the council –
- (a) such travelling, subsistence and other allowances; and
 - (b) in the case of the chairperson of the council, such additional remuneration,
- as the council may determine.

Funds of council

19. (1) The funds of the council consist of –
- (a) compulsory fees;
 - (b) money received from donations, contributions, interest or fines; and
 - (c) other money received by the council from any other source.
- (2) The council –
- (a) must during each financial year, at such time and in such manner as the Minister may determine, submit to the Minister for approval a detailed statement of its estimated income and expenditure for the ensuing financial year;
 - (b) may during any financial year submit to the Minister for approval adjusted statements of its estimated income and expenditure; and
 - (c) may not incur any expenditure which exceeds the total amount approved in terms of paragraphs (a) and (b).
- (3) If the Minister does not approve the statement of estimated income and expenditure of the council, the Minister must request the council to submit a revised statement of its estimated income and expenditure within a specified period.
- (4) (a) The funds contemplated in subsection (1) must be used by the council in accordance with the approved statement referred to in subsection (2).
- (b) Any unexpended balance must be carried forward as a credit to the following financial year.
- (5) Subject to subsection (4), the council may invest any portion of its funds in such manner as the council may approve.
- (6) The books of account and financial statements of the council must be audited at the end of each financial year by a chartered accountant registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), appointed by the council.
- (7) A copy of the audited financial statements must be submitted to the Minister within three months after the end of the council's financial year.

Annual report

20. (1) The council must, within three months after the end of each financial year, submit a report to the Minister on the performance of its functions during that financial year.
- (2) The Minister must table the report in Parliament as soon as is reasonably practicable.

Chapter 3
REGISTRATION OF EDUCATORS

Compulsory registration of educators

21. (1) A person who qualifies for registration in terms of this Act must register with the council prior to being appointed as an educator.
- (2) No person may be employed as an educator by any employer unless the person is registered with the council.

Application for registration

22. (1) (a) An application for registration must be made to the council in the manner and form determined by the council.
- (b) The applicant must submit the documentation and information required by the council together with the registration fee referred to in section 5 (d) (i).
- (2) The council must consider an application for registration in terms of the requirements for registration determined by the council.
- (3) If an applicant for registration satisfies the requirements referred to in subsection (1), the council must register the applicant and issue a registration certificate to the educator.
- (4) If an applicant does not satisfy all the requirements but the council is of the opinion that the requirements will be satisfied within a reasonable time, the council may register the applicant provisionally on such conditions as the council may determine.
- (5) When an educator who is provisionally registered as contemplated in subsection (4) satisfies all the requirements for registration and the conditions referred to in that subsection, the council must register the educator in accordance with subsection (3).
- (6) If an educator referred to in subsection (4) does not satisfy the requirements for registration within the period specified, the provisional registration lapses and the name of the person is removed from the register.
- (7) The period for which an educator is provisionally registered may be extended by the council, and different conditions in respect of different applicants may be determined if there is a reasonable basis for the differentiation.
- (8) Different categories of registration may be determined by the council –
- (a) to allow for special circumstances of different sectors in education; or
- (b) if there is a reasonable basis for such differentiation.

Removal of name from register

23. (1) The council may direct the chief executive officer to remove the name of an educator from the register if –
- (a) after having been registered, the relevant qualification of the educator is withdrawn or cancelled by the higher education institution which issued it;
- (b) the educator was registered by error or by means of fraud;
- (c) the educator was found guilty of a breach of the code of professional ethics;
- (d) the educator requests deregistration, permanently or for a specified period;
- (e) the educator fails to pay the fees prescribed by the council within a specified period; or
- (f) the educator dies.
- (2) Notice of the removal of the name of an educator from the register must be given by the chief executive officer to the educator concerned by way of certified mail addressed to the relevant address appearing in the register.
- (3) The name of an educator contemplated in subsection (1) (a), (b), (c) and (e) may not be removed from the register unless the educator was given a reasonable opportunity to make representations to the council.
- (4) As from the date on which notice contemplated in subsection (2) has been given to the educator any registration certificate issued to the educator concerned is regarded to be cancelled.

Registration certificates

24. (1) A registration certificate must be issued and sent to the educator upon registration by the council.
- (2) If the chief executive officer is satisfied, on proof submitted by a registered educator, that a registration certificate has been destroyed or lost, a duplicate registration certificate must be issued to that educator upon payment of the fee prescribed by the council.

Chapter 4 GENERAL

Transitional provisions

25. (1) The terms of office of the members of the council in office immediately prior to the commencement of this Act, expire on the day prior to the date on which the appointment of the members takes effect in terms of section 6 (8).
- (2) Any function performed by the council prior to the commencement of this Act, is regarded to have been performed in terms of the corresponding provision of this Act.
- (3) Despite the provisions of subsection (2), any disciplinary proceedings instituted against an educator for an alleged breach of the code of professional ethics prior to the commencement of this Act must be continued and concluded in terms of the procedure determined in terms of Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- (4) The constitution, registration procedure, code of professional ethics and other procedures of the council existing immediately prior to the commencement of this Act, remain in force until amended or repealed by the council under this Act, except where they are in conflict with the provisions of this Act.
- (5) The compulsory registration fees and other fees payable to the council immediately prior to the commencement of this Act, remain in force until amended or repealed by the council under this Act.
- (6) The agreements of employment existing immediately prior to the commencement of this Act between the employees of the council, and the council, continue to exist subject to applicable labour law.
- (7) Practising educators to whom the provisions of the Employment of Educators Act, 1998 (Act No. 76 of 1998), do not apply and who are required in terms of this Act to register are, subject to subsection (8), regarded to be provisionally registered with the council, irrespective of their qualifications.
- (8) Provisional registration contemplated in subsection (7) remains valid until a date determined by the Minister, prior to which date the educators concerned must apply for and obtain registration in terms of Chapter 3 in order to remain registered.

Information to be furnished to council

26. (1) A higher education institution and the employer of an educator must furnish the council, at its request, with such information as is reasonably required by the council for the performance of its functions.
- (2) In each case where disciplinary steps are taken against any educator by the employer resulting in a sanction other than a caution or reprimand, a certified summary of the record of the proceedings at the hearing and of the sanction imposed must be forwarded to the council by such employer.

Offences and penalties

27. Any person who –
- (a) has been duly summoned under section 14 (5) and who fails without sufficient cause –
- (i) to attend at the time and place specified in the summons; or
- (ii) to remain in attendance until excused by the panel from further attendance;
- (b) refuses to be sworn or to affirm as a witness; or
- (c) fails without sufficient cause –
- (i) to answer fully and satisfactorily any question lawfully put to that person; or
- (ii) to produce any book, document or object in that person's possession or custody or under that person's control which that person was required to produce in terms of the said section 14 (5),
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Repeal of law

28. Chapter 6 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), is hereby repealed.

Short title

29. This Act is called the South African Council for Educators Act, 2000.
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THE COMPOSITION, ADMINISTRATION AND FUNCTIONING FOR THE SOUTH AFRICAN COUNCIL FOR EDUCATORS

G.N. R1293 of 1999 published in Government Gazette No. 20581 dated 27 October 1999

THE COMPOSITION, ADMINISTRATION AND FUNCTIONING OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS

I, Mohammed Valli Moosa, acting Minister of Education, acting under section 30 read with section 35 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), after consultation with the bodies referred to in section 6 of the National Education Policy Act, 1996 (Act No. 27 of 1996), hereby provide the regulations for the composition, administration and functioning of the South African Council for Educators (SACE), as set out in the Schedule.

MR MV MOOSA
Acting Minister of Education
October 1999

SCHEDULE

THE SOUTH AFRICAN COUNCIL FOR EDUCATORS REGULATIONS

Definitions

1. In these regulations, unless the context indicates otherwise, words or expressions as defined in the Employment of Educators Act, 1998 (Act No. 78 of 1998) will have the same meaning.

Composition of the South African Council for Educators

2. (1) The South African Council for Educators consists of –
 - (a) two co-chairpersons appointed by the Minister;
 - (b) thirty members appointed by the trade unions which are parties to the Education Labour Relations Council;
 - (c) fifteen members appointed by the Minister, and
 - (d) the chief executive officer appointed by the South African Council for Educators in terms of section 28(1)(i) of the Act.
- (2) The members contemplated in subregulation (1)(c) shall include representatives of employers of educators contemplated in section 3(1) to (3) of the Act.
- (3) The current chairpersons and members of the South African Council for Educators continue to perform the functions which they performed prior to the commencement of these regulations until their current terms of office expire.

Term of office of co-chairpersons and members

3. (1) The co-chairpersons, and all members of the South African Council for Educators, excluding the chief executive officer, hold office for a period of two years.
- (2) The Minister may extend the term of office of the co-chairpersons and members of the South African Council for Educators for a period of not more than twelve months.

Vacation of office by members

4. A member vacates office if-
 - (a) his or her estate is sequestrated or the member compromises with his or her creditors unless the South African Council for Educators decides otherwise;
 - (b) he or she is absent for more than two consecutive ordinary meetings of the South African Council for Educators without the permission of either one of the co-chairpersons or the South African Council for Educators and such permission shall not be unreasonably withheld,
 - (c) he or she submits his or her resignation in writing to the co-chairpersons;

- (d) he or she is declared unable to attend to his or her personal affairs by a court of law, or
- (e) he or she is deceased.

Filling of vacancies

- 5. (1) If a member vacates his or her office, the resultant vacancy must be filled by appointment in accordance with regulation 2.
- (2) A member appointed in accordance with subregulation (1) shall remain in office for the unexpired term of office of his or her predecessor.

Executive committee of the South African Council for Educators

- 6. (1) The South African Council for Educators must establish an executive committee and determine its functions.
- (2) The executive committee consists of-
 - (a) the co-chairpersons of the South African Council for Educators;
 - (b) nine other members appointed by the South African Council for Educators; and
 - (c) the chief executive officer.
- (3) A decision of the executive committee must be regarded as a decision of the South African Council for Educators, unless such decision is revoked at the next meeting of the South African Council for Educators.
- (4) Anything done in consequence of a decision of the executive committee before its revocation is not invalid by reason only of the fact that the decision is revoked by the South African Council for Educators under subregulation (3).

Committees of the South African Council for Education

- 7. (1) The South African Council for Educators may establish other committees to assist the performance of its functions.
- (2) Any committee other than the executive may include persons who are not members of the South African Council for Educators.
- (3) The chairperson of a committee must be appointed by and be a member of the South African Council for Educators.
- (4) Members of the committees contemplated in subregulation (2) may be appointed for such period or periods as the South African Council for Educators may determine.

Meetings of the South African Council for Educators and committees

- 8. (1) Meetings of the South African Council for Educators must be held at such times and places as may be determined by the co-chairpersons concerned, but the co-chairpersons must convene a meeting at least every three months or if requested to do so in writing by at least one third of the members of the South African Council for Educators, as the case may be.
- (2) Whenever the chairperson of a committee is absent from any meeting of such a committee, the members present must elect a person from their ranks to preside at that meeting.
- (3) The South African Council for Educators may make rules relating to the procedure at meetings of the South African Council for Educators and its committees, including the quorum for such meetings, and any other matter necessary or expedient for the performance of its functions.
- (4) The proceedings at a meeting of the South African Council for Educators or of a committee are not invalid by reason only of the fact that a vacancy exists in the South African Council for Educators or a committee, as the case may be, at the time of such meeting.
- (5) Meetings of a committee must be held at such times and places as may be determined by its chairperson, but the chairperson may convene a meeting after a notice of the meeting of not less than seven (7) days has been given to the members of that committee.

Short title and commencement

These regulations shall be called The South African Council for Educators Regulations and shall come into operation on publication thereof.

DISCIPLINARY PROCEDURES

1. Introduction

- 1.1 This document must be read together with the provisions of the South African Council for Educators Act, 2000 (Act 31 of 2000).
- 1.2 The purpose of this document is to provide a fair procedure governing the investigation and hearing of alleged breaches of the code of professional ethics for educators.
- 1.3 The Council commits itself through these procedures to the development of a high standard of ethics governing the teaching profession.
- 1.4 These procedures are intended to be corrective and not punitive, where this is possible and desirable taking into account the interests of the teaching profession as a whole.

2. Functions of the disciplinary committee

- 2.1 The disciplinary committee must:
 - 2.1.1 ensure that alleged breaches of the code are investigated;
 - 2.1.2 establish investigating panels to investigate alleged breaches of the code;
 - 2.1.3 establish disciplinary panels to conduct disciplinary hearings into alleged breaches of the code;
 - 2.1.4 ensure that disciplinary hearings are fair and comply with the procedures set out in this document; and
 - 2.1.5 on the basis of recommendations received from disciplinary panels, recommend findings and appropriate sanctions if any, to the Council in respect of breaches of the code.
- 2.2 The members of investigating and disciplinary panels established by the disciplinary committee need not be members of the Council.

3. Investigation of alleged breaches of the code

- 3.1 Any person who believes that an educator has breached the code may lodge a complaint with the Council.
- 3.2 The complaint should preferably:
 - 3.2.1 be in writing; and
 - 3.2.2 clearly disclose the alleged breach of the code.
- 3.3 The disciplinary committee may investigate any alleged breach of the code, whether or not a complaint has been lodged.
- 3.4 The chief executive officer must, as soon as practicable after receiving a complaint, refer it to the disciplinary committee for consideration.
- 3.5 The disciplinary committee must refer an alleged breach to an investigating panel for investigation.
- 3.6 An investigating panel may, in investigating any alleged breach of the code:
 - 3.6.1 interview complainants and other possible witnesses;
 - 3.6.2 subject to clause 3.7, interview the educator who is alleged to have breached the code;
 - 3.6.3 notify the educator of the alleged breach and, subject to clause 3.7, give the educator an opportunity to respond within the period specified in that notice;
 - 3.6.4 gather evidence relevant to the alleged breach; and
 - 3.6.5 if necessary, cause summons to be served on any person who may assist the panel in its investigation as contemplated in section 14(4) of the Act.
- 3.7 Before interviewing an educator as contemplated in clause 3.6.2, and in any notice contemplated in clause 3.6.3, the investigating panel must warn the educator:
 - 3.7.1 of the educator's right against self-incrimination; and
 - 3.7.2 that any admission or explanation given by the educator may be used as evidence against the educator at a disciplinary hearing.
- 3.8 The investigating panel must keep a record of the investigation.
- 3.9 If an investigating panel is satisfied that there is sufficient evidence of a breach of the code by an educator, the disciplinary committee may refer the matter to a disciplinary panel for hearing.
- 3.10 A member of a panel that has investigated an alleged breach of the code cannot serve as a member of the disciplinary panel which hears the matter.

4. The disciplinary hearing

- 4.1 Once a matter has been referred for hearing by a disciplinary panel, the chief executive officer or the chairperson of the disciplinary committee must issue a summons to the educator who has allegedly breached the code.
- 4.2 The summons must disclose:
 - 4.2.1 the nature of the alleged breach;
 - 4.2.2 the date, time and venue of the disciplinary hearing;
 - 4.2.3 the educator's right to be represented at the disciplinary hearing, including the right to legal representation;
 - 4.2.4 the educator's right to call witnesses to give evidence and to produce books, documents and other items in support of the educator's case; and
 - 4.2.5 the educator's right to make written submissions against any recommendation of the disciplinary panel to the disciplinary committee.
- 4.3 The summons must be served by way of:
 - 4.3.1 delivery by hand;
 - 4.3.2 telefax; or
 - 4.3.3 registered post.
- 4.4 The date on which the summons is served is regarded as, in the case of:
 - 4.4.1 service by hand, the date of delivery;
 - 4.4.2 service by telefax, the dispatching date reflected on the telefax; and
 - 4.4.3 service by registered post, the date on which the letter was signed for in the absence of proof to the contrary.
- 4.5 The summons must be served on the accused at least twenty (20) days before the date of the disciplinary hearing.
- 4.6 The chief executive officer or the chairperson of the disciplinary committee may issue a summons to any other person to attend the disciplinary hearing in order to give evidence or to produce any books, documents or other items.
- 4.7 If the educator fails to attend a disciplinary hearing, the disciplinary panel may deal with the matter in the absence of the educator.
- 4.8 A witness who attends a disciplinary hearing is entitled to such allowance as the Council may from time to time determine.
- 4.9 Any person who fails to attend a disciplinary hearing when summoned to do so, or fails to stay in attendance until excused by the disciplinary panel, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six (6) months.

5. Procedure at the disciplinary hearing

- 5.1 The disciplinary panel may exclude any person or category of persons from attending a disciplinary hearing:
 - 5.1.1 on reasonable grounds; or
 - 5.1.2 if the orderly conduct of the inquiry so requires.
- 5.2 The disciplinary panel may postpone or adjourn a disciplinary hearing:
 - 5.2.1 at its discretion; or
 - 5.2.2 on the request of any party to the hearing.
- 5.3 The disciplinary committee may appoint one or more suitably qualified assessors to be present at a disciplinary hearing, and to advise the disciplinary panel on matters of law, procedure and evidence, or other matters requiring specific expertise.
- 5.4 An educator charged with an alleged breach of the code is entitled to representation, including legal representation at any disciplinary hearing.
- 5.5 The disciplinary panel must:
 - 5.5.1 record the evidence at a hearing; and
 - 5.5.2 administer an oath or affirmation to any witness at a hearing.
- 5.6 At the commencement of the hearing, the disciplinary panel must:
 - 5.6.1 put the charge to the educator and ask the educator to plead to the charge;
 - 5.6.2 inform the educator of the educator's rights:
 - (a) to representation, including legal representation;
 - (b) against self-incrimination;
 - (c) to an interpreter; and
 - (d) to adduce evidence and challenge evidence at the hearing.

- 5.7 If the educator:
 - 5.7.1 pleads guilty to the charge, the disciplinary panel must decide whether or not to hear evidence regarding the charge;
 - 5.7.2 pleads not guilty, the disciplinary panel must hear the evidence regarding the charge;
 - 5.7.3 refuses or fails to plead, the disciplinary panel must enter a plea of not guilty and must hear evidence regarding the charge.
- 5.8 If the educator charged with a breach of the code fails to attend the disciplinary hearing, and the disciplinary panel decides to proceed with the matter in the absence of the educator, it must enter a plea of not guilty and hear evidence regarding the charge.
- 5.9 If the disciplinary panel decides to hear evidence pertaining to the charge, every party to a hearing or the party's representative is entitled to:
 - 5.9.1 lead evidence in support of their case;
 - 5.9.2 cross-examine any witness of an opposing party; and
 - 5.9.3 re-examine any witness led by that party.
- 5.10 Members of the disciplinary panel may question any witness at the hearing.
- 5.11 The record of any evidence of a breach of the code in any criminal proceedings or disciplinary proceedings by an employer, constitutes prima facie evidence of such breach by an educator for purposes of a disciplinary hearing in terms of the Act.

6. Recommendation of the disciplinary panel

- 6.1 The disciplinary panel must make its recommendation on whether or not there has been a breach only after:
 - 6.1.1 evidence has been completed; and
 - 6.1.2 every party to an inquiry has been given a fair opportunity to be heard.
- 6.2 If the disciplinary panel recommends that the educator has breached the code, the panel must request the parties to make representations on an appropriate sanction. This may include the leading of further evidence, including evidence on any previous convictions of the educator for breaches of the code. A certificate issued by the chief executive officer containing details of any previous convictions constitutes prima facie evidence of such previous convictions.
- 6.3 If the disciplinary panel recommends that the educator has breached the code and recommends a sanction it must:
 - 6.3.1 record its recommendations;
 - 6.3.2 inform the educator in writing of its recommendations; and
 - 6.3.3 submit the record of the hearing and its recommendations to the disciplinary committee.
- 6.4 An educator who is dissatisfied with the recommendation of the disciplinary panel may make written submissions to the disciplinary committee within fourteen (14) days of his or her knowledge of the recommendation of the disciplinary panel.
- 6.5 The written submissions must set out the grounds on which the educator believes the recommendation to be wrong.

7. Recommendation of the disciplinary committee

- 7.1 On the basis of the recommendation of the disciplinary panel and the submissions of the educator charged with a breach of the code, if any, the disciplinary committee must recommend a finding and appropriate sanction, if any, to the Council and inform the educator concerned accordingly.
- 7.2 An educator who is dissatisfied with a recommendation of the disciplinary committee, may make written submissions to the Council within fourteen (14) days of his or her knowledge of the recommendation of the disciplinary committee.
- 7.3 The written submissions must set out the grounds on which the educator believes the recommendation to be wrong.

8. Decisions of the council

- 8.1 The Council, after considering the recommendation by the disciplinary committee and submissions by the educator concerned, if any, may:
 - 8.1.1 accept, reject or substitute the recommendation of the disciplinary committee; or
 - 8.1.2 refer the matter back to the disciplinary committee for further deliberation.
- 8.2 The Council may impose the following sanctions on an educator who is found guilty of a breach of the code:
 - 8.2.1 a caution or reprimand;
 - 8.2.2 a fine not exceeding one month's salary; or

- 8.2.3 the removal of the educator's name from the register for a specified period or indefinitely, or subject to specific conditions.
- 8.3 The Council may suspend any sanction contemplated in clause 8.2 for a period and on conditions determined by it.
- 8.4 The Council must inform the educator in writing of its decision.
- 8.5 The Council:
 - 8.5.1 may publish such information relating to the hearing as it deems reasonable; and
 - 8.5.2 must not publish information relating to a hearing which reveals or may reveal the identity of any person affected by the proceedings who is under the age of eighteen (18) years.

9. Definitions

In this document, unless the context indicates otherwise, any word or phrase defined in the South African Council for Educators Act, 2000 has that meaning and:

- 9.1 '**Act**' means the South African Council for Educators Act, 2000 (Act 31 of 2000);
 - 9.2 '**code**' means the code of professional ethics for educators contemplated in section 5(c)(i) of the Act;
 - 9.3 '**Council**' means the South African Council for Educators;
 - 9.4 '**disciplinary committee**' means the disciplinary committee of the Council contemplated in section 14 of the Act;
 - 9.5 '**educator**' means any person registered or provisionally registered with the Council;
 - 9.6 '**chief executive officer**' means the chief executive officer of the Council;
 - 9.7 '**register**' means the register contemplated in section 5(a)(iii) of the Act; and
 - 9.8 '**registered address**' means the address of an educator as it appears in the register.
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CODE OF PROFESSIONAL ETHICS

Definitions

1. In this Code, unless the context indicates otherwise, any word or phrase defined in the South African Council for Educators Act, 2000 has that meaning and:
 - 1.1 **'Code'** means the Code of Professional Ethics of the South African Council for Educators;
 - 1.2 **'Council'** means the South African Council for Educators;
 - 1.3 **'educator'** means any educator registered or provisionally registered with the Council;
 - 1.4 **'learner'** means a pupil or a student at any school, further education and training institution or adult learning centre;
 - 1.5 **'parent'** means:
 - (a) any natural parent or guardian of a learner;
 - (b) any person legally entitled to custody of a learner; and
 - (c) any person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) or (b) towards the learner's education at school.

General

2. The educators who are registered or provisionally registered with the South African Council for Educators:
 - 2.1 acknowledge the noble calling of their profession to educate and train the learners of our country;
 - 2.2 acknowledge that the attitude, dedication, self-discipline, ideals, training and conduct of the teaching profession determine the quality of education in this country;
 - 2.3 acknowledge, uphold and promote basic human rights, as embodied in the Constitution of South Africa.
 - 2.4 commit themselves therefore to do all within their power, in the exercising of their professional duties, to act in accordance with the ideals of their profession, as expressed in this Code and
 - 2.5 act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute.

CONDUCT: The educator and the learner

3. An educator:
 - 3.1 respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality;
 - 3.2 acknowledges the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realise his or her potentialities;
 - 3.3 strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa;
 - 3.4 exercises authority with compassion;
 - 3.5 avoids any form of humiliation, and refrains from any form of abuse, physical or psychological;
 - 3.6 refrains from improper physical contact with learners;
 - 3.7 promotes gender equality;
 - 3.8 refrains from any form of sexual harassment (physical or otherwise) of learners;
 - 3.9 refrains from any form of sexual relationship with learners at a school;
 - 3.10 uses appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners;
 - 3.11 takes reasonable steps to ensure the safety of the learner;
 - 3.12 does not abuse the position he or she holds for financial, political or personal gain;
 - 3.13 is not negligent or indolent in the performance of his or her professional duties;
 - 3.14 recognises, where appropriate, learners as partners in education.

CONDUCT: The educator and the parent

4. An educator, where appropriate:
 - 4.1 recognises the parents as partners in education, and promotes a harmonious relationship with them; and
 - 4.2 does what is practically possible to keep parents adequately and timeously informed about the well-being and progress of the learner.

CONDUCT: The educator and the community

5. An educator
 - 5.1 recognises that an educational institution serves the community, and therefore acknowledges that there will be differing customs, codes and beliefs in the community.
 - 5.2 Conducts him/herself in a manner that does not show disrespect to the values, customs and norms of the community.

CONDUCT: The educator and his or her colleagues

6. An educator:
 - 6.1 refrains from undermining the status and authority of his or her colleagues;
 - 6.2 respects the various responsibilities assigned to colleagues and the authority that arises therefrom, to ensure the smooth running of the educational institution;
 - 6.3 uses proper procedures to address issues of professional incompetence or misbehaviour;
 - 6.4 promotes gender equality and refrains from sexual harassment (physical or otherwise) of his or her colleagues;
 - 6.5 uses appropriate language and behaviour in his or her interactions with colleagues;
 - 6.6 avoids any form of humiliation, and refrains from any form of abuse (physical or otherwise) towards colleagues.

CONDUCT: The educator and the profession

7. An educator:
 - 7.1 acknowledges that the exercising of his or her professional duties occurs within a context requiring co-operation with and support of colleagues;
 - 7.2 behaves in a way that enhances the dignity and status of the teaching profession and that does not bring the profession into disrepute;
 - 7.3 keeps abreast of educational trends and developments;
 - 7.4 promotes the ongoing development of teaching as a profession;
 - 7.5 accepts that he or she has a professional obligation towards the education and induction into the profession of new members of the teaching profession.

CONDUCT: The educator and his or her employer

8. An educator:
 - 8.1 recognises the employer as a partner in education;
 - 8.2 acknowledges that certain responsibilities and authorities are vested in the employer through legislation, and serves his or her employer to the best of his or her ability;
 - 8.3 refrains from discussing confidential and official matters with unauthorised persons.

CONDUCT: The educator and the council

9. An educator:
 - 9.1 makes every effort to familiarise him/herself and his/her colleagues with the provisions of the Code;
 - 9.2 complies with the provisions of this Code;
 - 9.3 discloses all relevant information to the Council;
 - 9.4 informs the Council and/or relevant authorities of alleged or apparent breaches of the code within his/her knowledge.
 - 9.5 co-operates with the Council to the best of his or her ability; and
 - 9.6 accepts and complies with the procedures and requirements of the Council, including but not limited to the Registration Procedures, the Disciplinary Procedures of the Council and the payment of compulsory fees.

**COMPULSORY MONTHLY FEES PAYABLE BY
REGISTERED EDUCATORS TO THE SOUTH
AFRICAN COUNCIL FOR EDUCATORS (SACE)**

G.N. 637 of 2000 published in Government Gazette No. 20841 dated 16 February 2000

**COMPULSORY MONTHLY FEES PAYABLE BY REGISTERED EDUCATOR TO THE SOUTH AFRICAN
COUNCIL FOR EDUCATORS (SACE)**

The South African Council for Educators (SACE), after obtaining approval from the Minister of Education, hereby gives notice in terms of section 28(1)(g) of the Employment of Educators Act, 1998 of a compulsory monthly fee of R2.00, to be implemented with effect from 01 March 2000.

This compulsory monthly fee will be deducted from the salaries of all educators employed in approved posts on the establishment determined in terms of the Educators Employment Act, 1998 or the South African Schools Act, 1996.

REJ BRIJRAJ

Chief Executive Officer: South African Council for Educators

**SECTION 6:
EDUCATION LABOUR RELATIONS
COUNCIL (ELRC)**

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THE CONSTITUTION OF THE EDUCATION LABOUR RELATIONS COUNCIL

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CHAPTER 1

1. Name of Council

The name of the Council is the “**Education Labour Relations Council**”, hereinafter referred to as the “Council”.

2. Juristic person

- (1) The Council is a juristic person.
- (2) Unless otherwise provided by this constitution, no employer or trade union shall, by reason only of the fact that it is a party to the Council, be liable for any of the obligations of the Council.

3. Constitutional scope

The registered scope of the Education Labour Relations Council is the State and those employees in respect of which the Employment of Educators Act, 1998, applies.

4. Objectives of the Council

Subject to the provisions of the Act, the objectives of the Council shall be:

- (1) to maintain and promote labour peace in education;
- (2) to prevent and resolve labour disputes in education;
- (3) to perform dispute resolution functions in terms of section 51 of the Act;
- (4) to promote collective bargaining in relation to all matters of mutual interest;
- (5) to conclude and enforce collective agreements;
- (6) to grant exemptions to parties and non-parties from collective agreements, where appropriate;
- (7) to conduct research, analyse and survey education nationally and internationally, and to promote training and build capacity in education;
- (8) to develop proposals for submission to the Public Service Co-ordinating Bargaining Council (PSCBC) and NEDLAC, or any other appropriate forum, on labour policy and labour legislation that may affect education;
- (9) to confer on workplace forums such additional matters for consultation;
- (10) to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out; and
- (11) to consider and deal with any other matters that may affect the interests of the parties.

5. Powers of the Council

The Council shall have the following powers:

- (1) to conclude contracts;
- (2) to mortgage, pledge or otherwise encumber any of its movable or immovable property;
- (3) to borrow, lend and invest money;
- (4) to take part in any form of consultation, litigation and dispute resolution proceedings;
- (5) to promote and establish training and education schemes;
- (6) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the Council or their members;
- (7) to establish and administer a fund through the raising of levies to be utilised for the administration of the Council, resolving disputes and other Council activities;
- (8) to exercise any other powers that may be necessary or desirable to achieve the objectives of the Council and which shall include the authority to overrule matters which had been dealt with in a Chamber and which are in conflict with the provisions of this constitution or any national agreement;
- (9) to delegate such matters as the Council may deem necessary to any Chamber, committee or sub-committee of the Council for conclusion and subject to any conditions which the Council may attach thereto;
- (10) to refer such matters as the Council may deem necessary to any Chamber; and
- (11) to appoint a panel of conciliators and arbitrators or an accredited agency/agencies in terms of the provisions of the Act.

6. Parties to the Council

- (1) The parties to the Council shall be the employer and trade unions registered in terms of the provisions of the Act, and have members who fall within the registered scope of the Council and admitted to the Council in terms of the provisions of this constitution.
- (2) Any trade union registered in terms of the provisions of the Act, may apply in writing to the Council to be admitted as a party.
- (3) Any employer organisation registered in terms of the provisions of the Act, may apply in writing to the Council to be admitted as a party.
- (4) The application of a trade union to the Council must be accompanied by a certified copy of the applicant's registered constitution and its certificate of registration and must include –
 - (a) details of the applicant's membership within the registered scope of the Council, indicating that it represents at least 20 000 members, and
 - (b) any reasons or information on which the applicant relies in support of its application for admission as a party to the Council.
- (5) For the purposes of the admission criteria set out in clause 6(4) two or more trade unions registered in terms of the provisions of the Act may act together to meet the admission criteria of Council: Provided that where two or more trade unions act together to meet these admission criteria, such trade unions shall be represented in Council as a single party and shall at all times act as a single party.

- (6) Applications for admission to the Council shall be dealt with in terms of the provisions of this constitution and the vote weight shall be determined in terms of the provisions of clause 10(7).
- (7) The Council must, within 90 (ninety) days of receiving an application for admission referred to in clauses 6(2), (3), (4) and (6), decide whether to grant or refuse an applicant admission, and must advise the applicant of its decision. Should the Council decide to grant the applicant admission, such applicant will be admitted to the Council and the vote weights of the parties will be adjusted accordingly.
- (8) A trade union's membership of the Council may be terminated –
 - (a) on receipt of a notice of termination of the membership of the trade union;
 - (b) if a trade union is dissolved or wound up in terms of its constitution; or
 - (c) if a trade union no longer complies with the admission requirements prescribed in this constitution.
- (9) If the membership of a trade union is terminated, the trade union may refer a dispute about its termination of membership of the Council in terms of the dispute resolution procedures of the Council.

CHAPTER 2

7. Appointment of representatives

- (1) The employer shall be represented in the Council by such persons as the employer may from time to time appoint, subject to a maximum of one (1) representative for each representative of a trade union in the Council.
- (2) The trade unions admitted to the Council shall have 25 representatives allocated on the basis of proportionality according to the vote weights; provided that an admitted trade union shall have at least 1 representative.
- (3) Parties to the Council shall make the names of their representative/s available to the General Secretary within 30 days of the Annual General Meeting. Trade union representatives shall be members registered in terms of their constitutions, or full-time officials. Employer representatives shall be full-time officials employed in terms of the Public Service Act, 1994, as amended, or the Employment of Educators Act, 1998.
- (4) A party may at any time withdraw any of its representatives in the Council by giving written notice to the General Secretary.
- (5) Should a vacancy arise in the Council as a result of the withdrawal, resignation or death of a representative, the vacancy shall be filled by the party who previously appointed the relevant representative, by giving written notice to the General Secretary.
- (6) Should a party's membership of the Council be terminated, its representatives shall vacate their seats.
- (7) Parties to the Council may co-opt persons to give expert advice, assistance or evidence to the Council on matters being discussed in the Council: Provided that-
 - (a) where reasonably possible, the General Secretary be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
 - (b) trade unions or the employer shall not be allowed to co-opt more than one person at a time to address, advise or assist the Council on a specific matter; and
 - (c) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

8. Appointment of office bearers and staff

(1) Office bearers

The Council shall at its Annual General Meeting, elect a Chairperson and two Vice-Chairpersons. One Vice-Chairperson shall be elected from the trade unions and the other from the employer.

Chairperson and Vice-Chairperson

- (a) The outgoing Chairperson shall preside over the Annual General Meeting of the Council. The General Secretary shall request nominations for a new Chairperson for the forthcoming term of office, to reach him 30 days prior to the Annual General Meeting.
- (b) A person other than a representative or observer of the parties who has consented in writing to his or her nomination may also be nominated as Chairperson.
- (c) All nominations shall be sent to parties 14 days prior to the Annual General Meeting.
- (d) During the Annual General Meeting the outgoing Chairperson or the General Secretary shall formally introduce the candidates before voting commences in terms of the provisions of clause 10(6). The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should an equal number of votes be cast for two or more candidates, the outgoing Chairperson or the General Secretary shall write the name of each such candidate on a piece of

- paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared as the elected Chairperson.
- (e) The Chairperson shall hold office for a term of 12 months unless removed by a decision of the Council. The Chairperson so removed or any past Chairperson may be re-elected.
 - (f) The provisions of paragraphs (a) to (e) shall with the necessary effect thereto apply in respect of the election of two Vice-Chairpersons of the Council: Provided that one shall be elected from the employer and the other from the trade unions: Provided further that the Vice-Chairpersons shall be elected from the duly appointed representatives of the parties to the Council, and nothing herein prevents any party from replacing any representative with an alternate.
 - (g) The Chairperson shall preside over all meetings of the Council.
 - (h) The Chairperson shall –
 - (i) subject to paragraphs (j) and (k), preside over and enforce order at all meetings in accordance with normal meeting procedure;
 - (ii) sign and date the minutes of a meeting after confirmation;
 - (iii) endorse financial statements after approval by the Council;
 - (iv) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson; and
 - (v) countersign cheques on the Council's banking account.
 - (i) Whenever the Chairperson is not available, one of the Vice-Chairpersons shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
 - (j) Whenever the Chairperson or the Vice-Chairpersons is not available or unable to perform his or her duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
 - (k) The Chairperson, or the Vice-Chairpersons, shall not be entitled to vote on any matter: Provided that if any of the Vice-Chairpersons have not been replaced by another representative of that party to the Council, such Vice-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairpersons.
 - (l) The term of office of a Chairperson and/or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Council consequent to a resolution to that effect.
 - (m) The Council may from time to time determine a honorarium payable to the Chairperson of the Council: Provided that, should it become necessary or desirable to engage the services of the Chairperson on a part-time or full-time basis, the Council shall determine the salary and other conditions of employment of the Chairperson by agreement.
- (2) **Office bearers and staff**
- (a) The Council shall appoint a General Secretary.
 - (b) The terms and conditions of employment, of the office bearers and staff, shall be determined by the Council.
 - (c) The termination of employment of all office bearers and staff, including the General Secretary, shall be subject to one (1) calendar month's notice on either side.
 - (d) Subject to the provisions of the Act and this constitution, the General Secretary shall be responsible for the sound administration of Council including:
 - (i) all meetings of the Council and its committees and recording of minutes of meetings;
 - (ii) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Council;
 - (iii) correspondence of the Council;
 - (iv) keeping an accurate filing system;
 - (v) general office administration;
 - (vi) banking all monies received on behalf of the Council within 24 hours of receipt thereof or on the next working day, whichever is the earliest;
 - (vii) submitting statements of the financial position of the Council whenever required to do so by the Council;
 - (viii) countersigning cheques on the Council's banking account;
 - (ix) keeping a register of all employers and trade unions registered and/or admitted in terms of the provisions of this constitution, which must be made available for scrutiny upon request;
 - (x) calculating the voting percentages of parties to the Council;
 - (xi) keeping in safe custody at the offices of the Council, for a period of not less than three (3) years or in terms of Council's financial policy:

- (aa) a copy of the approved minutes of every meeting of the Council and its committees, duly signed by the Chairperson who presided at such meeting;

- (bb) a copy of the approved minutes of every meeting of a Chamber, duly signed by the Chairperson who presided at such meeting;
- (cc) the statements referred to in clause 15 and all records in relation thereto; and
- (dd) all past constitutions of the Council;
- (xii) with the prior approval of the Council appointing such staff as may be necessary, and be responsible for all staff employed by the Council;
- (xiii) providing the Registrar with such information as required in terms of the provisions of the Act;
- (xiv) determining the duties and functions of the staff employed by the Council.
- (xv) compiling the annual report of the Council; and
- (xvi) receiving and processing of all aspects regarding disputes in terms of approved policy and procedures of Council.
- (xvii) performing such other duties and functions as the Council may from time to time direct.
- (e) Unless otherwise determined by the Council the General Secretary may delegate any of his/her functions to any of the staff of Council.
- (f) The General Secretary must act impartially and in accordance with this constitution and the decisions of the Council's constitutional structures. The General Secretary is accountable to the Council via the Executive Committee.

9. The manner in which office bearers and staff may be removed from office

Any office-bearer or member of staff may be dismissed by the Council for incapacity, serious neglect of duty or misconduct, subject to the rules of natural justice and fair labour practice. Vacancies occurring as a result of the dismissal of an office-bearer shall be filled as provided for in clause 8(1), and in the case of a member of staff, as provided for in clause 8(2).

10. Meetings of the Council

(1) The Council shall meet at least four times per year, at such venue, date and time as may be determined by the General Secretary; Provided that one such meeting shall be the Annual General Meeting.

(2) Annual general meeting

- (a) The Council shall hold its Annual General Meeting during the month of April of each year.
- (b) Unless otherwise agreed to, the following matters shall be dealt with at the Annual General Meeting, in the following order:
 - (i) presentation of credentials;
 - (ii) the financial statements of the previous financial year, which financial year shall run from 1 January to 31 December;
 - (iii) the report of the auditor in respect of the financial statements referred to in sub-paragraph (ii) above;
 - (iv) the levies to be imposed on educators;
 - (v) the appointment of auditors, should it be necessary;
 - (vi) the annual report of the Council;
 - (vii) the admission or otherwise of parties to the Council;
 - (viii) determination of the vote weight in the Council and the Chambers, which shall come into effect on the date of the Annual General Meeting once so adopted; Provided that the change in the vote weight does not affect the change in representation at the meeting;
 - (ix) the determination of the number of members of the Executive, Finance and Legal Committees subject to the provisions of clause 11(5); and
 - (x) the election of a Chairperson and Vice-Chairpersons.

(3) Special meetings of Council and committees of Council

Special meetings shall be called by the General Secretary upon a written request by any party to the Council: Provided that the General Secretary shall consult, prior to the calling of such a meeting, with the parties to the Council.

(4) Notice of meeting

- (a) At least 14 days written notice shall be given to all parties, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted.
- (b) It shall be deemed that due notice had been given to a party, if notice of any meeting was given by –
 - (i) the General Secretary or any official of the Council serving notice on any representative of the party concerned;

- (ii) posting of a registered letter containing the notice to the party, at the registered address; or
- (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice has been transmitted to and received by the addressee.

(5) Quorum of a meeting

- (a) A quorum of a meeting of the Council or its committees shall be at least those trade unions representing 50% + 1 and the employer; Provided that -
 - (i) proper notice in terms of clause 10(4) has been given to all of the parties; and
 - (ii) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- (b) If, within a further 30 minutes, after the 30 minutes referred in clause 10(5)(a)(ii), of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned, to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in clause 10(4), shall again be given to all parties.

(6) Voting

- (a) The employer shall have a collective vote, which shall be exercised by its representatives.
- (b) Trade union representatives shall vote on the basis as determined in terms of clause 10(7) below.
- (c) The voting shall be by show of hands, unless a party requests a ballot, in which event the voting shall be by way of a secret ballot.
- (d) The General Secretary shall act as electoral officer.

(7) Vote weight

- (a) The employer shall have 50% of the vote weight in the Council and its committees and the admitted trade unions the other 50% collectively.
- (b) The admitted trade unions in the Council may, during February of each year, reach consensus on the vote weights in respect of the Council and its Chambers based on the PERSAL monthly remittances for the end of December of the previous year and as referred to in the Act.
- (c) In the event of there being no consensus in the Council on the vote weight, the General Secretary shall calculate the vote weight by no later than 15 March of each year and make recommendations to Council using:
 - (i) the monthly remittances referred to in clause 10(7)(b) as at the end of December of the previous year; and
 - (ii) the recommendations of the official auditors of the Council, taking into consideration the respective trade unions' membership audits for the period 1 January to 31 December of the applicable year.

The vote weight that the General Secretary must calculate is the ratio of the trade union's paid-up membership to the total number of paid-up members of all trade unions which are members of this Council. This ratio must be expressed as a percentage. If two or more trade unions are acting jointly they will be treated as a single entity for purposes of calculating their vote weight; Provided that the vote weight of each individual trade union shall be reflected separately.

- (d) For the purposes of calculating the vote weight, dual and multiple membership shall be included in the total membership figures of each of the trade unions to which they are fully paid-up members in terms of the official membership audit; Provided that dual and multiple membership figures shall not be counted more than once in calculating the vote weight, where the educators are members of trade unions which are acting jointly as a single party.
- (e) If a trade union is in dispute regarding the vote weight determined by the General Secretary, such dispute shall be dealt with in terms of the dispute resolution procedures of Council as set out in chapter 4; Provided that such dispute shall be registered within 7 working days of the said determination. In the event of a dispute being declared, the vote weights of the previous year shall apply until the dispute is resolved.
- (f) Subject to clauses 10(7)(a) to (e) above, the General Secretary must also calculate the vote weights of trade union parties to the respective provincial chambers. The provincial chamber vote weight is calculated as the ratio of the trade union's paid-up membership within that province to the total number of paid-up members of all trade unions, which are members to that provincial chamber.

(8) Meeting procedure

- (a) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed by the Chairperson immediately after confirmation thereof.

- (b) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation, be submitted in writing as a prerequisite to any debate or decision in respect thereof.
- (c) The Chairperson shall rule on any procedural matter that is not regulated in this constitution.
- (d) A person who is not a representative may be allowed to address the Council at the request of a party and with the concurrence of the Council.
- (e) Every meeting of the Council shall be conducted in private unless the Council decides otherwise.
- (f) The General Secretary shall keep minutes of the proceedings at Council meetings in such a manner as decided by the Council and the draft in writing shall be forwarded by the General Secretary to all parties within a period of 20 days after a meeting.

(9) Decisions of the Council

- (a) Unless otherwise agreed to, all proposals must be submitted in writing and be read by the chairperson as a prerequisite to any debate or decision in respect thereof.
- (b) No proposal shall be considered unless it has been duly seconded.
- (c) Subject to the Act and this constitution, all matters that form the subject of a proposal, shall be decided by a majority vote on the employer side together with a majority vote on the employee side.
- (d) No decision taken at a meeting of the Council shall be invalidated by the absence of any party concerned, if it was properly notified of such meeting, in the manner prescribed in clause 10(4) above.
- (e) A decision of the Council will be regarded as a collective agreement in terms of the Act and is binding on all the parties to the Council.
- (f) All decisions of the Council that have an impact on non-parties to the Council must be reduced to writing and signed by the parties to the Council.
- (g) The Council may, In terms of section 30 (1)(k) of the Act, determine a procedure for exemption from collective agreements.

11. Committees of the Council

- (1) The Council may from time to time establish committees and may, subject to such conditions as it may determine, delegate any of its functions to any such committee.
- (2) Any committee established in terms of clause 11(1), shall consist of equal numbers of representatives of trade unions and the employer; Provided that each admitted trade union meeting the threshold set in clause 6 (4) shall have at least one (1) representative.
- (3) Committees established in terms of clause 11(1) must submit regular written reports to the Executive Committee or Council, as the case may be.
- (4) A Committee established in terms of clause 11(1) may co-opt experts to render assistance, provided that where such co-option has financial implications prior approval must be obtained from the Executive Committee of Council.
- (5) The following shall be duly constituted committees of Council:

(a) The Executive Committee

The Executive Committee shall be accountable to Council and shall have the following functions:

- (i) to manage the day-to-day business of the Council;
- (ii) to determine standing orders for all committees, including the Executive Committee, sub-committees and *ad hoc* sub-committees of the Council;
- (iii) to decide on the manner in which matters referred to the Council shall be dealt with and, if necessary, to refer matters to another committee or sub-committee for advice or recommendation(s);
- (iv) to appoint sub-committees and *ad hoc* sub-committees of the Executive Committee;
- (v) to consider recommendations, including the ratification of agreements referred to it by Chambers, submitted to it by other committees, sub-committees and *ad hoc* sub-committees;
- (vi) to identify research to be undertaken in terms of clause 4(7);
- (vii) to prepare the agenda and supportive documentation for the Annual General Meeting; and
- (viii) to deal with all matters relating to staffing.

(b) Finance Committee

The functions of the Finance Committee are:

- (i) to investigate, control and monitor the financial matters of the Council;
- (ii) to advise and make recommendations on financial matters of the Council;
- (iii) to submit on a monthly basis a report to the Executive Committee on the financial position of the Council; and

- (iv) to submit annually to the Executive Committee, 60 days prior to the Annual General Meeting, a report on the financial matters of the Council for the year ending 31 December.
- (c) **Legal Committee**

The functions of the Legal Committee are:

 - (i) to attend to such matters referred to it by Council, committees of Council or the General Secretary;
 - (ii) to monitor applications for the condonation of late registration of disputes and advise Council accordingly;
 - (iii) to advise and make recommendations to Council, committees of Council or the General Secretary on any matters which have legal implications for Council;
 - (iv) to receive regular reports from the General Secretary on the status of disputes referred to the Council, including the condonation of the late registration of dispute; and
 - (v) to determine administrative procedures and criteria relating to the above.
- (6) The number of members of the Executive, Finance and Legal Committees will be determined at the Annual General Meeting by majority vote of the Council each year. The composition of the trade union representation to the Executive and Finance Committees must be proportional to their respective vote weights. In respect of all other committees the composition of the trade union representation will be proportional to their respective vote weights unless otherwise agreed to by the trade unions.
- (7) All decisions of the Executive Committee shall be taken by consensus. In the event of consensus not being arrived at, the matter shall be referred to the Council for a decision.

CHAPTER 3

12. Provincial chambers

- (1) The Council shall in every Province referred to in Section 103 of the Constitution, 1996 (Act 108 of 1996), establish a Provincial Chamber ("Chambers") of the Council, which shall be the bargaining or consultative forums in a specific province.
- (2) Chambers established in terms of clause 12(1) shall not be a juristic person.
- (3) **Scope of chambers**

Chambers shall function in a specific province and deal with matters referred or delegated to Chamber by the Council, as well as matters which fall exclusively under its jurisdiction.
- (4) **Objectives of chambers**

The objectives of Chambers shall be:

 - (a) to maintain and promote labour peace;
 - (b) to prevent and resolve labour disputes;
 - (c) to perform dispute resolution functions;
 - (d) to promote collective bargaining within the scope of its powers;
 - (e) to conduct research, analyse and survey education, subject to approval by the Council; and
 - (f) to promote training and build capacity.
- (5) **Functions of chambers**

The functions of Chambers will be:

 - (a) to deal with such matters referred or delegated to Chambers by the Council;
 - (b) to conclude agreements on matters pertaining only to that Province; Provided that no collective agreement concluded in a chamber may conflict with a collective agreement concluded in the Council;
 - (c) to deal with matters emanating from the agreed dispute resolution procedure of Council which fall within its competency;
 - (d) to refer matters which fall outside its scope, which matters should be dealt with by the Council or the PSCBC, to the General Secretary; and
 - (e) to refer agreements reached within Chambers to the Council, for ratification in accordance with clause 5 (8).
- (6) **Parties to chambers**

The parties to Chambers shall be the employer and trade unions in the province, admitted to the Council in terms of the provisions of clause 6.

(7) Appointment of representatives and observers

- (a) The employer, shall be represented in the Chambers by such persons the employer may from time to time appoint, subject to a maximum of one (1) representative for each representative of a trade union in the Chamber: Provided that the employer, shall be entitled to have a number of observers equal to its number of representatives.
- (b) The composition of the representation of trade unions to any Chamber shall be on the basis of proportionality in terms of the vote weights applicable in the Chamber, subject to –
 - (i) the norm being 10 representatives;
 - (ii) trade unions being entitled to a number of observers equal to the number of representatives;
 - (iii) trade unions being admitted and represented in Council; and
 - (iv) the norm with regard to the number of representatives being increased in order to allow a trade union which fails to qualify on the basis of proportionality for one of the 10 representatives in Chamber, having one representative in the Chamber.
- (c) Parties to the Chambers shall make the names of their representatives, and observers available to the Secretary within 30 days of the Annual General Meeting of the Chambers. Trade union representatives and observers shall be members registered in terms of their constitutions, or full-time officials. Employer representatives and observers shall be full-time officials employed in terms of the Public Service Act, 1994 (as amended) or the Employment of Educators Act, 1998.
- (d) A party may at any time withdraw any of its representatives or observers in the Chambers by giving written notice to the Secretary.
- (e) Should a vacancy arise in the Chambers as a result of the withdrawal, resignation, death or disqualification of a representative or an observer, the vacancy shall be filled by the party who previously appointed the relevant representative or observer and by giving written notice to the Secretary.
- (f) Should a party's membership of a Chamber or Council be terminated, its representatives shall vacate their seats.
- (g) Parties to the Chambers may co-opt persons to give expert advice, assistance or evidence on matters being discussed in the Chambers: Provided that –
 - (i) where reasonably possible, the Secretary be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
 - (ii) a trade union or the employer shall not be allowed to co-opt more than one person at a time to address, advise or assist the Chambers on a specific matter; and
 - (iii) the person co-opted only be allowed to attend the proceedings when the specific matter for which he or she is being co-opted, is being discussed.

(8) Appointment of office bearers and staff

(a) Chairperson and Vice-chairperson

- (i) At the Annual General Meeting of the Chambers, unless otherwise agreed, the parties shall elect a Chairperson from nominations submitted to the Secretary in writing, 14 working days prior to the meeting. At this meeting the outgoing Chairperson shall act as presiding officer. The employer party shall nominate a Vice-Chairperson.
- (ii) A person, other than a representative or observer of the parties, who has consented in writing to his or her nomination, may also be nominated as Chairperson.
- (iii) The Secretary shall send all nominations to parties, 7 working days prior to the meeting referred to in clause 12(8)(a)(i) above.
- (iv) The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson. Should there be an equal number of votes cast for two or more candidates, the acting Chairperson shall write the names of each such candidate on a piece of paper, insert the pieces of paper in a container and draw one out. The candidate whose name is drawn first shall be declared the elected Chairperson.
- (v) The Chairperson or Vice-Chairperson shall hold office for a term of 12 months unless removed by a decision of the Chamber or the Council. The Chairperson or Vice-Chairperson so removed, or any past Chairperson or Vice-Chairperson, may be re-elected or nominated as the case may be.
- (vi) The Chairperson shall preside over all meetings of the Chambers.
- (vii) The Chairperson shall –
 - (aa) enforce order at all meetings at which he or she is present, in accordance with normal meeting procedure;
 - (bb) sign the minutes of a meeting after confirmation; and

- (cc) at a meeting, perform such other duties as by usage and custom pertain to the office of Chairperson.
 - (viii) Whenever the Chairperson is not available, the Vice-Chairperson shall be acting Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
 - (ix) Whenever the Chairperson or the Vice-Chairperson is not available or unable to perform their duties, the parties present shall elect from their number someone to act as Chairperson at that meeting.
 - (x) The Chairperson or the Vice-Chairperson, shall not be entitled to vote on any matter: Provided that if the Vice-Chairperson has not been replaced by another representative of that party to the Chamber, such Vice-Chairperson shall be entitled to vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the Vice-Chairperson.
 - (xi) The term of office of a Chairperson or Vice-Chairperson may be terminated by written notice of either such Chairperson or Vice-Chairperson, by the Chambers or the Council consequent to a resolution to that effect.
 - (xii) The Council may from time to time determine an honorarium payable to the Chairperson of the Chambers.
- (b) **Staff**
- (i) The Council shall, after consultation with the relevant Chambers, appoint a Secretary to the Chambers.
 - (ii) The Secretary shall be responsible for:
 - (aa) all meetings of the Chambers and recording of minutes of meetings;
 - (bb) keeping books of account in accordance with generally accepted accounting practice and the instructions of the Chambers and the Council;
 - (cc) correspondence of the Chambers;
 - (dd) keeping an accurate filing system;
 - (ee) general office administration;
 - (ff) submitting statements of the financial position of the Chambers whenever required to do so by the Council or the General Secretary;
 - (gg) the implementation of the vote weights determined in accordance with the provisions of Clause 10(7);
 - (hh) keeping in safe custody at the offices of the Chamber, for a period of not less than three years:
 - (A) a copy of the approved minutes of every meeting of the Chambers, duly signed and dated by the Chairperson who presided at such meeting; and
 - (B) the statements referred to in sub-paragraph (ff) and all records in relation thereto.
 - (ii) compiling the annual report of the Chambers, and such report approved by the Chambers shall be submitted to the by no later than 15 February of each year;
 - (jj) providing the Council and/or General Secretary with such information as required;
 - (kk) referring all agreements reached in the Chambers to the Council; and
 - (ll) performing such other duties and functions as the Council or the General Secretary may from time to time direct.

(9) **The manner in which office bearers and staff may be removed from office**

The provisions of clause 9 shall apply, with the necessary effect thereto.

(10) **Meetings of the Chambers and their Committees**

(a) **Meetings of the Chambers and their Committees**

- (i) The Chambers shall meet at least 4 times per year, one of which shall be the Annual General Meeting, in which event the Secretary shall give at least 14 days written notice, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted; Provided that the Annual General Meeting shall be held within 30 days of the Annual General Meeting of Council.
- (ii) In respect of committees of the Chamber, the provision of paragraph (a) (i) above shall apply.

(b) **Special meetings**

The Secretary, upon a written request shall call special meetings, by any party to the Chamber; Provided that the Secretary shall consult, prior to the calling of such a meeting, with the parties to the Chamber.

(c) **Notice of meeting**

At least 14 days written notice shall be given, or such shorter period agreed to by all parties, setting out the time, date, venue and business to be transacted. It shall be deemed that due notice had been given to a party, if notice of any meeting was given by-

- (i) the Secretary of the Chamber serving notice on any representative of the party concerned;
- (ii) the posting of a registered letter containing the notice to the party, at the registered address; or
- (iii) telefaxing the notice to the office, provided that the telefax receipt shows that the notice had been transmitted to and received by the addressee.

(d) **Quorum of a meeting**

- (i) A quorum of a meeting of the Chamber shall be those trade unions representing 50% + 1 and the employer; Provided that –
 - (aa) proper notice in terms of paragraph (c) above has been given to all of the parties; and
 - (bb) if, within 30 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the 30 minutes have elapsed.
- (ii) If, within a further 30 minutes after the 30 minutes referred to in sub-paragraph (bb) above of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; Provided that notice of the adjourned meeting in the manner prescribed in paragraph (c) above, shall again be given to all parties to the Chamber.

(e) **Voting**

- (i) The employer has a collective vote of 50% which shall be exercised by its representatives and the admitted trade unions the other 50% collectively.
- (ii) Trade union representatives shall vote on the basis of their vote weights as determined by Council for such Chambers.
- (iii) The voting shall be by show of hands, unless the party requests a ballot, in which event the voting shall be by way of secret ballot.
- (iv) The Secretary shall act as electoral officer.

(f) **Vote weight**

The provisions of clause 10(7) shall apply.

(g) **Meeting procedure**

- (i) Unless they have been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting and shall be signed and dated by the Chairperson immediately after confirmation thereof.
- (ii) Unless otherwise agreed, the Chairperson shall require that a proposal dealing with a matter for information, consultation or negotiation be submitted in writing as a prerequisite to any debate or decision in respect thereof.
- (iii) The Chairperson shall rule on any procedural matters, which are not regulated in this constitution.
- (iv) Representatives and observers shall be entitled to attend meetings of the Chambers but observers shall not take part in debates, or vote.
- (v) A person who is not a representative may be allowed to address the Chambers at the request of a party and with the concurrence of the Chambers.
- (vi) Every meeting of the Chambers shall be conducted in private unless the Chambers otherwise decide.
- (vii) The Secretary shall keep minutes of the proceedings at Chamber meetings in such a manner as decided by the Chambers, and shall be forwarded by the Secretary to all parties within a period of 20 days after a meeting.

(h) **Agreements of Chambers**

- (i) Agreements of Chambers determined by way of voting shall be on the basis of a vote of the employer on the one side and a majority vote of the trade unions on the other side.
- (ii) The provisions of clause 14(2) shall apply with the necessary effect thereto.

(11) **Financial matters of the Chambers**

- (a) The annual budget submitted to the Council in terms of clauses 18(1) and (2) shall make provision for Chambers and shall include such expenses as the Council may agree to from time to time.
- (b) Accounts in respect of approved expenditure shall be submitted to the General Secretary by the Secretary, for settlement.

- (c) The Executive Committee may approve a petty cash for the Chambers, and shall be administered by the Secretary.
- (d) Funds required for a petty cash account shall –
 - (i) be kept safely in such a manner as the Council may determine from time to time;
 - (ii) be provided by the drawing of a cheque; and
 - (iii) not exceed the limit determined by the Council.
- (e) The Secretary shall prepare and submit quarterly to the General Secretary, statements of the income and expenditure.

CHAPTER 4

NEGOTIATION AND DISPUTE RESOLUTION PROCEDURES

13. Application

- (1) These procedures apply to all disputes that arise within the scope of the Council except disputes in respect of those matters that:
 - (a) are regulated by uniform rules, norms and standards that apply across the public service;
 - (b) apply to terms of service that apply to two or more sectors.
 - (c) are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector;
 - (d) are not capable of being determined by the Council as the employer or employers in the Council do not have the requisite authority to resolve the dispute; or
 - (e) must, in terms of the Act, be dealt with by the CCMA.¹
- (2) Any jurisdictional dispute between the PSCBC and the Council as to whether these procedures or the PSCBC's procedures apply must be referred to the Dispute Resolution Committee established in terms of section 38(1) of the Act for conciliation and arbitration.
- (3) Despite the provisions of clauses 13(1)(a) to 13(1)(d), all individual rights disputes must be dealt with by the Council.

14. Disputes of interest

- (1) **Negotiation procedures for parties to the Council on matters of mutual interest**
 - (a) Any party may submit proposals for the conclusion of a collective agreement in the Council.
 - (b) Within 7 days of the submission of the proposals the General Secretary must serve copies of the proposals on the parties to the Council.
 - (c) The Chairperson of the Council must call a meeting of the Executive Committee, within 10 days of the General Secretary receiving the proposals.
 - (d) The Executive Committee must set the agenda for the next meeting of the Council. Should the Executive Committee be of the view that some of the issues submitted to the Council should not be included on the agenda the matter will be referred to the Council for a decision. The Council will decide whether these issues must be included on the agenda, or whether to refer them to the relevant forum.
 - (e) If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion, of an item on the agenda of the Council, that party may refer the matter to the Dispute Resolution Committee established in terms of section 38(1) of the Act.
 - (f) At the first meeting of the Council, the Council must try to agree on a negotiation process which may include the following issues:
 - (i) the submission of counter proposals;
 - (ii) the establishment of a negotiation committee;
 - (iii) the appointment of a conciliator, if necessary, to facilitate the negotiations and chair the meetings; and
 - (iv) the time table for negotiations.

¹ The following disputes are not dealt with by the ELRC. They must, in terms of the Act, be dealt with by the CCMA.

- a) Disclosure of information – sections 16 and 189 of the Act
- b) Organisation rights – chapter III part A of the Act
- c) Agency shop disputes – section 25 of the Act
- d) Closed shop disputes – section 26 of the Act
- e) Interpretation or application of collective bargaining provisions – section 63(1) of the Act
- f) Picketing disputes – section 69 of the Act
- g) Workplace forum disputes – section 86 and 94 of the Act

- (g) In the event of the Council not agreeing on a negotiating procedure, the parties must, within two days, commence negotiations in the Council.
 - (h) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Council, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
 - (i) Subject to clause 14(1)(f) above, if any one of the parties declares a dispute the General Secretary must appoint a conciliator and convene a dispute meeting which the conciliator must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
 - (i) further conciliation meetings to settle the dispute;
 - (ii) the referral of the dispute to voluntary arbitration; and
 - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.
 - (j) If no collective agreement exists the conciliator must try to get agreement on:
 - (i) rules about the conduct of a strike or lockout, if applicable; and
 - (ii) picket rules, if applicable.
 - (k) If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
 - (l) At least any one of the parties must give seven days notice to the Council in the case of a lawful strike or lockout.
 - (m) Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 14(1)(h):
 - (i) require the employer not to implement unilaterally the change to terms and conditions of employment; or
 - (ii) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
 - (iii) the employer must comply with this requirement.
 - (n) If the dispute must be referred to arbitration, the procedures contained in clause 16(2) apply.
- (2) **Negotiating procedure for parties to a Chamber on matters of mutual interest**
- (a) Any party to a Chamber may submit proposals for the conclusion of a collective agreement in a Chamber.
 - (b) Within 7 days of the submission of the proposals, the Secretary of the Chamber must serve copies of the proposals on the parties to the Council.
 - (c) At the first meeting of the Chamber after the submission of the proposals, the Chamber must try to agree on a negotiating process and time table.
 - (d) In the event of the Chamber not agreeing to a negotiating procedure, the parties must, within 2 days, commence negotiations in the Chamber.
 - (e) If the parties do not conclude a collective agreement by the expiry of 30 days after the matter was first included on the agenda of the Chamber, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
 - (f) The provisions of clauses 14(1)(i) to 14(1)(n) apply with the necessary changes required by the context.
- (3) **Procedure for mutual interest disputes in respect of non-parties to the Council**
- (a) In this clause a dispute means any disputes of interest, other than one contemplated in clauses 14(1) and 14(2) above, between the employer or employers and a non-party to the Council, which concerns a matter of mutual interest contemplated in section 134 of the Act.
 - (b) If there is a dispute about whether or not a matter is a matter contemplated in section 134 of the Act the dispute must be referred to expedited arbitration in terms of clause 16(2).
 - (c) If the dispute is about a refusal to bargain, a party to the dispute may request the conciliator to issue an advisory award and the conciliator must issue the advisory award:
 - (i) within 14 days of the request; and
 - (ii) before notice is given in terms of section 64(1) of the Act.
 - (d) If the parties do not conclude a collective agreement by the expiry of the 30-day period, any party may declare a dispute. The General Secretary must convene a dispute meeting that the conciliator must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
 - (i) further conciliation meetings to settle the dispute;
 - (ii) the referral of the dispute to voluntary arbitration; and
 - (iii) if the dispute must be referred to arbitration, the appointment of the arbitrator.

- (e) If no collective agreement exists the conciliator must try to get agreement on:
 - (i) rules about the conduct of a strike or lockout, if applicable, and
 - (ii) picketing rules, if applicable.
- (f) If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the Act.
- (g) At least any one of the parties must give seven days notice to the Council in the case of a lawful strike or lockout.
- (h) Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in clause 14(3)(d):
 - (i) require the employer not to implement unilaterally the change to terms and conditions of employment;
 - (ii) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
 - (iii) the employer must comply with this requirement.

15. Disputes of right

- (1) In this clause, a dispute means any dispute, other than a mutual interest dispute contemplated in clause 14, that must be referred to the Council for:
 - (a) conciliation;²
 - (b) arbitration;³ or
 - (c) conciliation and arbitration.⁴
- (2) If the dispute is one that is contemplated in terms of clause 15(1)(a), the conciliation procedure contained in clause 16(1) applies.
- (3) If the dispute is one that is contemplated in terms of clause 15(1)(b), the procedure contained in clause 16(2) applies.
- (4) If the dispute is one that is contemplated in terms of clause 15(1)(c), the procedure contained in clause 16(3) applies.

16. Conciliation and arbitration procedures

(1) Conciliation by the Council

- (a) Subject to clause 16(1)(b), a party to a dispute may refer a dispute, as contemplated in clauses 15(1)(a) and 15(2), in writing, on appropriate forms as prescribed by Council, to the General Secretary for conciliation of that dispute.
- (b) The referral must be made within 45 days of becoming aware of the dispute, subject to the proviso that a party may not refer a Schedule 7 item 2(1)(a) unfair labour practice dispute before invoking the grievance procedure and allowing at least 30 days for resolution thereof.
- (c) The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (d) In the event of a Schedule 7 item 2(1)(a) unfair labour practice dispute, the party who refers the dispute must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.
- (e) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that the referral has been properly served, the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
 - (i) appoint a conciliator to attempt to resolve the dispute through conciliation within 45 days of the date of the registration;
 - (ii) decide the date, time and venue of the conciliation meeting; and
 - (iii) notify the parties to the dispute of these details.
- (f) If the parties to a dispute have agreed on a particular conciliator, the General Secretary must appoint the person agreed upon if that person is available to conciliate the dispute within the 45 day period or any agreed period. If the parties do not agree upon a conciliator the General Secretary shall appoint the conciliator.

2 Disputes contemplated are those that must be conciliated by the Council and may be referred to the Labour Court for adjudication. For example, dismissals for operational requirements or automatically unfair dismissals or dismissals for participating in an unprotected strike section 191(5)(b) Schedule 7, item 2(1)(a) unfair labour practice disputes.

3 Disputes concerning the interpretation of the Constitution, subject to clause 20(1).

4 Disputes contemplated are those disputes that the council must conciliate and arbitrate. For example, dismissals for misconduct and incapacity – see section 191(5)(a) item 2(1)(b) to (d) of Schedule 7 – unfair labour practice disputes. Section 23 – disputes arising out of the interpretation or application of a collective agreement.

- (g) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
 - (i) mediating the dispute;
 - (ii) conducting a fact-finding exercise;
 - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
 - (iv) arbitrating the dispute immediately if the parties request the conciliator, in writing on the Council's prescribed forms, to do so.
 - (h) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
 - (i) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may:
 - (i) dismiss the matter;
 - (ii) continue with the conciliation in the absence of the party; or
 - (iii) adjourn the conciliation to a later date.
 - (j) At the conclusion of the conciliation, the Conciliator must either:
 - (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator, OR
 - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND
 - (iii) issue the General Secretary of Council, not later than two (2) ordinary days thereof, with the original documents, as required by 16 (1)(j)(i) and (ii) above, OR
 - (iv) if the parties requested the conciliator to arbitrate the dispute, having had regard to the Council's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings, and it must be signed by the conciliator/arbitrator.
 - (k) After the conclusion of the conciliation, the Council will not process the dispute any further, unless at the request of both parties to further explore conciliation or voluntary arbitration through Council.
 - (l) If an arbitration award is issued in terms of either clause 16 (1) (j)(iv) or clause 16 (1)(k), the General Secretary must serve a copy of the award on each party to the dispute within 14 days of conclusion of the proceedings or as soon thereafter as possible.
- (2) **Arbitrations by the Council**
- (a) Subject to clause 16(2)(b), a party to a dispute, as contemplated in clauses 15 (1)(b) and 15 (3), may refer the dispute, in writing, on the appropriate forms as prescribed by Council, to the General Secretary for arbitration of that dispute.
 - (b) The referral must be made within 45 days of becoming aware of the dispute.
 - (c) The party who refers a dispute to the Council must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
 - (d) If the parties to a dispute have agreed on an arbitrator or arbitrators, the General Secretary must appoint the person or persons agreed upon. The onus for reaching an agreement about who is to be the arbitrator rests with the parties. Upon an application by a party the General Secretary may appoint more than one arbitrator, provided that the nature of the issue in dispute and/or the financial implications of the dispute justifies this.
 - (e) Should the parties not agree upon the arbitrator within 10 days of the date of the registration of the dispute, the General Secretary shall appoint an arbitrator.
 - (f) If the General Secretary is satisfied that the dispute is a dispute in terms of this Constitution and that referral has been properly served the General Secretary must register the dispute by recording it in a Dispute Register and thereafter:
 - (i) appoint the arbitrator or arbitrators to arbitrate the dispute;
 - (ii) set the matter down for arbitration within 45 days of the registration of the dispute.
 - (g) The General Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.
 - (h) The arbitrator may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation.
 - (i) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
 - (j) In any arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the

employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.

- (k) If the party to the dispute fails to appear in person, or to be represented at the arbitration proceedings the arbitrator may –
 - (i) dismiss the matter; or
 - (ii) continue with the arbitration proceedings in the absence of the party; or
 - (iii) adjourn the arbitration proceedings to a later date.
- (l) Within 14 days of the conclusion of the arbitration proceedings –
 - (i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.
 - (ii) the General Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
 - (iii) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.

(3) Conciliation and arbitration by the Council

- (a) Subject to clause 16(3)(b), a party to a dispute, as contemplated in clauses 15(1)(c) and 15(4), may refer the dispute in writing, on the appropriate forms as prescribed by Council, to the General Secretary for conciliation and arbitration of that dispute.
- (b) The referral must be made within 90 days of becoming aware of the dispute, subject to the proviso that a party may not refer a dispute, except a dismissal dispute, before invoking the grievance procedure and allowing at least 30 days for resolution thereof.
- (c) Notwithstanding clause 16(3)(b), a dispute about a dismissal must reach the General Secretary within 45 days of the employee being informed of the dismissal.
- (d) The party who refers the dispute must satisfy the General Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (e) The party who refers the dispute, other than a dismissal dispute, must satisfy the General Secretary that the grievance procedure was invoked at least 30 days prior to the referral.
- (f) If the General Secretary is satisfied that the dispute is a dispute in terms of its Constitution and that the referral has been properly served, the General Secretary must register the dispute, by recording it in a Dispute Register, and thereafter:
 - (i) appoint an arbitrator;
 - (ii) set the matter down for arbitration within 45 days of registering the dispute;
 - (iii) appoint a conciliator; and
 - (iv) set the matter down for conciliation no less than 14 days before the arbitration.
- (g) The General Secretary may appoint the same person to conciliate and arbitrate the dispute if that person is a member of both panels appointed in terms of clause 16(6).
- (h) The timeframes referred to in clauses 16(3)(b) and (c) may be extended by the General Secretary, where there is a successful condonation application, relating to the late referral of that dispute.

Conciliation

- (i) The conciliator appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include:
 - (i) mediating the dispute;
 - (ii) conducting a fact-finding exercise;
 - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
 - (iv) arbitrating the dispute immediately if the parties request the conciliator, in writing on the Council's prescribed forms, to do so.
- (j) In the conciliation proceedings a party to the dispute may appear in person and/or be represented by a member, an office bearer or an official of that party's trade union in the case of an employee or by an employee of the party in the case of an employer.
- (k) If a party to the dispute fails to appear in person or to be represented at the conciliation, the conciliator may:
 - (i) dismiss the matter;
 - (ii) continue with the conciliation in the absence of the party; or
 - (iii) adjourn the conciliation to a later date.

- (l) At the conclusion of the conciliation, the Conciliator must either:
 - (i) draw up a written agreement between the parties if the dispute is resolved; such agreement must be duly signed by the parties and witnessed by the conciliator, OR
 - (ii) issue the parties with a copy of the "Outcome Form for a Dispute referred to the ELRC for Conciliation", if the dispute remains unresolved, AND
 - (iii) issue the General Secretary of Council, not later than two (2) ordinary days thereof, with the original documents as required by clauses 16 (3)(l) (i) and (ii) above, OR
 - (iv) if the parties agreed, in writing, to immediate arbitration in terms of Clause 16(3)(i)(iv), having regard to the Council's policy on arbitrations, issue the General Secretary with an arbitration award with reasons, within 14 days of conclusion of the proceedings and it must be signed by the conciliator/arbitrator.
- (m) In the event of immediate arbitration, the General Secretary must, within 14 days of conclusion of the proceedings or as soon as possible thereafter, serve a copy of the award on the parties.
- (n) If the dispute remains unresolved at the end of conciliation, the referring party must indicate in writing, within 4 working days, on appropriate forms as prescribed by Council, that the scheduled arbitration must proceed. The "Outcome Form for a Dispute referred to the ELRC for Conciliation", referred to in clause 16(3)(l)(ii), must be attached to the application for arbitration.

Arbitration

- (o) In respect of pre-arbitration pleadings, the onus rests with the parties to address this matter, prior to the date already scheduled for arbitration, of the said dispute.
 - (p) The arbitrator may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
 - (q) The arbitrator appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
 - (r) Subject to clause 16(3)(s) below, in these arbitration proceedings, a party to the dispute may appear in person and/or be represented by a legal practitioner or by a member, office bearer or official of that party's trade union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner.
 - (s) If the dispute being arbitrated is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the educator's conduct or capacity, the parties, despite clause 16(3)(r) above, are not entitled to be represented by a legal practitioner in these arbitration proceedings unless:
 - (i) the arbitrator and all the other parties consent; or
 - (ii) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering:
 - (aa) the nature of the questions of law raised by the dispute;
 - (bb) the complexity of the dispute;
 - (cc) the public interest; and
 - (dd) the comparative ability of the opposing parties or their representatives to deal with the arbitration of the dispute.
 - (t) If the party to the dispute fails to appear in person, or to be represented at the arbitration proceedings the arbitrator may –
 - (i) dismiss the matter; or
 - (ii) continue with the arbitration proceedings in the absence of the party; or
 - (iii) adjourn the arbitration proceedings to a later date.
 - (u) Within 14 days of the conclusion of the arbitration proceedings –
 - (i) the arbitrator/s must, having had regard to the Council's policy on arbitrations, issue an arbitration award with reasons and it must be signed by the arbitrator or arbitrators, as the case may be.
 - (ii) the General Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
 - (iii) the General Secretary may, on good cause shown, extend the period within which the arbitration award is written and issued and the reasons, for such, are to be filed.
- (4) **Recording of conciliation and arbitration proceedings**
- (a) The Council will not provide any recording facilities at conciliation or its related activities.

- (b) Subject to clause 16(4)(c), the Council shall, upon request, provide mechanical recording facilities, at the cost of Council, for arbitration proceedings.
- (c) The General Secretary shall determine the type of recording facility to be provided, based on the availability of resources in Council.
- (d) The Council will not provide any transcripts of such recordings, unless the requesting party is willing to cover the costs of Council related to the production of such transcripts.
- (e) The Council shall keep the mechanical recordings, in a place determined by the General Secretary, and such recordings may only be available to the parties for a period not exceeding 180 ordinary days, from the date of its production.
- (f) The mechanical recording and the transcript shall be the property of the Council.
- (g) The Council reserves the right to destroy the recordings after the 180 ordinary days referred to in clause 16(4)(e).

(5) Costs

- (a) Subject to clause 16(5)(b), the Council will pay the costs of the conciliators' and arbitrators' proceedings, in terms of the Council's Policy.
- (b) If an arbitrator finds that a dismissal is procedurally unfair the arbitrator may charge the employer an arbitration fee⁵.
- (c) Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- (d) If the arbitrator is satisfied that a party has acted unreasonably, wasted costs or referred the dispute to arbitration without reasonable cause, the arbitrator may, on application by either party or Council, make an appropriate order for costs, including the costs of the arbitration.
- (e) Costs awarded by the arbitrator may include –
 - (i) the costs of the arbitration;
 - (ii) legal and professional costs and disbursements;
 - (iii) other expenses which a party has incurred in the conduct of the dispute; and
 - (iv) expenses of witnesses.

(6) Panels of conciliators and arbitrators

- (a) Subject to the Act, the Council may, at any its meetings, for a period of one year at time, appoint, from nominations received from the parties:
 - (i) a panel of conciliators to conciliate disputes;
 - (ii) a panel of arbitrators to arbitrate disputes.
- (b) In making these appointments the Council must ensure that the panels–
 - (i) are drawn from each of the nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of educators employed in the national and provincial departments in the various provinces;
 - (ii) have skill and experience in labour relations, knowledge about the education sector and knowledge or experience in conciliation and arbitration;
 - (iii) are broadly representative of South African society.
- (c) All conciliators and arbitrators will conduct themselves in accordance with the Code of Conduct in Schedule 1.
- (d) The Council may remove a member of the panels from office because of incapacity.
- (e) If for any reason there is a vacancy in a panel, the Council may, subject to the Act, appoint a new member to the relevant panel for the unexpired term of office.
- (f) A member of the panel, whose term of office expires, may be eligible for re-appointment.
- (g) If the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the CCMA who must appoint a suitably qualified person to fill the vacancy.

(7) Extension of time periods and condonation

- (a) The Council may require the referring party to set out in writing, on the appropriate forms as prescribed by the Council, the application for condonation of a late referral of a dispute.
- (b) Any late referral or application may be condoned on good cause shown, by an arbitrator appointed for that purpose. Such an arbitrator must be appointed by the General Secretary from the agreed panel of arbitrators.

⁵ Section 140(2) of the Act provides this power to commissioners of the CCMA. This is a comparable power provided to arbitrators appointed by the Council.

- (c) Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.
- (d) If a party does not comply with the timeframes set in this Constitution because it is involved in resolving the matter through the grievance procedures, then this will constitute good cause for condonation.
- (e) An arbitrator adjudicating a condonation application must determine the application, as far as it is reasonably possible, by means of written submissions from the parties.

CHAPTER 5

17. Strikes, lock-outs, picketing and protest action

- (1) Every employee has the right to strike and every employer has recourse to lock-out if:
 - (a) the issue in dispute has been referred to the Council;
 - (b) the Council has issued a certificate stating the dispute remains unresolved, or a period of 30 days, which may be extended by agreement, has lapsed, since the referral was received by the Council; and
 - (c) 7 days notice of the commencement of the strike or lock-out has been given to the employer or the trade unions, as the case may be, and the Council.
- (2) Parties shall comply with a code or codes of practice as provided for by the Act or as contained in any collective agreement.

CHAPTER 6

18. Financial matters of the Council

- (1) On or before the 15th day of September of each year, the various committees of Council must submit their inputs on the budget for the following year to the General Secretary. A draft budget must then be submitted to a special meeting of the Executive Committee via the Finance Committee.
- (2) The budget of Council shall also make provision for the administration and functioning of Chambers.
- (3) The General Secretary, shall, during the first week of December of each year, submit to a special meeting of Council an annual budget which must be approved at such a meeting.
- (4) The expenses of the Council shall be met from a fund or funds, which shall be raised by levies on employers and employees; Provided that such levies may be revised and adjusted by the Council from time to time.
- (5) The employer shall pay monthly, per employee, an amount agreed to by the parties to the Council into the fund or funds referred to in clause 18(4) above.
- (6) The employer shall deduct monthly per employee a levy agreed to by the parties to the Council which shall be paid into the fund or funds referred to in clause 18(4) above.
- (7) All monies received on behalf of the Council shall be deposited to the credit of the Council with a registered bank approved by the Council.
- (8) Monies received by the Council from levies imposed in terms of clauses 18(4), (5) and (6) above shall firstly be applied to meet the monthly expenditure budget of the Council, and monies not so applied shall:
 - (a) at the discretion of Council, be used for Council activities including research and development, training and other activities that enhance collective bargaining; or
 - (b) be invested in accordance with section 53(5) of the Act.
- (9) All disbursements to be made from the funds of the Council shall be approved by the Council and shall be paid in any legal tender.
- (10) Funds required for a petty cash account shall –
 - (a) be kept safely in such a manner as the Council may determine from time to time;
 - (b) be provided by the drawing of a cheque; and
 - (c) not exceed the limit determined by the Council.
- (11) A financial report of the books of Council shall be prepared by the Finance Committee of Council as at the end of June each year, in accordance with accepted accounting practice, showing monies received and expenditure incurred over the preceding six months. A full audit of the books of Council must be prepared as at the end of December of each year.
- (12) The General Secretary shall, prior to the Annual General Meeting of each year, in respect of the previous financial year, prepare the financial statements of the Council in accordance with accepted accounting practice, showing monies received and expenditure incurred.
- (13) The financial year of the Council shall be from 1 January of a particular year to the last day of December of the same year.

- (14) Certified copies of the audited statements and of the auditor's report thereon, shall be made available for inspection at the office of the Council to the parties who shall be entitled to make copies of both the statements and of the auditor's report.
- (15) All the statements as well as the auditor's report shall be included in the annual report of the Council.
- (16) Certified copies of statements and of the auditor's reports referred to in clauses 18(14) and (15) above shall be transmitted to the Registrar, within 30 days after the close of the period covered by the statements.

CHAPTER 7

19. Amendment of the constitution

- (1) The Council may amend this constitution at any time by either :-
 - (a) a unanimous vote on a resolution without prior notice; or
 - (b) a resolution adopted by two thirds of the vote weight of the trade unions to the Council on the one side and the employer on the other after at least –
 - (i) one month's notice to the General Secretary; and
 - (ii) two weeks' notice to parties to the Council.

20. Interpretation

- (1) Any dispute relating to the interpretation or application of this constitution shall be resolved by a decision of Council by two-thirds of the vote weight of the trade unions to the Council on the one side and the employer on the other, and failing such vote, the dispute shall be referred to arbitration in terms of the provisions of clause 15(1)(b).
- (2) The decision of the arbitrator shall be final and binding.

CHAPTER 8

21. Seat of the Council

- (1) The *domicilium citandi et executandi* of the Council shall be:
261 West Avenue,
Centurion,
0046,
Gauteng,
Republic of South Africa.

22. Winding-up

- (1) At a special meeting called for that purpose the Council may decide by resolution to wind up the Council.
- (2) Upon adoption of a resolution to wind up, the General Secretary must :-
 - (a) apply immediately to the Labour Court for an order giving effect to the resolution; and
 - (b) deliver the Council's books of account and its assets, including all funds and investments, to the liquidator appointed by the Labour Court.
- (3) Upon adoption of a resolution to wind up, each party to the Council remains liable for unpaid liabilities to the Council as at the date on which the resolution for winding up was adopted.
- (4) If all the liabilities of the Council have been discharged, the Council must transfer any remaining assets to a bargaining council to be decided upon by the parties to the Council. If no agreement can be reached then the proceeds must be paid to the Commission for Conciliation, Mediation and Arbitration (CCMA).

CHAPTER 9

23. Definitions

- (1) Unless otherwise specified, any expression used in this Constitution that is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995) has the same meaning as in the Act.
- (2) "Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (3) "Arbitrator" means an arbitrator appointed in terms of clause 16(4) above.
- (4) "Conciliator" means a conciliator appointed by the Council in terms of clause 16(4) above.

- (5) **“dispute”** means a dispute that exists in respect of
 - (a) matters that are regulated by uniform rules, norms and standards that apply to the education sector; or
 - (b) matters that apply to terms and conditions of service that apply to the education sector; or
 - (c) matters that are assigned to the State as employer in the education sector.
- (6) **“Employee”** means an educator as defined in the Employment of Educators Act, 1998.
- (7) **“Employer”** means the employer as defined in the Employment of Educators Act, 1998.
- (8) **“General Secretary”** means the official appointed in terms of clause 8(2)(a).
- (9) **“Membership”** means the paid-up membership on stop-order with the employer and registered in terms of the Act and this constitution.
- (10) **“Member of the Executive Council”** means the Member of the Executive Council entrusted with the portfolio of education in terms of sections 132 and 133 of the Constitution of the Republic of South Africa, 1993. (Act No. 108 of 1996)
- (11) **“Minister”** means the Minister of Education.
- (12) **“Official audited membership”** means the audit of membership, as at 31 December, of a registered or admitted trade union which is required in terms of the provisions of this constitution and which is confirmed by the official auditors of the Council in an annual audit for the Annual General Meeting.
- (13) **“Provincial Head of Education”** means the most senior official responsible for education in a province appointed by the Member of the Executive Council.
- (14) **“Public Service Co-ordinating Bargaining Council (PSCBC)”** means the PSCBC established in terms of the Act.
- (15) **“Registrar”** means the Registrar as defined in the Act.
- (16) **“Secretary”** means the official appointed in a Chamber in terms of clause 12(9)(b)(i).
- (17) **“Trade union”** means a trade union as defined in the Act, including two or more trade unions acting jointly as a single party.

CODE OF CONDUCT FOR ARBITRATORS AND CONCILIATORS

SCHEDULE 1

CODE OF CONDUCT FOR CONCILIATORS AND ARBITRATORS

1. Purpose

- (1) The purpose of this code is to:
 - (a) assist in maintaining the good repute of the conciliation mediation and arbitration processes.
 - (b) provide guidance to all conciliators and arbitrators on matters of professional conduct and practice generally.

2. General attributes of conciliators and arbitrators

- (1) In order for conciliation, mediation and arbitration processes to be seen to be fair and just, conciliators and arbitrators must:
 - (a) Act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of their functions;
 - (b) Conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
 - (c) Not solicit appointments for themselves. This shall not however preclude conciliators and arbitrators from indicating a willingness to serve in any capacity;
 - (d) Accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment.
 - (e) Avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias;
 - (f) Not influence any of the parties in disputes by improper means, including gifts or other inducements;
 - (g) Support sound labour relations in the education sector.

3. Conflict of interest and disclosure

- (1) Conciliators and arbitrators should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the conciliators and arbitrators.
- (2) Conciliators and arbitrators appointed to intervene in any matter should, before accepting, disclose this to the General Secretary of the Council:
 - (a) Any direct or indirect financial or personal interest in the matter;
 - (b) Any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias;
 - (c) If the circumstances requiring disclosure are unknown to conciliators and arbitrators prior to accepting appointments, disclosure must be made when these circumstances become known to the conciliators and arbitrators. The disclosure in this regard could in arbitration proceedings, include witnesses who may have a relationship with the conciliators and arbitrators;
 - (d) After appropriate disclosure conciliators and arbitrators may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties.
 - (e) In the event where there is no consensus on whether conciliators and arbitrators should withdraw or not, conciliators and arbitrators should not withdraw if the following circumstances exist:
 - (i) If the terms of reference provide for a procedure to be followed for determining challenges to the conciliators and arbitrators then those procedures should be followed;
 - (ii) If conciliators and arbitrators, after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

4. Hearing conduct

- (1) Conciliators and arbitrators should conduct proceedings fairly, diligently and in an even-handed manner.

- (2) Conciliators and arbitrators should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.
- (3) Conciliators and arbitrators should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings.
- (4) Agreements by the parties for the use of mechanical recording should be respected by arbitrators.
- (5) In determining whether to conduct an ex parte hearing, an arbitrator must consider the relevant legal, contractual and other pertinent circumstances.
- (6) A conciliator or arbitrator must be satisfied before proceeding ex parte that a party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing.
- (7) In the event of more than one conciliator or arbitrator acting as either a conciliator, mediator or arbitrator, the conciliator or arbitrator should afford each other a full opportunity to participate in the proceedings.
- (8) Conciliators and arbitrators should not delegate their duty to intervene in any matter to any other person without prior notice to and the consent of the General Secretary of the Council.

5. Post-hearing

- (1) Arbitrators should not disclose a prospective award to either party prior to its simultaneous issuance to both parties.
- (2) Arbitrators' awards should be definite, certain and as concise as possible.
- (3) No clarification or interpretation of an award is permissible without the consent of both parties.
- (4) Under agreements which permit or require clarification or interpretation of an award, arbitrators shall afford each party an opportunity to be heard.

6. Confidentiality

Information disclosed to conciliators in confidence by a party during the course of conciliation, should be kept by conciliators in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained for such disclosure.

7. Jurisdiction

- (1) Conciliators and arbitrators must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which they serve.
- (2) A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by conciliators and arbitrators as relieving him or her of further jurisdiction in respect of such issues.

8. Reliance on other arbitrators' awards and independent research

Conciliators and arbitrators issuing advisory or binding awards may have regard to other arbitrators' awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.

9. Avoidance of delays

- (1) Conciliators and arbitrators have the duty to plan their work schedules in a manner that ensures that commitments to the Council are fulfilled timeously.
- (2) Conciliators and arbitrators should co-operate with the parties and the Council to avoid delays.
- (3) On completion of a hearing, arbitrators must adhere to the time limits for issuing an award.

10. Fees and expenses

- (1) Conciliators and arbitrators should be governed by the fee structure of the Council and should not enter into any arrangements with the parties regarding fees.
- (2) Conciliators and arbitrators must maintain adequate records to support charges for services and expenses and must account timeously to the Council.

11. Competency

Conciliators and arbitrators should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.

SECTION 7: GENERAL LEGISLATION

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CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT 108 of 1997

Relevant Extracts

[DATE OF PROMULGATION 18 DECEMBER, 1996]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 4 FEBRUARY, 1997]

[UNLESS OTHERWISE INDICATED]

as amended by

Constitution of the Republic of South Africa Amendment Act, No. 35 of 1997
Constitution of the Republic of South Africa Amendment Act, No. 65 of 1998
Constitution of the Republic of South Africa Second Amendment Act, No. 87 of 1998
Constitution of the Republic of South Africa Second Amendment Act, No. 2 of 1999
Constitution of the Republic of South Africa Amendment Act, No. 3 of 1999
Constitution of the Republic of South Africa Amendment Act, No. 34 of 2001
Constitution of the Republic of South Africa Second Amendment Act, No. 61 of 2001

Chapter 2 BILL OF RIGHTS

Rights

- 7** (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.

Application

- 8** (1) The Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
- (2) A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.
- (3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a court –
- (a) in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right; and
- (b) may develop rules of the common law to limit the right, provided that the limitation is in accordance with section 36 (1).
- (4) A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.

Equality

- 9** (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Life

11. Everyone has the right to life.

Freedom and security of the person

- 12 (1) Everyone has the right to freedom and security of the person, which includes the right –
- (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) not to be detained without trial;
 - (c) to be free from all forms of violence from either public or private sources;
 - (d) not to be tortured in any way; and
 - (e) not to be treated or punished in a cruel, inhuman or degrading way.
- (2) Everyone has the right to bodily and psychological integrity, which includes the right –
- (a) to make decisions concerning reproduction;
 - (b) to security in and control over their body; and
 - (c) not to be subjected to medical or scientific experiments without their informed consent.

Slavery, servitude and forced labour

13. No one may be subjected to slavery, servitude or forced labour.

Privacy

14. Everyone has the right to privacy, which includes the right not to have –
- (a) their person or home searched;
 - (b) their property searched;
 - (c) their possessions seized; or
 - (d) the privacy of their communications infringed.

Freedom of religion, belief and opinion

- 15 (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that –
- (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising –
- (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Freedom of expression

16. (1) Everyone has the right to freedom of expression, which includes –
- (a) freedom of the press and other media;
 - (b) freedom to receive or impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.
- (2) The right in subsection (1) does not extend to –
- (a) propagand-a for war;
 - (b) incitement of imminent violence; or
 - (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Assembly, demonstration, picket and petition

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Freedom of association

18. Everyone has the right to freedom of association.

Political rights

- 19** (1) Every citizen is free to make political choices, which includes the right –
- (a) to form a political party;
 - (b) to participate in the activities of, or recruit members for, a political party; and
 - (c) to campaign for a political party or cause.
- (2) Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution.
- (3) Every adult citizen has the right –
- (a) to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret; and
 - (b) to stand for public office and, if elected, to hold office.

Citizenship

- 20.** No citizen may be deprived of citizenship.

Freedom of movement and residence

- 21** (1) Everyone has the right to freedom of movement.
- (2) Everyone has the right to leave the Republic.
- (3) Every citizen has the right to enter, to remain in and to reside anywhere in, the Republic.
- (4) Every citizen has the right to a passport.

Freedom of trade, occupation and profession

- 22.** Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.

Labour relations

- 23** (1) Everyone has the right to fair labour practices.
- (2) Every worker has the right –
- (a) to form and join a trade union;
 - (b) to participate in the activities and programmes of a trade union; and
 - (c) to strike.
- (3) Every employer has the right –
- (a) to form and join an employers' organisation; and
 - (b) to participate in the activities and programmes of an employers' organisation.
- (4) Every trade union and every employers' organisation has the right –
- (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).
- (6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).

Environment

- 24.** Everyone has the right –
- (a) to an environment that is not harmful to their health or well-being; and
 - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Property

- 25** (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application –
- (a) for a public purpose or in the public interest; and

- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –
 - (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section –
 - (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).
- (9) Parliament must enact the legislation referred to in subsection (6).

Housing

- 26** (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Health care, food, water and social security

- 27** (1) Everyone has the right to have access to –
- (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

Children

- 28** (1) Every child has the right –
- (a) to a name and a nationality from birth;
 - (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;
 - (c) to basic nutrition, shelter, basic health care services and social services;
 - (d) to be protected from maltreatment, neglect, abuse or degradation;
 - (e) to be protected from exploitative labour practices;
 - (f) not to be required or permitted to perform work or provide services that –
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
 - (g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –
 - (i) kept separately from detained persons over the age of 18 years; and
 - (ii) treated in a manner, and kept in conditions, that take account of the child's age;

- (h) to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

Education

- 29** (1) Everyone has the right –
- (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions, taking into account –
- (a) equity;
 - (b) practicability; and
 - (c) the need to redress the results of past racially discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –
- (a) do not discriminate on the basis of race;
 - (b) are registered with the state; and
 - (c) maintain standards that are not inferior to standards at comparable public educational institutions.
- (4) Subsection (3) does not preclude state subsidies for independent educational institutions.

Language and culture

- 30.** Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

Cultural, religious and linguistic communities

- 31** (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
- (a) to enjoy their culture, practise their religion and use their language; and
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights.

Access to information

- 32** (1) Everyone has the right of access to –
- (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Just administrative action

- 33** (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must –
- (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - (b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and
 - (c) promote an efficient administration.

Access to courts

- 34.** Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Arrested, detained and accused persons

- 35** (1) Everyone who is arrested for allegedly committing an offence has the right –
- (a) to remain silent;
 - (b) to be informed promptly –
 - (i) of the right to remain silent; and
 - (ii) of the consequences of not remaining silent;
 - (c) not to be compelled to make any confession or admission that could be used in evidence against that person;
 - (d) to be brought before a court as soon as reasonably possible, but not later than –
 - (i) 48 hours after the arrest; or
 - (ii) the end of the first court day after the expiry of the 48 hours, if the 48 hours expire outside ordinary court hours or on a day which is not an ordinary court day;
 - (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
 - (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.
- (2) Everyone who is detained, including every sentenced prisoner, has the right –
- (a) to be informed promptly of the reason for being detained;
 - (b) to choose, and to consult with, a legal practitioner, and to be informed of this right promptly;
 - (c) to have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
 - (e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment; and
 - (f) to communicate with, and be visited by, that person's –
 - (i) spouse or partner;
 - (ii) next of kin;
 - (iii) chosen religious counsellor; and
 - (iv) chosen medical practitioner.
- (3) Every accused person has a right to a fair trial, which includes the right –
- (a) to be informed of the charge with sufficient detail to answer it;
 - (b) to have adequate time and facilities to prepare a defence;
 - (c) to a public trial before an ordinary court;
 - (d) to have their trial begin and conclude without unreasonable delay;
 - (e) to be present when being tried;
 - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
 - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
 - (i) to adduce and challenge evidence;
 - (j) not to be compelled to give self-incriminating evidence;
 - (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;
 - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
 - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
 - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
 - (o) of appeal to, or review by, a higher court.
- (4) Whenever this section requires information to be given to a person, that information must be given in a language that the person understands.
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

Limitation of rights

- 36** (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including –
- (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

States of emergency

- 37** (1) A state of emergency may be declared only in terms of an Act of Parliament, and only when –
- (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency; and
 - (b) the declaration is necessary to restore peace and order.
- (2) A declaration of a state of emergency, and any legislation enacted or other action taken in consequence of that declaration, may be effective only –
- (a) prospectively; and
 - (b) for no more than 21 days from the date of the declaration, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time. The first extension of the state of emergency must be by a resolution adopted with a supporting vote of a majority of the members of the Assembly. Any subsequent extension must be by a resolution adopted with a supporting vote of at least 60 per cent of the members of the Assembly. A resolution in terms of this paragraph may be adopted only following a public debate in the Assembly.
- (3) Any competent court may decide on the validity of –
- (a) a declaration of a state of emergency;
 - (b) any extension of a declaration of a state of emergency; or
 - (c) any legislation enacted, or other action taken, in consequence of a declaration of a state of emergency.
- (4) Any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that –
- (a) the derogation is strictly required by the emergency; and
 - (b) the legislation –
 - (i) is consistent with the Republic's obligations under international law applicable to states of emergency;
 - (ii) conforms to subsection (5); and
 - (iii) is published in the national *Government Gazette* as soon as reasonably possible after being enacted.
- (5) No Act of Parliament that authorises a declaration of a state of emergency, and no legislation enacted or other action taken in consequence of a declaration, may permit or authorise –
- (a) indemnifying the state, or any person, in respect of any unlawful act;
 - (b) any derogation from this section; or
 - (c) any derogation from a section mentioned in column 1 of the Table of Non-Derogable Rights, to the extent indicated opposite that section in column 3 of the Table.

Table of Non-Derogable Rights

1 Section Number	2 Section Title	3 Extent to which the right is protected
9	Equality	With respect to unfair discrimination solely on the grounds of race, colour, ethnic or social origin, sex, religion or language.
10	Human Dignity	Entirely
11	Life	Entirely
12	Freedom and Security of the person	With respect to subsections (1) (d) and (e) and (2) (c).
13	Slavery, servitude and forced labour	With respect to slavery and servitude.
28	Children	With respect to: – subsection (1) (d) and (e); – the rights in subparagraphs (i) and (ii) of subsection (1) (g); and – subsection 1 (i) in respect of children of 15 years and younger.
35	Arrested, detained and accused persons	With respect to: – subsections (1) (a), (b) and (c) and (2) (d); – the rights in paragraphs (a) to (o) of subsection (3), excluding paragraph (d) – subsection (4); and – subsection (5) with respect to the exclusion of evidence if the admission of that evidence would render the trial unfair.

- (6) Whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, the following conditions must be observed:
- (a) An adult family member or friend of the detainee must be contacted as soon as reasonably possible, and informed that the person has been detained.
 - (b) A notice must be published in the national *Government Gazette* within five days of the person being detained, stating the detainee's name and place of detention and referring to the emergency measure in terms of which that person has been detained.
 - (c) The detainee must be allowed to choose, and be visited at any reasonable time by, a medical practitioner.
 - (d) The detainee must be allowed to choose, and be visited at any reasonable time by, a legal representative.
 - (e) A court must review the detention as soon as reasonably possible, but no later than 10 days after the date the person was detained, and the court must release the detainee unless it is necessary to continue the detention to restore peace and order.
 - (f) A detainee who is not released in terms of a review under paragraph (e), or who is not released in terms of a review under this paragraph, may apply to a court for a further review of the detention at any time after 10 days have passed since the previous review, and the court must release the detainee unless it is still necessary to continue the detention to restore peace and order.
 - (g) The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
 - (h) The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee at least two days before the court reviews the detention.
- (7) If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.
- (8) Subsections (6) and (7) do not apply to persons who are not South African citizens and who are detained in consequence of an international armed conflict. Instead, the state must comply with the standards binding on the Republic under international humanitarian law in respect of the detention of such persons.

Enforcement of rights

- 38.** Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –
- (a) anyone acting in their own interest;
 - (b) anyone acting on behalf of another person who cannot act in their own name;
 - (c) anyone acting as a member of, or in the interest of, a group or class of persons;
 - (d) anyone acting in the public interest; and
 - (e) an association acting in the interest of its members.

Interpretation of Bill of Rights

- 39** (1) When interpreting the Bill of Rights, a court, tribunal or forum –
- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
 - (b) must consider international law; and
 - (c) may consider foreign law.
- (2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights.
- (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.
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LABOUR RELATIONS ACT

66 of 1995

Relevant Extracts

[ASSENTED TO 29 NOVEMBER, 1995]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 11 NOVEMBER, 1996]

[UNLESS OTHERWISE INDICATED]

as amended by

Labour Relations Amendment Act, No. 42 of 1996

Basic Conditions of Employment Act, No. 75 of 1997

Employment Equity Act, No. 55 of 1998

Labour Relations Amendment Act, No. 127 of 1998

Labour Relations Amendment Act, No. 12 of 2002

ACT

To change the law governing labour relations and, for that purpose –
to give effect to section 27 of the Constitution;
to regulate the organisational rights of trade unions;
to promote and facilitate collective bargaining at the workplace and at sectoral level;
to regulate the right to strike and the recourse to lock-out in conformity with the Constitution;
to promote employee participation in decision-making through the establishment of workplace forums;
to provide simple procedures for the resolution of labour disputes through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose;
to establish the Labour Court and Labour Appeal Court as superior courts, with exclusive jurisdiction to decide matters arising from the Act;
to provide for a simplified procedure for the registration of trade unions and employers' organisations, and to provide for their regulation to ensure democratic practices and proper financial control;
to give effect to the public international law obligations of the Republic relating to labour relations;
to amend and repeal certain laws relating to labour relations; and
to provide for incidental matters.

Chapter I

PURPOSE, APPLICATION AND INTERPRETATION

Purpose of this Act

1. **The purpose of this Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act, which are –**
 - (a) to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution;
 - (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation;
 - (c) to provide a framework within which employees and their trade unions, employers and employers' organisations can –
 - (i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and
 - (ii) formulate industrial policy; and
 - (d) to promote –
 - (i) orderly collective bargaining;
 - (ii) collective bargaining at sectoral level;

- (iii) employee participation in decision-making in the workplace; and
- (iv) the effective resolution of labour disputes.

Exclusion from application of this Act

2. **This Act does not apply to members of –**
- (a) the National Defence Force;
 - (b) the National Intelligence Agency; and
 - (c) the South African Secret Service.

Interpretation of this Act

3. **Any person applying this Act must interpret its provisions –**
- (a) to give effect to its primary objects;
 - (b) in compliance with the Constitution; and
 - (c) in compliance with the public international law obligations of the Republic.

**Chapter II
FREEDOM OF ASSOCIATION AND GENERAL PROTECTIONS**

Employees' right to freedom of association

4. (1) Every employee has the right –
- (a) to participate in forming a trade union or federation of trade unions; and
 - (b) to join a trade union, subject to its constitution.
- (2) Every member of a trade union has the right, subject to the constitution of that trade union –
- (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers, officials or trade union representatives; and
 - (c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; and
 - (d) to stand for election and be eligible for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in terms of this Act or any collective agreement.
- (3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation –
- (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers or officials; and
 - (c) to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office.

Protection of employees and persons seeking employment

5. (1) No person may discriminate against an employee for exercising any right conferred by this Act.
- (2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following –
- (a) require an employee or a person seeking employment –
 - (i) not to be a member of a trade union or workplace forum;
 - (ii) not to become a member of a trade union or workplace forum; or
 - (iii) to give up membership of a trade union or workplace forum;
 - (b) prevent an employee or a person seeking employment from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
 - (c) prejudice an employee or a person seeking employment because of past, present or anticipated –
 - (i) membership of a trade union or workplace forum;
 - (ii) participation in forming a trade union or federation of trade unions or establishing a workplace forum;
 - (iii) participation in the lawful activities of a trade union, federation of trade unions or workplace forum;
 - (iv) failure or refusal to do something that an employer may not lawfully permit or require an employee to do;
 - (v) disclosure of information that the employee is lawfully entitled or required to give to another person;
 - (vi) exercise of any right conferred by this Act; or
 - (vii) participation in any proceedings in terms of this Act.
- (3) No person may advantage, or promise to advantage, an employee or a person seeking employment in exchange for that person not exercising any right conferred by this Act or not participating in any

proceedings in terms of this Act. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle that dispute.

- (4) A provision in any contract, whether entered into before or after the commencement of this Act, that directly or indirectly contradicts or limits any provision of section 4, or this section is invalid, unless the contractual provision is permitted by this Act.

Employers' right to freedom of association

6. (1) Every employer has the right –
- (a) to participate in forming an employers' organisation or a federation of employers' organisations; and
 - (b) to join an employers' organisation, subject to its constitution.
- (2) Every member of an employers' organisation has the right, subject to the constitution of that employers' organisation –
- (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers or officials; and
 - (c) if –
 - (i) a natural person, to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office; or
 - (ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an office-bearer or official and, if elected or appointed, to hold office.
- (3) Every member of an employers' organisation that is a member of a federation of employers' organisations has the right, subject to the constitution of that federation –
- (a) to participate in its lawful activities;
 - (b) to participate in the election of any of its office-bearers or officials; and
 - (c) if –
 - (i) a natural person, to stand for election and be eligible for appointment as an office-bearer or official and, if elected or appointed, to hold office;
 - (ii) a juristic person, to have a representative stand for election, and be eligible for appointment, as an office-bearer or official and, if elected or appointed, to hold office.

Protection of employers' rights

7. (1) No person may discriminate against an employer for exercising any right conferred by this Act.
- (2) Without limiting the general protection conferred by subsection (1), no person may do, or threaten to do, any of the following –
- (a) require an employer –
 - (i) not to be a member of an employers' organisation;
 - (ii) not to become a member of an employers' organisation; or
 - (iii) to give up membership of an employers' organisation;
 - (b) prevent an employer from exercising any right conferred by this Act or from participating in any proceedings in terms of this Act; or
 - (c) prejudice an employer because of past, present or anticipated –
 - (i) membership of an employers' organisation;
 - (ii) participation in forming an employers' organisation or a federation of employers' organisations;
 - (iii) participation in the lawful activities of an employers' organisation or a federation of employers' organisations;
 - (iv) disclosure of information that the employer is lawfully entitled or required to give to another person;
 - (v) exercise of any right conferred by this Act; or
 - (vi) participation in any proceedings in terms of this Act.
- (3) No person may advantage, or promise to advantage, an employer in exchange for that employer not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle that dispute.
- (4) A provision in any contract, whether entered into before or after the commencement of this Act, that directly or indirectly contradicts or limits any provision of section 6, or this section, is invalid, unless the contractual provision is permitted by this Act.

Rights of trade unions and employers' organisations

8. **Every trade union and every employers' organisation has the right –**
- (a) subject to the provisions of Chapter VI –
 - (i) to determine its own constitution and rules; and

- (ii) to hold elections for its office-bearers, officials and representatives;
- (b) to plan and organise its administration and lawful activities;
- (c) to participate in forming a federation of trade unions or a federation of employers' organisations;
- (d) to join a federation of trade unions or a federation of employers' organisations, subject to its constitution, and to participate in its lawful activities; and
- (e) to affiliate with, and participate in the affairs of, any international workers' organisation or international employers' organisation or the International Labour Organisation, and contribute to, or receive financial assistance from, those organisations.

Procedure for disputes

9. (1) If there is a dispute about the interpretation or application of any provision of this Chapter, any party to the dispute may refer the dispute in writing to –
- (a) a council, if the parties to the dispute fall within the registered scope of that council; or
 - (b) the Commission, if no council has jurisdiction.
- (2) The party who refers the dispute must satisfy the council or the Commission that a copy of the referral has been served on all the other parties to the dispute.
- (3) The council or the Commission must attempt to resolve the dispute through conciliation.
- (4) If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.

Burden of proof

10. **In any proceedings –**
- (a) a party who alleges that a right or protection conferred by this Chapter has been infringed must prove the facts of the conduct; and
 - (b) the party who engaged in that conduct must then prove that the conduct did not infringe any provision of this Chapter.

Chapter III COLLECTIVE BARGAINING

Part A – Organisational Rights

Trade union representativeness

11. **In this Part, unless otherwise stated, “representative trade union” means a registered trade union, or two or more registered trade unions acting jointly, that are sufficiently representative of the employees employed by an employer in a workplace.**

Trade union access to workplace

12. (1) Any office-bearer or official of a representative trade union is entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve their interests.
- (2) A representative trade union is entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union are entitled to vote at the employer's premises in any election or ballot contemplated by that trade union's constitution.
- (4) The rights conferred by this section are subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

Deduction of trade union subscriptions or levies

13. (1) Any employee who is a member of a representative trade union may authorise the employer in writing to deduct subscriptions or levies payable to that trade union from the employee's wages.
- (2) An employer who receives an authorisation in terms of subsection (1) must begin making the authorised deduction as soon as possible and must remit the amount deducted to the representative trade union by not later than the 15th day of the month first following the date each deduction was made.
- (3) An employee may revoke an authorisation given in terms of subsection (1) by giving the employer and the representative trade union one month's written notice or, if the employee works in the public service, three months' written notice.
- (4) An employer who receives a notice in terms of subsection (3) must continue to make the authorised deduction until the notice period has expired and then must stop making the deduction.
- (5) With each monthly remittance, the employer must give the representative trade union –
- (a) a list of the names of every member from whose wages the employer has made the deductions that are included in the remittance;
 - (b) details of the amounts deducted and remitted and the period to which the deductions relate; and
 - (c) a copy of every notice of revocation in terms of subsection (3).

Trade union representatives

14. (1) In this section, “representative trade union” means a registered trade union, or two or more registered trade unions acting jointly, that have as members the majority of the employees employed by an employer in a workplace.
- (2) In any workplace in which at least 10 members of a representative trade union are employed, those members are entitled to elect from among themselves –
- (a) if there are 10 members of the trade union employed in the workplace, one trade union representative;
 - (b) if there are more than 10 members of the trade union employed in the work place, two trade union representatives;
 - (c) if there are more than 50 members of the trade union employed in the workplace, two trade union representatives for the first 50 members, plus a further one trade union representative for every additional 50 members up to a maximum of seven trade union representatives;
 - (d) if there are more than 300 members of the trade union employed in the workplace, seven trade union representatives for the first 300 members, plus one additional trade union representative for every 100 additional members up to a maximum of 10 trade union representatives;
 - (e) if there are more than 600 members of the trade union employed in the workplace, 10 trade union representatives for the first 600 members, plus one additional trade union representative for every 200 additional members up to a maximum of 12 trade union representatives; and
 - (f) if there are more than 1 000 members of the trade union employed in the workplace, 12 trade union representatives for the first 1 000 members, plus one additional trade union representative for every 500 additional members up to a maximum of 20 trade union representatives.
- (3) The constitution of the representative trade union governs the nomination, election, terms of office and removal from office of a trade union representative.
- (4) A trade union representative has the right to perform the following functions –
- (a) at the request of an employee in the workplace, to assist and represent the employee in grievance and disciplinary proceedings;
 - (b) to monitor the employer’s compliance with the workplace-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer;
 - (c) to report any alleged contravention of the workplace-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer to –
 - (i) the employer;
 - (ii) the representative trade union; and
 - (iii) any responsible authority or agency; and
 - (d) to perform any other function agreed to between the representative trade union and the employer.
- (5) Subject to reasonable conditions, a trade union representative is entitled to take reasonable time off with pay during working hours –
- (a) to perform the functions of a trade union representative; and
 - (b) to be trained in any subject relevant to the performance of the functions of a trade union representative.

Leave for trade union activities

15. (1) An employee who is an office-bearer of a representative trade union, or of a federation of trade unions to which the representative trade union is affiliated, is entitled to take reasonable leave during working hours for the purpose of performing the functions of that office.
- (2) The representative trade union and the employer may agree to the number of days of leave, the number of days of paid leave and the conditions attached to any leave.
- (3) An arbitration award in terms of section 21 (7) regulating any of the matters referred to in subsection (2) remains in force for 12 months from the date of the award.

Disclosure of information

16. (1) For the purposes of this section, “representative trade union” means a registered trade union, or two or more registered trade unions acting jointly, that have as members the majority of the employees employed by an employer in a workplace.
- (2) Subject to subsection (5), an employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14 (4).
- (3) Subject to subsection (5), whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to engage effectively in consultation or collective bargaining.
- (4) The employer must notify the trade union representative or the representative trade union in writing if any information disclosed in terms of subsection (2) or (3) is confidential.
- (5) An employer is not required to disclose information –

- (a) that is legally privileged;
 - (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
 - (c) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
 - (d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
- (6) If there is a dispute about what information is required to be disclosed in terms of this section, any party to the dispute may refer the dispute in writing to the Commission.
- (7) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (8) The Commission must attempt to resolve the dispute through conciliation.
- (9) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
- (10) In any dispute about the disclosure of information contemplated in subsection (6), the commissioner must first decide whether or not the information is relevant.
- (11) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (5) (c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an employee or employer against the harm that the failure to disclose the information is likely to cause to the ability of a trade union representative to perform effectively the functions referred to in section 14 (4) or the ability of a representative trade union to engage effectively in consultation or collective bargaining.
- (12) If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee or employer.
- (13) When making an order in terms of subsection (12), the commissioner must take into account any breach of confidentiality in respect of information disclosed in terms of this section at that workplace and may refuse to order the disclosure of the information or any other confidential information which might otherwise be disclosed for a period specified in the arbitration award.
- (14) In any dispute about an alleged breach of confidentiality, the commissioner may order that the right to disclosure of information in that workplace be withdrawn for a period specified in the arbitration award.

Restricted rights in the domestic sector

17. (1) For the purposes of this section, "domestic sector" means the employment of employees engaged in domestic work in their employers' homes or on the property on which the home is situated.
- (2) The rights conferred on representative trade unions by this Part in so far as they apply to the domestic sector are subject to the following limitations –
- (a) the right of access to the premises of the employer conferred by section 12 on an office-bearer or official of a representative trade union does not include the right to enter the home of the employer, unless the employer agrees; and
 - (b) the right to the disclosure of information conferred by section 16 does not apply in the domestic sector.

Right to establish thresholds of representativeness

18. (1) An employer and a registered trade union whose members are a majority of the employees employed by that employer in a workplace, or the parties to a bargaining council, may conclude a collective agreement establishing a threshold of representativeness required in respect of one or more of the organisational rights referred to in sections 12, 13 and 15.
- (2) A collective agreement concluded in terms of subsection (1) is not binding unless the thresholds of representativeness in the collective agreement are applied equally to any registered trade union seeking any of the organisational rights referred to in that subsection.

Certain organisational rights for trade union party to a council

19. **Registered trade unions that are parties to a council automatically have the rights contemplated in sections 12 and 13 in respect of all workplaces within the registered scope of the council regardless of their representativeness in any particular workplace.**

Organisational rights in collective agreements

20. **Nothing in this Part precludes the conclusion of a collective agreement that regulates organisational rights.**

Exercise of rights conferred by this Part

21. (1) Any registered trade union may notify an employer in writing that it seeks to exercise one or more of the rights conferred by this Part in a workplace.
- (2) The notice referred to in subsection (1) must be accompanied by a certified copy of the trade union's certificate of registration and must specify –
- (a) the workplace in respect of which the trade union seeks to exercise the rights;

- (b) the representativeness of the trade union in that workplace, and the facts relied upon to demonstrate that it is a representative trade union; and
 - (c) the rights that the trade union seeks to exercise and the manner in which it seeks to exercise those rights.
- (3) Within 30 days of receiving the notice, the employer must meet the registered trade union and endeavour to conclude a collective agreement as to the manner in which the trade union will exercise the rights in respect of that workplace.
 - (4) If a collective agreement is not concluded, either the registered trade union or the employer may refer the dispute in writing to the Commission.
 - (5) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on the other party to the dispute.
 - (6) The Commission must appoint a commissioner to attempt to resolve the dispute through conciliation.
 - (7) If the dispute remains unresolved, either party to the dispute may request that the dispute be resolved through arbitration.
 - (8) If the unresolved dispute is about whether or not the registered trade union is a representative trade union, the commissioner –
 - (a) must seek –
 - (i) to minimise the proliferation of trade union representation in a single workplace and, where possible, to encourage a system of a representative trade union in a workplace; and
 - (ii) to minimise the financial and administrative burden of requiring an employer to grant organisational rights to more than one registered trade union;
 - (b) must consider –
 - (i) the nature of the workplace;
 - (ii) the nature of the one or more organisational rights that the registered trade union seeks to exercise;
 - (iii) the nature of the sector in which the workplace is situated; and
 - (iv) the organisational history at the workplace or any other workplace of the employer; and
 - (c) may withdraw any of the organisational rights conferred by this Part and which are exercised by any other registered trade union in respect of that workplace, if that other trade union has ceased to be a representative trade union.
 - (9) In order to determine the membership or support of the registered trade union, the commissioner may –
 - (a) make any necessary inquiries;
 - (b) where appropriate, conduct a ballot of the relevant employees; and
 - (c) take into account any other relevant information.
 - (10) The employer must co-operate with the commissioner when the commissioner acts in terms of subsection (9), and must make available to the commissioner any information and facilities that are reasonably necessary for the purposes of that subsection.
 - (11) An employer who alleges that a trade union is no longer a representative trade union may apply to the Commission to withdraw any of the organisational rights conferred by this Part, in which case the provisions of subsections (5) to (10) apply, read with the changes required by the context.

Disputes about organisational rights

22. (1) Any party to a dispute about the interpretation or application of any provision of this Part, other than a dispute contemplated in section 21, may refer the dispute in writing to the Commission.
- (2) The party who refers a dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (3) The Commission must attempt to resolve the dispute through conciliation.
- (4) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration as soon as may be practicable.

Chapter IV STRIKES AND LOCK-OUTS

Right to strike and recourse to lock-out

64. (1) Every employee has the right to strike and every employer has recourse to lock-out if–
 - (a) the issue in dispute has been referred to a council or to the Commission as required by this Act, and –
 - (i) a certificate stating that the dispute remains unresolved has been issued; or
 - (ii) a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the council or the Commission; and after that –
 - (b) in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, has been given to the employer, unless –

- (i) the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or
 - (ii) the employer is a member of an employers' organisation that is a party to the dispute, in which case, notice must have been given to that employers' organisation; or
 - (c) in the case of a proposed lock-out, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any trade union that is a party to the dispute, or, if there is no such trade union, to the employees, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or
 - (d) in the case of a proposed strike or lock-out where the State is the employer, at least seven days' notice of the commencement of the strike or lock-out has been given to the parties contemplated in paragraphs (b) and (c).
- (2) If the issue in dispute concerns a refusal to bargain, an advisory award must have been made in terms of section 135 (3) (c) before notice is given in terms of subsection (1) (b) or (c). A refusal to bargain includes –
 - (a) a refusal –
 - (i) to recognise a trade union as a collective bargaining agent; or
 - (ii) to agree to establish a bargaining council;
 - (b) a withdrawal of recognition of a collective bargaining agent;
 - (c) a resignation of a party from a bargaining council;
 - (d) a dispute about –
 - (i) appropriate bargaining units;
 - (ii) appropriate bargaining levels; or
 - (iii) bargaining subjects.
- (3) The requirements of subsection (1) do not apply to a strike or a lock-out if–
 - (a) the parties to the dispute are members of a council, and the dispute has been dealt with by that council in accordance with its constitution;
 - (b) the strike or lock-out conforms with the procedures in a collective agreement;
 - (c) the employees strike in response to a lock-out by their employer that does not comply with the provisions of this Chapter;
 - (d) the employer locks out its employees in response to their taking part in a strike that does not conform with the provisions of this Chapter; or
 - (e) the employer fails to comply with the requirements of subsections (4) and (5).
- (4) Any employee who or any trade union that refers a dispute about a unilateral change to terms and conditions of employment to a council or the Commission in terms of subsection (1) (a) may, in the referral, and for the period referred to in subsection (1) (a) –
 - (a) require the employer not to implement unilaterally the change to terms and conditions of employment; or
 - (b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.
- (5) The employer must comply with a requirement in terms of subsection (4) within 48 hours of service of the referral on the employer.

Limitations on right to strike or recourse to lock-out

- 65.** (1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if–
- (a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;
 - (b) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
 - (c) the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act;
 - (d) that person is engaged in –
 - (i) an essential service; or
 - (ii) a maintenance service.
- (2) (a) Despite section 65 (1) (c), a person may take part in a strike or a lock-out or in any conduct in contemplation or in furtherance of a strike or lock-out if the issue in dispute is about any matter dealt with in sections 12 to 15.
- (b) If the registered trade union has given notice of the proposed strike in terms of section 64 (1) in respect of an issue in dispute referred to in paragraph (a), it may not exercise the right to refer the dispute to arbitration in terms of section 21 for a period of 12 months from the date of the notice.
- (3) Subject to a collective agreement, no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or lock-out –
- (a) if that person is bound by –
 - (i) any arbitration award or collective agreement that regulates the issue in dispute; or

- (ii) any determination made in terms of section 44 by the Minister that regulates the issue in dispute; or
- (b) any determination made in terms of the Wage Act and that regulates the issue in dispute, during the first year of that determination.

Secondary strikes

66. (1) In this section "secondary strike" means a strike, or conduct in contemplation or furtherance of a strike, that is in support of a strike by other employees against their employer, but does not include a strike in pursuit of a demand that has been referred to a council if the striking employees, employed within the registered scope of that council, have a material interest in that demand.
- [Sub-s. (1) substituted by s. 19 of Act No. 42 of 1996.]
- (2) No person may take part in a secondary strike unless –
 - (a) the strike that is to be supported complies with the provisions of sections 64 and 65;
 - (b) the employer of the employees taking part in the secondary strike or, where appropriate, the employers' organisation of which that employer is a member, has received written notice of the proposed secondary strike at least seven days prior to its commencement; and
 - (c) the nature and extent of the secondary strike is reasonable in relation to the possible direct or indirect effect that the secondary strike may have on the business of the primary employer.
 - (3) Subject to section 68 (2) and (3), a secondary employer may apply to the Labour Court for an interdict to prohibit or limit a secondary strike that contravenes subsection (2).
 - (4) Any person who is a party to proceedings in terms of subsection (3), or the Labour Court, may request the Commission to conduct an urgent investigation to assist the Court to determine whether the requirements of subsection (2) (c) have been met.
 - (5) On receipt of a request made in terms of subsection (4), the Commission must appoint a suitably qualified person to conduct the investigation, and then submit, as soon as possible, a report to the Labour Court.
 - (6) The Labour Court must take account of the Commission's report in terms of subsection (5) before making an order.

Strike or lock-out in compliance with this Act

67. (1) In this Chapter, "protected strike" means a strike that complies with the provisions of this Chapter and "protected lock-out" means a lock-out that complies with the provisions of this Chapter.
- (2) A person does not commit a delict or a breach of contract by taking part in –
 - (a) a protected strike or a protected lock-out; or
 - (b) any conduct in contemplation or in furtherance of a protected strike or a protected lock-out.
 - (3) Despite subsection (2), an employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike or a protected lock-out, however –
 - (a) if the employee's remuneration includes payment in kind in respect of accommodation, the provision of food and other basic amenities of life, the employer, at the request of the employee, must not discontinue the payment in kind during the strike or lock-out; and
 - (b) after the end of the strike or lock-out, the employer may recover the monetary value of the payment in kind made at the request of the employee during the strike or lock-out from the employee by way of civil proceedings instituted in the Labour Court.
 - (4) An employer may not dismiss an employee for participating in a protected strike or for any conduct in contemplation or in furtherance of a protected strike.
 - (5) Subsection (4) does not preclude an employer from fairly dismissing an employee in accordance with the provisions of Chapter VIII for a reason related to the employee's conduct during the strike, or for a reason based on the employer's operational requirements.
 - (6) Civil legal proceedings may not be instituted against any person for –
 - (a) participating in a protected strike or a protected lock-out; or
 - (b) any conduct in contemplation or in furtherance of a protected strike or a protected lock-out.
 - (7) The failure by a registered trade union or a registered employers' organisation to comply with a provision in its constitution requiring it to conduct a ballot of those of its members in respect of whom it intends to call a strike or lock-out may not give rise to, or constitute a ground for, any litigation that will affect the legality of, and the protection conferred by this section on, the strike or lock-out.
 - (8) The provisions of subsections (2) and (6) do not apply to any act in contemplation or in furtherance of a strike or a lock-out, if that act is an offence.
 - (9) Any act in contemplation or in furtherance of a protected strike or a protected lock-out that is a contravention of the Basic Conditions of Employment Act or the Wage Act does not constitute an offence.

Strike or lock-out not in compliance with this Act

68. (1) In the case of any strike or lock-out, or any conduct in contemplation or in furtherance of a strike or lock-out, that does not comply with the provisions of this Chapter, the Labour Court has exclusive jurisdiction –

- (a) to grant an interdict or order to restrain –
 - (i) any person from participating in a strike or any conduct in contemplation or in furtherance of a strike; or
 - (ii) any person from participating in a lock-out or any conduct in contemplation or in furtherance of a lock-out;
 - (b) to order the payment of just and equitable compensation for any loss attributable to the strike or lock-out, or conduct, having regard to –
 - (i) whether –
 - (aa) attempts were made to comply with the provisions of this Chapter and the extent of those attempts;
 - (bb) the strike or lock-out or conduct was premeditated;
 - (cc) the strike or lock-out or conduct was in response to unjustified conduct by another party to the dispute; and
 - (dd) there was compliance with an order granted in terms of paragraph (a);
 - (ii) the interests of orderly collective bargaining;
 - (iii) the duration of the strike or lock-out or conduct; and
 - (iv) the financial position of the employer, trade union or employees respectively.
- [Para. (b) substituted by s. 17 of Act No. 12 of 2002.]
- (2) The Labour Court may not grant any order in terms of subsection (1) (a) unless 48 hours' notice of the application has been given to the respondent: However, the Court may permit a shorter period of notice if–
 - (a) the applicant has given written notice to the respondent of the applicant's intention to apply for the granting of an order;
 - (b) the respondent has been given a reasonable opportunity to be heard before a decision concerning that application is taken; and
 - (c) the applicant has shown good cause why a period shorter than 48 hours should be permitted.
 - (3) Despite subsection (2), if written notice of the commencement of the proposed strike or lock-out was given to the applicant at least 10 days before the commencement of the proposed strike or lock-out, the applicant must give at least five days' notice to the respondent of an application for an order in terms of subsection (1) (a).
 - (4) Subsections (2) and (3) do not apply to an employer or an employee engaged in an essential service or a maintenance service.
 - (5) Participation in a strike that does not comply with the provisions of this Chapter, or conduct in contemplation or in furtherance of that strike, may constitute a fair reason for dismissal. In determining whether or not the dismissal is fair, the Code of Good Practice: Dismissal in Schedule 8 must be taken into account.

Picketing

- 69.** (1) A registered trade union may authorise a picket by its members and supporters for the purposes of peacefully demonstrating –
- (a) in support of any protected strike; or
 - (b) in opposition to any lock-out.
- (2) Despite any law regulating the right of assembly, a picket authorised in terms of subsection (1) may be held –
- (a) in any place to which the public has access but outside the premises of an employer; or
 - (b) with the permission of the employer, inside the employer's premises.
- [Sub-s. (2) amended by s. 20 of Act No. 42 of 1996.]
- (3) The permission referred to in subsection (2) (b) may not be unreasonably withheld.
 - (4) If requested to do so by the registered trade union or the employer, the Commission must attempt to secure an agreement between the parties to the dispute on rules that should apply to any picket in relation to that strike or lock-out.
 - (5) If there is no agreement, the Commission must establish picketing rules, and in doing so must take account of–
 - (a) the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised; and
 - (b) any relevant code of good practice.
 - (6) The rules established by the Commission may provide for picketing by employees on their employer's premises if the commission is satisfied that the employer's permission has been unreasonably withheld.
 - (7) The provisions of section 67, read with the changes required by the context, apply to the call for, organisation of, or participation in a picket that complies with the provisions of this section.
 - (8) Any party to a dispute about any of the following issues may refer the dispute in writing to the Commission –
 - (a) an allegation that the effective use of the right to picket is being undermined;

- (b) an alleged material contravention of subsection (1) or (2);
 - (c) an alleged material breach of an agreement concluded in terms of subsection (4); or
 - (d) an alleged material breach of a rule established in terms of subsection (5).
- (9) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (10) The Commission must attempt to resolve the dispute through conciliation.
- (11) If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.

Chapter VIII UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE

[Heading substituted by s. 39 of Act No. 12 of 2002.]

Right not to be unfairly dismissed or subjected to unfair labour practice

185. Every employee has the right not to be –

- (a) unfairly dismissed; and
- (b) subjected to unfair labour practice.

[S. 185 substituted by s. 40 of Act No. 12 of 2002.]

Meaning of dismissal and unfair labour practice

186. (1) "Dismissal" means that –

- (a) an employer has terminated a contract of employment with or without notice;
- (b) an employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it;
- (c) an employer refused to allow an employee to resume work after she –
 - (i) took maternity leave in terms of any law, collective agreement or her contract of employment; or
 - (ii)

[Sub-para. (ii) deleted by s. 95 (4) of Act No. 75 of 1997.]

- (d) an employer who dismissed a number of employees for the same or similar reasons has offered to re-employ one or more of them but has refused to re-employ another; or
- (e) an employee terminated a contract of employment with or without notice because the employer made continued employment intolerable for the employee.
- (f) an employee terminated a contract of employment with or without notice because the new employer, after a transfer in terms of section 197 or section 197A, provided the employee with conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer.

[Para. (f) added by s. 41 (b) of Act No. 12 of 2002.]

(2) "Unfair labour practice" means any unfair act or omission that arises between an employer and an employee involving –

- (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee;
- (b) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
- (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and
- (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act.

[S. 186 amended by s. 41 (a) of Act No. 12 of 2002. Sub-s. (2) added by s. 41 (c) of Act No. 12 of 2002.]

Automatically unfair dismissals

187. (1) A dismissal is automatically unfair if the employer, in dismissing the employee, acts contrary to section 5 or, if the reason for the dismissal is –

- (a) that the employee participated in or supported, or indicated an intention to participate in or support, a strike or protest action that complies with the provisions of Chapter IV;
- (b) that the employee refused, or indicated an intention to refuse, to do any work normally done by an employee who at the time was taking part in a strike that complies with the provisions of Chapter IV or was locked out, unless that work is necessary to prevent an actual danger to life, personal safety or health;

- (c) to compel the employee to accept a demand in respect of any matter of mutual interest between the employer and employee;
 - (d) that the employee took action, or indicated an intention to take action, against the employer by –
 - (i) exercising any right conferred by this Act; or
 - (ii) participating in any proceedings in terms of this Act;
 - (e) the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy;
 - (f) that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility;
 - (g) a transfer, or a reason related to a transfer, contemplated in section 197 or 197A; or
[Para. (g) added by s. 42 of Act No. 12 of 2002.]
 - (h) a contravention of the Protected Disclosures Act, 2000, by the employer, on account of an employee having made a protected disclosure defined in that Act.
[Para. (h) added by s. 42 of Act No. 12 of 2002.]
- (2) Despite subsection (1) (f) –
- (a) a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job;
 - (b) a dismissal based on age is fair if the employee has reached the normal or agreed retirement age for persons employed in that capacity.

Other unfair dismissals

- 188.** (1) A dismissal that is not automatically unfair, is unfair if the employer fails to prove –
- (a) that the reason for dismissal is a fair reason –
 - (i) related to the employee's conduct or capacity; or
 - (ii) based on the employer's operational requirements; and
 - (b) that the dismissal was effected in accordance with a fair procedure.
- (2) Any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act.

Agreement for pre-dismissal arbitration

- 188A.** (1) An employer may, with the consent of the employee, request a council, an accredited agency or the Commission to conduct an arbitration into allegations about the conduct or capacity of that employee.
- (2) The request must be in the prescribed form.
 - (3) The council, accredited agency or the Commission must appoint an arbitrator on receipt of–
 - (a) payment by the employer of the prescribed fee; and
 - (b) the employee's written consent to the inquiry.
 - (4) (a) An employee may only consent to a pre-dismissal arbitration after the employee has been advised of the allegation referred to in subsection (1) and in respect of a specific arbitration.
(b) Despite subparagraph (a), an employee earning more than the amount determined by the Minister in terms of section 6 (3) of the Basic Conditions of Employment Act, may consent to the holding of a pre-dismissal arbitration in a contract of employment.
 - (5) In any arbitration in terms of this section a party to the dispute may appear in person or be represented only by –
 - (a) a co-employee;
 - (b) a director or employee, if the party is a juristic person;
 - (c) any member, office bearer or official of that party's registered trade union or registered employers' organisation; or
 - (d) a legal practitioner, on agreement between the parties.
 - (6) Section 138, read with the changes required by the context, applies to any arbitration in terms of this section.
 - (7) An arbitrator appointed in terms of this section has all the powers conferred on a commissioner by section 142 (1) (a) to (e), (2) and (7) to (9), read with the changes required by the context, and any reference in that section to the director for the purpose of this section, must be read as a reference to –
 - (a) the secretary of the council, if the arbitration is held under the auspices of the council;
 - (b) the director of the accredited agency, if the arbitration is held under the auspices of an accredited agency.
 - (8) The provisions of sections 143 to 146 apply to any award made by an arbitrator in terms of this section.
 - (9) An arbitrator conducting an arbitration in terms of this section must, in the light of the evidence presented and by reference to the criteria of fairness in the Act, direct what action, if any, should be taken against the employee.

- (10) (a) A private agency may only conduct an arbitration in terms of this section if it is accredited for this purpose by the Commission.
- (b) A council may only conduct an arbitration in terms of this section in respect of which the employer or the employee is not a party to the council, if the council has been accredited for this purpose by the Commission.

[S. 188A inserted by s. 43 of Act No. 12 of 2002.]

Dismissals based on operational requirements

- 189.** (1) When an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult –
- (a) any person whom the employer is required to consult in terms of a collective agreement;
 - (b) if there is no collective agreement that requires consultation –
 - (i) a workplace forum, if the employees likely to be affected by the proposed dismissals are employed in a workplace in respect of which there is a workplace forum; and
 - (ii) any registered trade union whose members are likely to be affected by the proposed dismissals;
 - (c) if there is no workplace forum in the workplace in which the employees likely to be affected by the proposed dismissals are employed, any registered trade union whose members are likely to be affected by the proposed dismissals; or
 - (d) if there is no such trade union, the employees likely to be affected by the proposed dismissals or their representatives nominated for that purpose.
- (2) The employer and the other consulting parties must in the consultation envisaged by subsections (1) and (3) engage in a meaningful joint consensus-seeking process and attempt to reach consensus on –
- (a) appropriate measures –
 - (i) to avoid the dismissals;
 - (ii) to minimise the number of dismissals;
 - (iii) to change the timing of the dismissals; and
 - (iv) to mitigate the adverse effects of the dismissals;
 - (b) the method for selecting the employees to be dismissed; and
 - (c) the severance pay for dismissed employees.
- (3) The employer must issue a written notice inviting the other consulting party to consult with it and disclose in writing all relevant information, including, but not limited to –
- (a) the reasons for the proposed dismissals;
 - (b) the alternatives that the employer considered before proposing the dismissals, and the reasons for rejecting each of those alternatives;
 - (c) the number of employees likely to be affected and the job categories in which they are employed;
 - (d) the proposed method for selecting which employees to dismiss;
 - (e) the time when, or the period during which, the dismissals are likely to take effect;
 - (f) the severance pay proposed;
 - (g) any assistance that the employer proposes to offer to the employees likely to be dismissed;
 - (h) the possibility of the future re-employment of the employees who are dismissed;
 - (i) the number of employees employed by the employer; and
 - (j) the number of employees that the employer has dismissed for reasons based on its operational requirements in the preceding 12 months.
- (4) (a) The provisions of section 16 apply, read with the changes required by the context, to the disclosure of information in terms of subsection (3).
- (b) In any dispute in which an arbitrator or the Labour Court is required to decide whether or not any information is relevant, the onus is on the employer to prove that any information that it has refused to disclose is not relevant for the purposes for which it is sought.
- (5) The employer must allow the other consulting party an opportunity during consultation to make representations about any matter dealt with in subsections (2), (3) and (4) as well as any other matter relating to the proposed dismissals.
- (6) (a) The employer must consider and respond to the representations made by the other consulting party and, if the employer does not agree with them, the employer must state the reasons for disagreeing.
- (b) If any representation is made in writing the employer must respond in writing.
- (7) The employer must select the employees to be dismissed according to selection criteria –
- (a) that have been agreed to by the consulting parties; or
 - (b) if no criteria have been agreed, criteria that are fair and objective.

[S. 189 substituted by s. 44 of Act No. 12 of 2002.]

Dismissals based on operational requirements by employers with more than 50 employees

- 189A.** (1) This section applies to employers employing more than 50 employees if–
- (a) the employer contemplates dismissing by reason of the employer's operational requirements, at least –
 - (i) 10 employees, if the employer employs up to 200 employees;
 - (ii) 20 employees, if the employer employs more than 200, but not more than 300, employees;
 - (iii) 30 employees, if the employer employs more than 300, but not more than 400, employees;
 - (iv) 40 employees, if the employer employs more than 400, but not more than 500, employees; or
 - (v) 50 employees, if the employer employs more than 500 employees; or
 - (b) the number of employees that the employer contemplates dismissing together with the number of employees that have been dismissed by reason of the employer's operational requirements in the 12 months prior to the employer issuing a notice in terms of section 189 (3), is equal to or exceeds the relevant number specified in paragraph (a).
- (2) In respect of any dismissal covered by this section –
- (a) an employer must give notice of termination of employment in accordance with the provisions of this section;
 - (b) despite section 65 (1) (c), an employee may participate in a strike and an employer may lock out in accordance with the provisions of this section;
 - (c) the consulting parties may agree to vary the time periods for facilitation or consultation.
- (3) The Commission must appoint a facilitator in terms of any regulations made under subsection (6) to assist the parties engaged in consultations if–
- (a) the employer has in its notice in terms of section 189 (3) requested facilitation; or
 - (b) consulting parties representing the majority of employees whom the employer contemplates dismissing have requested facilitation and have notified the Commission within 15 days of the notice.
- (4) This section does not prevent an agreement to appoint a facilitator in circumstances not contemplated in subsection (3).
- (5) If a facilitator is appointed in terms of subsection (3) or (4) the facilitation must be conducted in terms of any regulations made by the Minister under subsection (6) for the conduct of such facilitations.
- (6) The Minister, after consulting NEDLAC and the Commission, may make regulations relating to –
- (a) the time period, and the variation of time periods, for facilitation;
 - (b) the powers and duties of facilitators;
 - (c) the circumstances in which the Commission may charge a fee for appointing a facilitator and the amount of the fee; and
 - (d) any other matter necessary for the conduct of facilitations.
- (7) If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of section 189 (3) –
- (a) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the Basic Conditions of Employment Act; and
 - (b) a registered trade union or the employees who have received notice of termination may either –
 - (i) give notice of a strike in terms of section 64 (1) (b) or (d); or
 - (ii) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191 (11).
- (8) If a facilitator is not appointed –
- (a) a party may not refer a dispute to a council or the Commission unless a period of 30 days has lapsed from the date on which notice was given in terms of section 189 (3); and
 - (b) once the periods mentioned in section 64 (1) (a) have elapsed –
 - (i) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the Basic Conditions of Employment Act; and
 - (ii) a registered trade union or the employees who have received notice of termination may –
 - (aa) give notice of a strike in terms of section 64 (1) (b) or (d); or
 - (bb) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191 (11).
- (9) Notice of the commencement of a strike may be given if the employer dismisses or gives notice of dismissal before the expiry of the periods referred to in subsections (7) (a) or (8) (b) (i).
- (10) (a) A consulting party may not –
- (i) give notice of a strike in terms of this section in respect of a dismissal, if it has referred a dispute concerning whether there is a fair reason for that dismissal to the Labour Court;
 - (ii) refer a dispute about whether there is a fair reason for a dismissal to the Labour Court, if it has given notice of a strike in terms of this section in respect of that dismissal.
- (b) If a trade union gives notice of a strike in terms of this section –

- (i) no member of that trade union, and no employee to whom a collective agreement concluded by that trade union dealing with consultation or facilitation in respect of dismissals by reason of the employers' operational requirements has been extended in terms of section 23 (1) (d), may refer a dispute concerning whether there is a fair reason for dismissal to the Labour Court;
 - (ii) any referral to the Labour Court contemplated by subparagraph (i) that has been made, is deemed to be withdrawn.
- (11) The following provisions of Chapter IV apply to any strike or lock-out in terms of this section:
- (a) Section 64 (1) and (3) (a) to (d), except that –
 - (i) section 64 (1) (a) does not apply if a facilitator is appointed in terms of this section;
 - (ii) an employer may only lock out in respect of a dispute in which a strike notice has been issued;
 - (b) subsection (2) (a), section 65 (1) and (3);
 - (c) section 66 except that written notice of any proposed secondary strike must be given at least 14 days prior to the commencement of the strike;
 - (d) sections 67, 68, 69 and 76.
- (12) (a) During the 14-day period referred to in subsection (11) (c), the director must, if requested by an employer who has received notice of any intended secondary strike, appoint a commissioner to attempt to resolve any dispute, between the employer and the party who gave the notice, through conciliation.
- (b) A request to appoint a commissioner or the appointment of a commissioner in terms of paragraph (a) does not affect the right of employees to strike on the expiry of the 14-day period.
- (13) If an employer does not comply with a fair procedure, a consulting party may approach the Labour Court by way of an application for an order –
- (a) compelling the employer to comply with a fair procedure;
 - (b) interdicting or restraining the employer from dismissing an employee prior to complying with a fair procedure;
 - (c) directing the employer to reinstate an employee until it has complied with a fair procedure;
 - (d) make an award of compensation, if an order in terms of paragraphs (a) to (c) is not appropriate.
- (14) Subject to this section, the Labour Court may make any appropriate order referred to in section 158 (1) (a).
- (15) An award of compensation made to an employee in terms of subsection (14) must comply with section 194.
- (16) The Labour Court may not make an order in respect of any matter concerning the disclosure of information in terms of section 189 (4) that has been the subject of an arbitration award in terms of section 16.
- (17) (a) An application in terms of subsection (13) must be brought not later than 30 days after the employer has given notice to terminate the employee's services or, if notice is not given, the date on which the employees are dismissed.
- (b) The Labour Court may, on good cause shown condone a failure to comply with the time limit mentioned in paragraph (a).
- (18) The Labour Court may not adjudicate a dispute about the procedural fairness of a dismissal based on the employer's operational requirements in any dispute referred to it in terms of section 191 (5) (b) (ii).
- (19) In any dispute referred to the Labour Court in terms of section 191 (5) (b) (ii) that concerns the dismissal of the number of employees specified in subsection (1), the Labour Court must find that the employee was dismissed for a fair reason if–
- (a) the dismissal was to give effect to a requirement based on the employer's economic, technological, structural or similar needs;
 - (b) the dismissal was operationally justifiable on rational grounds;
 - (c) there was a proper consideration of alternatives; and
 - (d) selection criteria were fair and objective.
- (20) For the purposes of this section, an "employer" in the public service is the executing authority of a national department, provincial administration, provincial department or organisational component contemplated in section 7 (2) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994).

[S. 189A inserted by s. 45 of Act No. 12 of 2002.]

Date of dismissal

- 190.** (1) The date of dismissal is the earlier of–
- (a) the date on which the contract of employment terminated; or
 - (b) the date on which the employee left the service of the employer.
- (2) Despite subsection (1) –
- (a) if an employer has offered to renew on less favourable terms, or has failed to renew a fixed-term contract of employment, the date of dismissal is the date on which the employer offered the less

favourable terms or the date the employer notified the employee of the intention not to renew the contract;

- (b) if the employer refused to allow an employee to resume work, the date of dismissal is the date on which the employer first refused to allow the employee to resume work;
- (c) if an employer refused to re-instate or re-employ the employee, the date of dismissal is the date on which the employer first refused to re-instate or re-employ that employee.

Disputes about unfair dismissals and unfair labour practices

191. (1) (a) If there is a dispute about the fairness of a dismissal, or a dispute about an unfair labour practice, the dismissed employee or the employee alleging the unfair labour practice may refer the dispute in writing to –

- (i) a council, if the parties to the dispute fall within the registered scope of that council; or
- (ii) the Commission, if no council has jurisdiction.

(b) A referral in terms of paragraph (a) must be made within –

- (i) 30 days of the date of a dismissal or, if it is a later date, within 30 days of the employer making a final decision to dismiss or uphold the dismissal;
- (ii) 90 days of the date of the act or omission which allegedly constitutes the unfair labour practice or, if it is a later date, within 90 days of the date on which the employee became aware of the act or occurrence.

[Sub-s. (1) substituted by s. 46 (b) of Act No. 12 of 2002.]

(2) If the employee shows good cause at any time, the council or the Commission may permit the employee to refer the dispute after the relevant time limit in subsection (1) has expired.

[Sub-s. (2) substituted by s. 46 (c) of Act No. 12 of 2002.]

(2A) Subject to subsections (1) and (2), an employee whose contract of employment is terminated by notice, may refer the dispute to the council or the Commission once the employee has received that notice.

[Sub-s. (2A) inserted by s. 46 (d) of Act No. 12 of 2002.]

(3) The employee must satisfy the council or the Commission that a copy of the referral has been served on the employer.

(4) The council or the Commission must attempt to resolve the dispute through conciliation.

(5) If a council or a commissioner has certified that the dispute remains unresolved, or if 30 days have expired since the council or the Commission received the referral and the dispute remains unresolved –

- (a) the council or the Commission must arbitrate the dispute at the request of the employee if–
 - (i) the employee has alleged that the reason for dismissal is related to the employee's conduct or capacity, unless paragraph (b) (iii) applies;
 - (ii) the employee has alleged that the reason for dismissal is that the employer made continued employment intolerable or the employer provided the employee with substantially less favourable conditions or circumstances at work after a transfer in terms of section 197 or 197A, unless the employee alleges that the contract of employment was terminated for a reason contemplated in section 187;

[Sub-para. (ii) substituted by s. 46 (e) of Act No. 12 of 2002.]

- (iii) the employee does not know the reason for dismissal; or
- (iv) the dispute concerns an unfair labour practice; or

[Sub-para. (iv) added by s. 46 (f) of Act No. 12 of 2002.]

(b) the employee may refer the dispute to the Labour Court for adjudication if the employee has alleged that the reason for dismissal is –

- (i) automatically unfair;
- (ii) based on the employer's operational requirements;
- (iii) the employees participation in a strike that does not comply with the provisions of Chapter IV; or
- (iv) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.

(5A) Despite any other provision in the Act, the council or Commission must commence the arbitration immediately after certifying that the dispute remains unresolved if the dispute concerns –

- (a) the dismissal of an employee for any reason relating to probation;
- (b) any unfair labour practice relating to probation;
- (c) any other dispute contemplated in subsection (5) (a) in respect of which no party has objected to the matter being dealt with in terms of this subsection.

[Sub-s. (5A) inserted by s. 46 (g) of Act No. 12 of 2002.]

(6) Despite subsection (5) (a) or (5A), the director must refer the dispute to the Labour Court, if the director decides, on application by any party to the dispute, that to be appropriate after considering –

- (a) the reason for dismissal;

- (b) whether there are questions of law raised by the dispute;
- (c) the complexity of the dispute;
- (d) whether there are conflicting arbitration awards that need to be resolved;
- (e) the public interest.

[Sub-s. (6) substituted by s. 46 (h) of Act No. 12 of 2002.]

- (7) When considering whether the dispute should be referred to the Labour Court, the director must give the parties to the dispute and the commissioner who attempted to conciliate the dispute, an opportunity to make representations.
- (8) The director must notify the parties of the decision and refer the dispute –
 - (a) to the Commission for arbitration; or
 - (b) to the Labour Court for adjudication.
- (9) The director's decision is final and binding.
- (10) No person may apply to any court of law to review the director's decision until the dispute has been arbitrated or adjudicated, as the case may be.
- (11) (a) The referral, in terms of subsection (5) (b), of a dispute to the Labour Court for adjudication, must be made within 90 days after the council or (as the case may be) the commissioner has certified that the dispute remains unresolved.
 - (b) However, the Labour Court may condone non-observance of that time-frame on good cause shown.

[Sub-s. (11) added by s. 25 of Act No. 127 of 1998.]

- (12) If an employee is dismissed by reason of the employer's operational requirements following a consultation procedure in terms of section 189 that applied to that employee only, the employee may elect to refer the dispute either to arbitration or to the Labour Court.

[Sub-s. (12) added by s. 46 (i) of Act No. 12 of 2002.]

- (13) (a) An employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court for adjudication if the employee has alleged that the employee has been subjected to an occupational detriment by the employer in contravention of section 3 of the Protected Disclosures Act, 2000, for having made a protected disclosure defined in that Act.
 - (b) A referral in terms of paragraph (a) is deemed to be made in terms of subsection (5) (b).
- [S. 191 amended by s. 46 (a) of Act No. 12 of 2002. Sub-s. (13) added by s. 46 (i) of Act No. 12 of 2002.]

Onus in dismissal disputes

- 192.** (1) In any proceedings concerning any dismissal, the employee must establish the existence of the dismissal.
- (2) If the existence of the dismissal is established, the employer must prove that the dismissal is fair.

Remedies for unfair dismissal and unfair labour practice

- 193.** (1) If the Labour Court or an arbitrator appointed in terms of this Act finds that a dismissal is unfair, the Court or the arbitrator may –
 - (a) order the employer to re-instate the employee from any date not earlier than the date of dismissal;
 - (b) order the employer to re-employ the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or
 - (c) order the employer to pay compensation to the employee.
- (2) The Labour Court or the arbitrator must require the employer to re-instate or re-employ the employee unless –
 - (a) the employee does not wish to be re-instated or re-employed;
 - (b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
 - (c) it is not reasonably practicable for the employer to re-instate or re-employ the employee; or
 - (d) the dismissal is unfair only because the employer did not follow a fair procedure.
- (3) If a dismissal is automatically unfair or, if a dismissal based on the employer's operational requirements is found to be unfair, the Labour Court in addition may make any other order that it considers appropriate in the circumstances.
- (4) An arbitrator appointed in terms of this Act may determine any unfair labour practice dispute referred to the arbitrator, on terms that the arbitrator deems reasonable, which may include ordering reinstatement, re-employment or compensation.

[S. 193 amended by s. 47 (a) of Act No. 12 of 2002. Sub-s. (4) inserted by s. 47 (b) of Act No. 12 of 2002.]

Limits on compensation

- 194.** (1) The compensation awarded to an employee whose dismissal is found to be unfair either because the employer did not prove that the reason for dismissal was a fair reason relating to the employee's conduct

or capacity or the employer's operational requirements or the employer did not follow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be more than the equivalent of 12 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

[Sub-s. (1) substituted by s. 48 (a) of Act No. 12 of 2002.]

(2)

[Sub-s. (2) deleted by s. 48 (b) of Act No. 12 of 2002.]

(3) The compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of 24 months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

(4) The compensation awarded to an employee in respect of an unfair labour practice must be just and equitable in all the circumstances, but not more than the equivalent of 12 months remuneration.

[Sub-s. (4) added by s. 48 (c) of Act No. 12 of 2002.]

EMPLOYMENT EQUITY ACT

55 of 1998

Relevant Extracts

[ASSENTED TO 12 OCTOBER, 1998]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 1 DECEMBER, 1999]

[UNLESS OTHERWISE INDICATED]

as amended by

ACT

To provide for employment equity; and to provide for matters incidental thereto.

Preamble

Recognising –

that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and

that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws,

Therefore, in order to –

promote the constitutional right of equality and the exercise of true democracy;

eliminate unfair discrimination in employment;

ensure the implementation of employment equity to redress the effects of discrimination;

achieve a diverse workforce broadly representative of our people;

promote economic development and efficiency in the workforce; and

give effect to the obligations of the Republic as a member of the International Labour Organisation,

Chapter I

DEFINITIONS, PURPOSE, INTERPRETATION AND APPLICATION

Definitions

1. In this Act, unless the context otherwise indicates –

“**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

“**black people**” is a generic term which means Africans, Coloureds and Indians;

“**CCMA**” means the Commission for Conciliation, Mediation and Arbitration, established by section 112 of the Labour Relations Act;

“**code of good practice**” means a document issued by the Minister in terms of section 54;

“**collective agreement**” means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand –

(a) one or more employers;

(b) one or more registered employers' organisations; or

(c) one or more employers and one or more registered employers' organisations;

“**Commission**” means the Commission for Employment Equity, established by section 28;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“**designated employer**” means –

(a) a person who employs 50 or more employees;

(b) a person who employs fewer than 50 employees but has a total annual turn-over that is equal to or above the applicable annual turn-over of a small business in terms of the Schedule 4 of this Act;

- (c) a municipality, as referred to in Chapter 7 of the Constitution;
- (d) an organ of state as defined in section 239 of the Constitution, but excluding local spheres of government, the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
- (e) an employer bound by collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement.

“**designated groups**” means black people, women and people with disabilities;

“**Director-General**” means the Director-General of the Department of Labour;

“**dismissal**” has the meaning assigned to it in section 186 of the Labour Relations Act;

“**dispute**” includes an alleged dispute;

“**employee**” means any person other than an independent contractor who –

- (a) works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
- (b) in any manner assists in carrying on or conducting the business of an employer,

and “**employed**” and “**employment**” have corresponding meanings;

“**employment law**” means any provision of this Act or any of the following Acts:

- (a) The Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
- (b) the Guidance and Placement Act, 1981 (Act No. 62 of 1981);
- (c) the Manpower Training Act, 1981 (Act No. 56 of 1981);
- (d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- (f) the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (g) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
- (h) any other Act, whose administration has been assigned to the Minister.

“**employment policy or practice**” includes, but is not limited to –

- (a) recruitment procedures, advertising and selection criteria;
- (b) appointments and the appointment process;
- (c) job classification and grading;
- (d) remuneration, employment benefits and terms and conditions of employment;
- (e) job assignments;
- (f) the working environment and facilities;
- (g) training and development;
- (h) performance evaluation systems;
- (i) promotion;
- (j) transfer;
- (k) demotion;
- (l) disciplinary measures other than dismissal; and
- (m) dismissal.

“**family responsibility**” means the responsibility of employees in relation to their spouse or partner, their dependant children or other members of their immediate family who need their care or support;

“**HIV**” means the Human Immunodeficiency Virus;

“**labour inspector**” means a person appointed in terms of section 65 of the Basic Conditions of Employment Act;

“**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“**medical testing**” includes any test, question, inquiry or other means designed to ascertain, or which has the effect of enabling the employer to ascertain, whether an employee has any medical condition;

“**Minister**” means the Minister of Labour;

“**NEDLAC**” means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

“**organ of state**” means an organ of state as defined in section 239 of the Constitution;

“**people with disabilities**” means people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment;

“**pregnancy**” includes intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy;

“**prescribed**” means prescribed by a regulation made under section 55;

“**public service**” means the public service referred to in section 1 (1) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7 (4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding –

- (a) the National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service.

“**reasonable accommodation**” means any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment;

“**registered employers’ organisation**” means an employers’ organisation as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act;

“**registered trade union**” means a trade union as defined in section 213 of the Labour Relations Act and registered in terms of section 96 of that Act;

“**remuneration**” means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State;

“**representative trade union**” means a registered trade union, or two or more registered trade unions acting jointly, that are sufficiently representative of the employees employed by an employer in a work-place;

“**Republic**” means the Republic of South Africa as defined in the Constitution;

“**serve**” or “**submit**”, in relation to any communication, means either –

- (a) to send it in writing delivered by hand or registered post; or
- (b) to transmit it using any electronic mechanism as a result of which the recipient is capable of printing the communication;

“**suitably qualified person**” means a person contemplated in sections 20 (3) and (4);

“**this Act**” includes any regulations made under section 55, but excludes any footnote;

“**trade union representative**” means a member of a registered trade union who is elected to represent employees in a work-place;

“**work-place forum**” means a work-place forum established in terms of Chapter V of the Labour Relations Act.

Purpose of this Act

2. The purpose of this Act is to achieve equity in the work-place by –

- (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

Interpretation of this Act

3. This Act must be interpreted –

- (a) in compliance with the Constitution;
- (b) so as to give effect to its purpose;
- (c) taking into account any relevant code of good practice issued in terms of this Act or any other employment law; and
- (d) in compliance with the international law obligations of the Republic, in particular those contained in the International Labour Organisation Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation.

Application of this Act

4. (1) Chapter II of this Act applies to all employees and employers.

- (2) Except where Chapter III provides otherwise, Chapter III of this Act applies only to designated employers and people from designated groups.
- (3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency, or the South African Secret Service.

Chapter II PROHIBITION OF UNFAIR DISCRIMINATION

Elimination of unfair discrimination

5. Every employer must take steps to promote equal opportunity in the work-place by eliminating unfair discrimination in any employment policy or practice.

Prohibition of unfair discrimination

6. (1) **No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.**
- (2) It is not unfair discrimination to –
 - (a) take affirmative action measures consistent with the purpose of this Act; or
 - (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.
- (3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

Medical testing

7. (1) **Medical testing of an employee is prohibited, unless –**
 - (a) legislation permits or requires the testing; or
 - (b) it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
- (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined justifiable by the Labour Court in terms of section 50 (4) of this Act.

Psychometric testing

8. **Psychometric testing and other similar assessments of an employee are prohibited unless the test or assessment being used –**
 - (a) has been scientifically shown to be valid and reliable;
 - (b) can be applied fairly to employees; and
 - (c) is not biased against any employee or group.

Applicants

9. **For purposes of sections 6, 7 and 8, "employee" includes an applicant for employment.**

Disputes concerning this Chapter

10. (1) In this section, the word "dispute" excludes a dispute about an unfair dismissal, which must be referred to the appropriate body for conciliation and arbitration or adjudication in terms of Chapter VIII of the Labour Relations Act.
- (2) Any party to a dispute concerning this Chapter may refer the dispute in writing to the CCMA within six months after the act or omission that allegedly constitutes unfair discrimination.
- (3) The CCMA may at any time permit a party that shows good cause to refer a dispute after the relevant time limit set out in subsection (2).
- (4) The party that refers a dispute must satisfy the CCMA that –
 - (a) a copy of the referral has been served on every other party to the dispute; and
 - (b) the referring party has made a reasonable attempt to resolve the dispute.
- (5) The CCMA must attempt to resolve the dispute through conciliation.
- (6) If the dispute remains unresolved after conciliation –
 - (a) any party to the dispute may refer it to the Labour Court for adjudication; or
 - (b) all the parties to the dispute may consent to arbitration of the dispute.
- (7) The relevant provisions of Parts C and D of Chapter VII of the Labour Relations Act, with the changes required by context, apply in respect of a dispute in terms of this Chapter.

Burden of proof

11. **Whenever unfair discrimination is alleged in terms of this Act, the employer against whom the allegation is made must establish that it is fair.**

**Chapter III
AFFIRMATIVE ACTION**

Application of this Chapter

12. **Except where otherwise provided, this Chapter applies only to designated employers.**

Duties of designated employers

13. (1) Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.
- (2) A designated employer must –
 - (a) consult with its employees as required by section 16;
 - (b) conduct an analysis as required by section 19;
 - (c) prepare an employment equity plan as required by section 20; and
 - (d) report to the Director-General on progress made in implementing its employment equity plan, as required by section 21.

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SIGNPOSTS FOR SAFE SCHOOLS

LETTER FROM STEVE TSHWETE

Everyone wants to live in a safe place and all of us know that safe schools are essential cornerstones for safe communities.

It is inevitable that the people who live and work in any community hold the knowledge and experience required to create and sustain it as a safe and secure environment. It is accessing and turning the knowledge into action that is often difficult. Crime and violence affect us all, not just those who are directly victimised. Our capacity to deliver essential services and our resilience and ability to stay focused on the achievement of our goals often seem to be frozen. To succeed in overcoming this and taking control of our collective future, we need signposts that lead us back to our innate ability to contribute to making our schools safe for educators and learners alike, and thus to a safe society for all.

My department and all members of the SAPS will of course continue to provide leadership in crime management, but active partnership is the only key to crime prevention and reduction. I urge that we recognise and urgently act upon the realisation that each one of us brings something different and vital to the journey that we have embarked upon. This is an opportunity for all of us to contribute to drawing a new map – of safe and effective learning environments in which our teachers and learners will achieve their true potential.

THE LATE STEVE TSHWETE
Minister of Safety & Security

LETTER FROM KADER ASMAL

It may seem to some inappropriate for the Department of Education to provide signposts for crime prevention partnerships, and that this is a task for the police or the Criminal Justice System. We have however come to realise that issues of safety cannot be relegated to one or other department, that we must share responsibility for the security of our communities just as we must share responsibility for education with those beyond the formal bounds of my department. No one of us acts in isolation. We cannot educate, nor can we contribute to the realisation of a prosperous future for our country, if we attempt to do so without ensuring a safe and nurturing environment for educators and learners. We cannot reassure parents that our youth are being equipped to participate in the social and economic mainstream if we do not protect them from the risks of victimisation and of becoming offenders. As long as crime and violence threaten our schools, we cannot claim to fulfill our mandate or our promise to the nation.

I said some time ago that we must provide schools with security measures that help exclude violent elements from our schoolyards. We cannot however regard the installation of metal detectors and security guards as satisfying our needs. We must look beyond and invest in a time when we will normalise the learning environment as a place of freedom and respect, valued as the nerve centre of a safe community.

This initiative invites the inclusion of all those who believe in this vision. It is dependent on your support and active participation. I trust and believe that together we will achieve safe and effective schools throughout South Africa.

PROFESSOR KADER ASMAL
Minister of Education

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INTRODUCTION

On the 27th of July 1999, Professor Kader Asmal, the Minister of Education, announced his "Tirisano: Call to Action" detailing South Africa's educational priorities and vision for the next five years. This is operationalised through an annually revised "Implementation Plan for Tirisano". The Tirisano statement acknowledges that, "the educational condition of the majority of people in this country amounts to a national emergency". School safety is highlighted as a critical obstacle to learning.

The depth and breadth of the impact of crime, abuse and violence affects every community. The school community pays a considerable cost. Crime creates unnecessary expense related to the maintenance of infrastructure, human resource costs and the loss of opportunities.

Education is directly threatened through the loss of learning and teaching time, through the negative impact on the resilience of educators and learners and through damage to property. The safety of schools and the prevention of violence, particularly gender-based violence, are enormous challenges facing government, schools and communities. In a focused drive to develop environments in which the sharing of knowledge is enabled, the "Safe Schools" initiative of the Department of Education aims to free the school community from fear, risk of victimisation, and to promote the realisation of the potential of all our youth. Early intervention is seen as the most cost-effective and reliable way to support and guide youth to self-fulfillment through education.

The South African Police Service (SAPS) has formed a partnership with the Department of Education to provide leadership in crime and violence reduction and prevention in schools. While the SAPS has responsibility for community safety and the Department of Education has responsibility for teaching and learning, the basic principle of this book is that every member of our society has a role to play. For some the role is formal and central, for instance in the case of those who work in the criminal justice system or law enforcement environments. For others it is more incidental, but equally important, for instance in the case of those who provide transport or aftercare for learners, those who are involved in the maintenance of local utilities, or those who engage with learners as a part of their social interaction. It is only when we are mobilised as a whole community, with a common understanding of the importance of all these roles, that we will achieve the essential objective of a safe and secure school environment.

Which direction should we take?

Aimed at educators, learners, school governing bodies, principals, parents and all those involved in crime management, reduction and prevention in our communities, this book can guide you in the following direction:

- If you are struggling with a problem at your school that leads to high levels of violence, conflict or abuse, this book will help you to design a school intervention programme that begins to deal with the problem.
- This book will provide you with information that will make it easier for you to assist victims of violence, crime and abuse.
- It will help you, as an educator, to take a pro-active role in cases of sexual abuse, giving you information about how to manage incidents.
- It identifies and provides guidelines and signposts for building partnerships with community structures and government departments so that the school becomes a leverage point for a safer community.
- It identifies organisations that can help you, your school and your community when you face particular types of violence. Although many of the organisations listed are mainly city based, many of them work at a national level. You should identify locally based organisations that can assist you.

Who should take the journey?

- School principals;
- School governing bodies;
- Educators;
- Learners;
- Parents and families;
- Police members;
- Health and social services providers;
- Formal and informal community structures and groups such as religious communities, school safety forums, community police forums, transport suppliers, youth clubs, sports clubs, social clubs and adult learning groups.

How will we get furthest, fastest?

This book is a resource and provides signposts for you, mapping out potential routes and destinations. The knowledge you gain from this book can however, only generate results if you take the first steps. The going may be difficult and tough, but keep at it, because the journey will be worth it!

To make the best of this book, here are some helpful hints:

- Identify problems or concerns that you face in the classroom or school, and deal with them systematically. Think laterally – our suggestions may not apply exactly to your circumstances, use them to stimulate a problem solving approach.
- Do not be daunted by lack of resources. Do an inventory of the resources you HAVE and work with those to generate more. Success breeds success.
- Encourage an inclusive approach; involve others in identifying and developing projects and work towards a common vision; mobilise anyone who is concerned and who can be useful to a project. Remember to involve learners, as they are one of your biggest resources in a school!
- Crime often makes people feel powerless and out of control; offering participation in a project is in itself an opportunity for individuals to feel empowered. Don't make the assumption that there is anyone who has no contribution to offer.
- Let us know what works – and what doesn't – in your school. Tell us about the successes and challenges you face. We are learning all the time and would like to share ideas with others.

Remember**Every child has the right to an education****A learner who has been sexually abused or raped has the right to remain at her or his school****A learner has the right to education allowing him or her to remain at the same school without fear of victimisation**

**Section 1:
THE JOURNEY THROUGH CRIME & VIOLENCE FOR SOUTH AFRICAN YOUTH**

This section outlines the problem of crime and violence in South African schools and gives the general principles for building safe schools.

1.1 Violence and crime among South African youth

In 1999 the Secretariat for Safety and Security, the Department of Education and the National Youth Commission developed a joint Framework Document called "Tirisano – Towards an Intervention Strategy to Address Youth Violence in Schools". This was an attempt to grapple with the provision of an integrated approach to addressing and preventing youth violence in schools. In this document the following points were highlighted about violence and children in South Africa.¹

- Violence against children and youth in South Africa is high and is usually perpetrated within a child's familiar environment by people they know. (Victims of Crime Survey, 1998; HSRC, 1996).
- Young people are the perpetrators of a significant portion of violence against young people. Data from the South African Police Service Child Protection Unit (1994 – 1995) suggests that young people (under the age of 18) are responsible for approximately 30% of violence against youth (HSRC, 1997).
- Cross-sectional school-based data (Flisher, 1993) suggests that schools are sites of violence for young people. Firstly, some educators inflict violence on learners. This takes the form of corporal punishment and sexual violence. Secondly, learners inflict violence on other learners. This most commonly takes two forms: older boys physically assaulting younger boys and boy learners sexually assaulting girl learners (Flisher, 1993). And finally, youth from outside the school (individual children or organised gang structures) physically and sexually assault both boy and girl learners (in transit both to and from school).

Broad strategies to intervene in schools violence

In the same Framework Document, the authors provide an overview of government commitment to dealing with violence in schools:

- In July 1999 Professor Kader Asmal, Minister of Education, announced nine educational priorities to revitalise South Africa's education and training system. The Minister condemned the unacceptably high levels of violence within schools and stated that schools must be reclaimed "as spaces of peace and stability" from those who are violent.
- The Department of Safety and Security identifies the reduction of youth violence in South African schools as a social crime prevention priority, supporting the policy shift toward social crime prevention articulated within the National Crime Prevention Strategy (1996).
- To address this area of national importance, the Minister of Education and the Minister for Safety and Security mandated a joint strategy development process to identify a practical intervention framework designed to reduce youth violence in South African schools.

1.2 Crime and violence prevention programme

A number of youth-oriented prevention strategies, mostly in the United States, have shown that crime prevention programmes in schools both help to turn youth away from a life of crime and help to prevent younger children from choosing a path of crime. In other words, for younger children (or those not yet involved in crime) crime prevention programmes stop them from becoming involved. Youth involved in crime can be turned away from crime through participation in crime prevention programmes. Crisis intervention programmes help these youth to turn away from crime. This is the aim of all prevention interventions.

Crime and violence prevention programmes in schools therefore focus on:

- Reducing the potential for violence to occur.
- Protecting the physical safety of learners and educators.
- Providing safe and healthy environments for learning and development.
- Providing opportunities for youth to engage in non-violent activities.
- Building resilience tools (see explanation in next paragraph) in youth so that they are able to choose a non-violent pathway.
- Reducing risk factors (see explanation in next paragraph) in youth so that they are less likely to become involved in crime or violence.

What are risk factors and how do they relate to crime prevention?

Research has proven that it is extremely important to identify risk factors early in life; these are factors that make some children more likely than others to become involved in crime and violence. Identifying risk factors helps us to address some of the underlying causes that push some young people towards crime and violence. The road to violence begins in childhood. Criminologists have long known that those who end up being involved in serious crime are most active during their teen years, and that their paths to violence almost always begin with serious behavioural problems in early childhood. While many children who exhibit poor conduct do correct themselves rather than embark on a life of crime, those who do become serious criminals typically follow well-worn pathways towards increasingly serious criminality.

¹ Joint Framework document, "Tirisano: Towards an Intervention Strategy to Address Youth Violence in Schools" Secretariat for Safety and Security, Department of Education, National Youth Commission, 1999.

What are resilience factors and how do they relate to crime prevention?

Research has also shown that in addition to key risk factors there are also well-recognised resilience factors. These resilience factors are what help young people who are at risk of embarking on violent and criminal behaviour, not to become violent. Resilience factors might include things like enjoying family stability, relating to positive role models, living in a supportive community and having healthy self-esteem.

Both these risk and resilience factors need to be recognised and understood in order to develop prevention interventions that target building resilience and reducing risk.

1.3 Safe Schools

Despite the commitment of government since 1994 to provide resources and improve school conditions, current reports indicate that many schools are still not functioning very well. Not only are schools themselves finding it difficult to keep order and control, but the delivery of state services in support of schools, learners and educators still has a long way to go to achieve the national vision of equality, quality education and justice in schools.

Schools in South Africa are battling to provide the quality education required for the holistic and healthy development of young people. Furthermore, many schools do not offer a nurturing environment to counteract or deal with violence within the community and family.

In November 2000, an amendment was made by the Department of Education to the Employment of Educators Act (No. 76 of 1998). This amendment requires Provincial Education Departments to dismiss any educator found guilty of having a sexual relationship with a learner, irrespective of the willingness of the learner or the age of the learner. Also the South African Council of Educators Act 2000 was enacted to ensure that when an educator is dismissed on the basis of sexual abuse of a learner, he or she will be deregistered as an educator and may not be appointed by any provider, including private providers, as an educator.

In terms of the law, a child is defined as a person younger than 18 (Section 1 of the Child Care Act No. 74 of 1983); Section 30 of the Constitution of the Republic of South Africa (No. 200 of 1993). In terms of Section 28 of the new Constitution, every child has the right to be protected from maltreatment and neglect.

The following legislation exists in relation to reporting crimes against children:

- Any person, who examines, treats, attends to, advises, instructs or cares for any child, shall immediately report such ill treatment to a police official, commissioner of child welfare or social worker (Section 4 of the Prevention of Family Violence Act No. 133 of 1993).
- The Mental Health Act (No. 18 of 1973) Section 4 gives provision for any person over the age of 18 to give consent for medical attention for a child who is emotionally disturbed, if the person has observed behaviour related to emotional disturbance over some time and such behaviour poses a danger to the life of the child or other people.

There are a number of key principles that can be extracted from effective school safety initiatives and interventions:

Principle 1: Understanding what a safe school is

A safe school encompasses a programme, or programmes to develop capacity to deal with crime and violence. Educators, school governing bodies, learners and the community in which the schools function, develop this programme together. Such a programme provides for the safety and security of learners and educators in order to build a learning environment free from violence, intimidation, fear and shaming.

A safer school strategy needs to include both:

- Environmental change strategies which would involve increasing the skills base and expertise of educators, making sure there are norms for behaviour and procedures at school, and managing classes in a way that contributes to learning and building the self-esteem of learners.
- Individual change strategies which would involve improving inter-personal relationships between members of the school community, having a procedure for dealing with 'inappropriate' behaviour, running programmes that encourage peer support and counselling, and providing recreation and enrichment activities as part of the school life.

Principle 2: Knowing what to look for as indicators of violence, delinquent behaviour and troubled learners AND knowing what steps to follow to address the problem.

It is important to understand and be aware of behavioural changes in children that indicate problems such as drug abuse, gang involvement, alcohol abuse and domestic violence. This book gives guidance in observing these behavioural changes in learners, knowing how to record what is taking place and how to deal with the problem within the school.

Principle 3: Developing policies, prevention and response plans to issues of safety and violence

Although each school will have a different safety plan, these plans and policies should include:

- A policy on firearms, drugs and alcohol use on school property.
- The school disciplinary code and strategies for dealing with misconduct.
- A strategy to deal with truancy, the influence of gangs in schools, and gang violence.
- A policy and process for dealing with learners who are victims of sexual abuse.
- Forming a relationship with the local police, emergency services, disaster management, health and social services.

Principle 4: Building a 'safety net' for troubled children: knowing where to get help

The "safety net" should include:

- Learner leadership development;
- Crime prevention programmes;
- Activities that encourage learners to explore their talents and interests;

- Cultural and social awareness and tolerance;
- Curriculum development;
- Academic support mechanisms;
- Dealing with learning problems or barriers.

Principle 5: Knowing how to handle and respond to crises

Safe schools are prepared for potential crises and violent acts. In the event of such an incident the handling of crisis situations is critical. Educators need to be aware of what steps to follow when violence or abuse occurs. Training in conflict management, mediation, and dealing with particular situations, is therefore required.

Principle 6: Treating the aftermath of violence and trauma

Talking about and dealing with violence and trauma is an essential element of the process of developing safer schools. This involves counsellors and guidance teachers in discussions, activities, and victim empowerment (both victims and witnesses) to deal with the trauma. It is also necessary to involve educators. Unfortunately this is the part of the approach to developing safer schools that is often neglected.

Principle 7: Effective school management

One of the most important factors contributing to safe schools and low levels of violence is good school management. Schools with clear norms and expectations, fair procedures, and schools that involve all members of the community (educators, parents, learners, principals, administrators, community services) are less likely to experience high levels of violence than schools where these systems and relationships are not in place.

The following findings are key to understanding schools as safe places:

Research suggests that the way in which the school is managed and the extent to which it runs effectively as a place of learning and nurturing is directly linked to the level of stability or chaos in the school.

- Higher morale among educators and learners, and lower levels of disorder, are found in schools where educators, administration and school governing bodies problem-solve and work together towards an action plan.
- Less disorder is found in schools where learners know the school rules, where these rules are enforced fairly and consistently, and where there are clear reward and recognition systems.

The provision of school safety requires a multi-sectoral and multi-disciplinary approach. Effective partnerships need to be developed within schools, and between schools, communities, law enforcement agents, parents, social services and civil society. The purpose of these partnerships is to develop an integrated approach and shared responsibility for the school as part of the community.

1.4 School-community-government partnerships are key elements in building safe schools

Violence and crime do not only occur on the school premises. Some of the worst causes of violence for youth lie outside of school – in the family, the neighbourhood, and in broader society. For this reason it is very important that any intervention strategy should include a community-based mobilisation component. In the same light, to deal with these types of violence and to build a safe school, it is vital that the Education Departments and schools work together with other departments: Safety and Security, Social Welfare and Development, Sports and Recreation, Health and even Economic Development and Arts and Culture.

Launching or strengthening police-school partnerships that also include civic leaders, parents and learners can highlight interventions already underway, spur interest in more preventative measures, and reduce crime, victimisation and fear.

The best reason for working together is that all parties share responsibility for the safety of the school and the community it serves. Schools and communities interact; the one cannot be safe unless the other is safe. School Management Teams can find out what help law enforcement can offer, such as maintaining order and mentoring youth; law enforcement can better understand school processes and problems such as disciplinary policies and parental pressures regarding school safety. The police will also be able to help by addressing the causes of drug abuse and violence that lie outside the school grounds.

Partnerships work because:

- Partners share common goals and objectives in making schools safe and are prepared to work to make these happen.
- Each partner brings different skills, ideas, resources and experiences.
- The positive elements of each of these are reinforced and enhanced.
- One partner can activate what another partner brings and in so doing, make the action effective.

Partnerships fail when:

- Expectations are not met.
- There is a perception that trust has been abused.
- Communication breaks down.
- People blame others for problems.
- One partner claims too much responsibility for success.

It is important to be aware of these pitfalls and pre-empt them by talking about potential problems and working out ways to deal with them.

What steps should we follow to establish a good partnership?

- List the key partners (the institutions and their representatives) in building safe schools. Make sure that all their contact details are available.
- Discuss the expectations of each partner and arrive at a common understanding of what the partnership hopes to achieve.
- Develop a vision and a mission of a safe school that is shared by all partners.
- Talk about goals and objectives and describe desired outcomes.

- List the characteristics, skills and resources that each partner brings to the partnership.
- Together, extract from this list those characteristics that are most important to the successful outcomes of the partnerships.
- Reach agreement on the environment in which the partnership will operate.
- Reach agreement on the logistics required for the partnership to work. For instance meeting times, attendance, setting agendas, taking and distributing minutes.

1.5 What works or not? You decide!

This is a difficult but very important question: you will want to assess whether your efforts and actions are, for instance, actually reducing the use of drugs at school and reducing abuse among learners.

It is becoming more and more important for schools and communities to show whether and how their intervention programmes are working. A successful intervention is more likely to raise resources to keep the intervention going. An evaluation of an existing programme will indicate which areas of the intervention need to be improved, and what changes need to be implemented in order to make the intervention more effective.

Principals and educators are often discouraged by the word evaluation: to many it means extra work and an element of being judged. However, there are many different ways of evaluating intervention programmes and this booklet suggests an approach of participatory evaluation. Participatory evaluation, put simply, gives priority to understanding and including the expectations, values, and customs of the stakeholders most directly involved in the programme – in this instance, your learners and yourselves. Participatory evaluation engages the community, the school, and the programme participants (learners), in the design, implementation processes and interpretation of the evaluation in ways that both empower the community and enhance the effectiveness of the programme.

How will you measure the success of your intervention? How will you know what works for you and what doesn't?

You need to decide what questions your evaluation will answer. Section 7 of this book will help you.

1.6 Tell us about it!

Tell us about your successful interventions. There are many reasons why we would like to hear about the strengths and weaknesses of your interventions. The more we know about what works and what doesn't, the better we are able to improve our programmes and make a difference in our communities!

Copy the form below, fill it in and send it back to us!

Director, Education Management and Governance Development, Department of Education, Private Bag X895, Pretoria, 0001.	
Name of School/Organisation or Programme:	
Physical address	
Postal address	
Telephone number	Fax number:
E-mail:	Web address
Contact person:	
What problem is your school or programme trying to address?	
.....	
.....	
How did you determine the extent of the problem?	
.....	
.....	
What are the causes and effects of the problem?	
.....	
.....	
What kinds of interventions did you follow to try and deal with the problem?	
.....	
.....	
Who was involved in the programme and who were your partners?	
.....	
.....	
Any strengths, weaknesses or special lessons you would like to tell us about?	
.....	
.....	
List the names of any contact people or organisations that could help others in your area:	
.....	
.....	

Section 2: UNDERSTANDING THE CAUSES OF VIOLENCE IN SCHOOLS AND SOME IDEAS ABOUT POSSIBLE INTERVENTIONS

This section outlines how educators can address problems of violence, crime and abuse at school through implementing prevention programmes and partnering other organisations and government departments.

2.1 Bullying

a Indicators of a bullying problem at school

Learners who are being bullied will more than likely not speak about it. But they may show behaviour that will give educators a clue of what is happening. There may be other reasons they act like this, but watch out for bullying if a learner:

- Is afraid to walk to or from school, or continually changes their route to school;
- Is unwilling to go to school and is absent often or feels ill all particularly in the morning before school;
- Begins doing poorly in his/her school work;
- Becomes withdrawn;
- Has unexplained scratches and bruises;
- Becomes distressed and anxious, or stops eating;
- Is different in some way from his/her peers e.g. being handicapped, being of a different race group from most of the children in the school, or being smaller than most of the children in the school.

The bully will often:

- Be physically stronger than his/her peers;
- Dislike school and be generally unhappy;
- Experience problems at home, in particular witnessing violence at home;
- Be exposed to inconsistent, harsh, physical punishment.

If you suspect that bullying is happening to a learner, observe his or her actions during break and offer to help the learner to resolve the problem. You should speak to the learner in private to avoid further intimidation by the bullies. To give support to the learner who is a victim of bullying, follow the guidelines in Section 2, which details how to assist victims.

b The causes and effects of the problem

To develop a whole school programme that addresses problems of bullying, first map out the causes and effects of the problem.

- What form does the bullying in your school take? Some schools report predominantly physical abuse and some report mainly teasing and emotional abuse. Often emotional abuse takes place but young people can more easily hide it and educators are therefore not aware of it. Both kinds of bullying should be taken seriously. In fact some studies even show that children are more likely to commit suicide if they are victims of emotional abuse than if they are victims of physical abuse.
- Who does the bullying? Some schools identify one-on-one bullying while others report bullying between groups of children. Also, bullying may differ from girls to boys; and from school to school. Typically boys are more likely to use physical violence and girls are more like to use emotional abuse – but this may not always be the case. Do some young people enjoy more status because of their involvement in particular groups such as sports teams or gangs, and does this make them more likely to bully others?
- When does the bullying take place? Most schools indicate that bullying is most likely to take place at break time or after school. This is because children are often unsupervised at these times, or not as closely supervised. At these times children are also usually mixed in terms of age and gender, making it possible, for example, for bigger children to bully smaller ones.
- Where does the bullying take place? Some areas are harder for educators to monitor than others, such as the playground, toilets, etc. It is important to identify those areas in which bullying is likely to take place.

Prioritise the issues to tackle in the short term and in the long term

Decide which cases can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes should be dealt with in the long term.

Possible partners

- Caregivers – will be able to tell you whether bullying also takes place at home. They can also help reinforce the lessons learned at school about bullying.
- School governing body – can assist with drawing up a bullying policy or dealing with cases of bullying.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem. Young people are often the best source of information as they are the ones who experience bullying. Try getting them involved in discussion groups or role-plays to brainstorm some of these issues.

c Intervention programme

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Bullying can be subtle and it is hard to decide what is bullying and what is just 'harmless teasing'.	<p>Some schools have developed a 'zero tolerance' approach to bullying. This involved creating a policy and set of rules around bullying. Learners were asked what bullying was taking place and what should be done about it. Meetings were also held with educators and parents. The rules they developed included the following:</p> <ul style="list-style-type: none"> • We (learners and staff) agree that no learner will be permitted to bully or put down another learner. • We (learners and staff) agree that we will come to the aid of any student being bullied or put down, by telling a bully to stop and/or by getting help from an adult. <p>If you don't want to develop a policy, get learners involved in drawing up a 'Bill of Rights' for the school that will address bullying.</p>	The involvement of parents and educators. This may require that they become informed about how serious a problem bullying is in the school, so that they are willing to make their time available.
Educators are often unaware of bullying.	Appoint monitors to watch for bullying during the times that it is said to take place. Train the monitors in what to look out for and to whom to report it. Make learners aware that stopping bullying is everyone's job – even if you are not a bully or a victim.	A person to train monitors. This should be someone who is knowledgeable about the forms that bullying takes and some of its possible causes. A group of children (preferably older children) who are not implicated in bullying should be selected to act as monitors.
Programmes can prevent bullying but this does not help children who have already been victims of bullying.	Have group counselling sessions to address issues such as self-esteem, assertiveness and conflict management. If this is not possible, young or new learners could be assigned a mentor who has to make sure that they are adjusting and are not experiencing too many difficulties.	The counselling groups require a skilled group facilitator whom learners can trust. It is often better to have someone from outside the school. If you decide to use mentors, the mentors should be older children in the school who are good role models and are well respected among their peers.

d Dealing with problems

Common Problems	Solutions That May Help
Most research states how difficult it is to get children to talk about bullying to educators or parents.	Have an anonymous box where children can leave descriptions of their experiences. Take every report of bullying seriously or children may fear not being believed.
There is a lack of information about bullying for educators, and often little understanding of the problem.	Contact one of the resources listed at the end of this section.
There is a lack of interest among parents, governing bodies and educators to address bullying.	Letting these groups know that nearly 40% of South African children are victims of bullying and that often children who are bullied become depressed and may even commit suicide. Also bullies are more likely to be arrested for committing a crime and are more likely to abuse their spouses in later life. Bullying happens in every school regardless of race or class.

e Measuring the success of the intervention

Work out a set of questions, for example:

Has bullying at break time decreased since monitors were put on duty and trained to deal with bullying?

Next, decide what information is needed in order to answer these questions. For instance, if you are monitoring the effects of introducing break time monitors, it may be helpful to keep a record of the number of reports of bullying that came to you through monitors and what the outcome of each report was.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.

- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

f Information on bullying

Bullying in South Africa is extremely common. Most experts attribute this to children having been exposed to violence in society. Being a victim of bullying has serious long-term consequences. Children who are victims of bullying are likely to be depressed, lack self-esteem, dislike school and are more likely to commit suicide. They are also more likely to smoke or take drugs. The effects of being a bully are also severe. Bullies are more likely to be arrested for committing a criminal offence as adolescents, and are more likely to become abusive towards their spouses in later life.

Educators often fail to recognise that bullies may also have low self-esteem, are fearful and may be exposed to violence and abuse outside school. It is therefore more effective to be firm but supportive of bullies and praise the things they do well rather than to punish them, especially physically.

Victims should always be taken seriously and reports of bullying should never be written off as 'just rough and tumble child's play'. Often children do not feel that they can talk to adults because they blame the victim. Victims of bullying should be aware that they have the right not to be abused and to report it if they are.

The most important resource that schools have is the large group of children that are neither bullies nor victims but are witnesses to bullying. Interventions should focus on bullying being everybody's problem. All learners should know that they have a responsibility to stop bullying, or to report it, even if it is happening to someone else.

g Helpful National Contact Numbers

ChildLine

Offers confidential support and counselling to children who are victims of bullying or who are bullies.

Tel: 0800055555

2.2 Gangs

a Indicators of problems with gangs at school

Young gangsters will often:

- Have an attitude of fearlessness;
- Deal in or take drugs;
- Attend school irregularly and show a drop in performance;
- Have strong codes of conduct in the gang context;
- Display symbols of their gang e.g. tattoos and/or greeting signs;
- Have great access to money;
- Have macho, sexist attitudes towards women;
- Befriend other young people who are in gangs and/or change their own friends.

b Causes and effects of the problem

To develop school programmes to deal with the problem of gangs, first map out the causes and effects of the problem.

- Who are the learners involved in gangs? This may often be evident from the tattoos they have and clothes they wear. Leaving a gang is often a death warrant for a gang member so once gang members have been identified, this information should be handled sensitively.
- Where do gangs operate or meet? Gangs are typically territorial and battles for turf can be violent and frequent. This is particularly the case in defence gangs who also engage in housebreaking and other crime. Different gangs are therefore likely to have different places from which they operate. Linked to this, think about when gang activities take place and how this affects the ability to intervene (e.g. do they operate during or after school hours?).
- What actions do gangs carry out? Do they claim to protect the community? Some gangs focus on stealing and housebreaking; others are involved in drug dealing.

Prioritise the issues to tackle in the short term and in the long term.

Decide which causes can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes can be dealt with in the long term.

Possible partners

- SAPS Gang-Busting Unit (Cape Town), or local police station.
- Parents – often parents are blamed for their children's behaviour. A no blame approach is essential if schools and families are to work together.
- The school governing body – can play a monitoring role in the prevention of gangsterism.
- Churches, youth clubs and sports centres.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem.

c Intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Gangs are pervasive and very powerful in the community.	Involve the community and families. Schools cannot solve a gang problem alone. Community policing, street committees or neighbourhood watches can be organised to curb gang activity at night.	School premises can be used for community safety meetings and community policing forums, which can focus on tackling gang problems. Educators and other community role models can approach families of gangsters to assist in any family problems and support the family.
Gangs have sexist attitudes, which endanger women in the community.	The Peace in the Community Campaign has had some success in creating an understanding of gangsterism. In an area where gang rapes were common, the Community Action Group held an anti-rape campaign. Their approach involved workshops on rape, a door-to-door campaign to raise awareness, the distribution of a questionnaire to collect ideas from the residents on how to combat rape, and the distribution of a pamphlet on rape from Rape Crisis.	Appoint a person with knowledge of the effect of rape on individuals and communities to lead research and print materials. Sponsors could be sought to publish awareness pamphlets.

d Dealing with common problems

Common Problems	Solutions That Have Worked
Parents deny their children's involvement in gangs.	This is a common problem, and is difficult to address. Remember that parents often deny their children's involvement in gangs because they feel guilty. Blaming parents will only make matters worse. Focus on how schools can support and assist parents in dealing with the problem.
It is very difficult to reform gang members and the consequences of leaving a gang are often severe for an individual gang member.	Primary school educators have an important role to play in preventing gang behaviour. Children do not join gangs spontaneously and there are often warning signs. Look out for the indicators described above.
Fear of gangsters makes community members unwilling to become involved in anti-gang programmes.	The local police should always be informed of activities to address gangsterism. The police should be called if any situation is considered highly dangerous.

e Measuring the success of the intervention

Work out a set of questions, for example:

Has gang-related theft decreased since neighbourhood watch patrols were established?

Next, decide what information is needed in order to answer these questions.

For instance, if you are monitoring the effects of introducing a neighbourhood watch programme, you will need to be familiar with local crime statistics and how these patterns change. The local police can assist in providing this information.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success;
- A plan for answering these questions;
- An indication of how the results of the evaluation will be addressed.

f Information on gangs

There are several important reasons why gangs are formed. Apartheid with its repressive laws played a role in the formation of gangs, as progressive youth organisations were banned and forced to operate underground. A general tolerance of violence has also exacerbated the problem.

In addition, apartheid policies have left many South African youth unskilled and therefore unemployed. Fifty percent of South African youth between the ages of 15 to 20 are unemployed, which often prompts a decision to join gangs for economic and social survival. In the face of the lack of opportunity, gangs offer a means to attain power and status, which would not otherwise be possible for young people. This desire for power often results in gangs picking on members of the community weaker or less able to protect themselves, typically women. Finally, personal experiences of abuse and prejudice lead to a desire for revenge, and may prompt young people to join gangs.

g Helpful National Contact Numbers

Numbers for provinces are listed at the back of this book

ChildLine

Offers counselling to young people.

Tel: 0800055555

LifeLine

Offers 24 hour telephone counselling service, HIV/AIDS, trauma, rape, youth counselling, training and outreach programmes.

Tel: (011) 728 1347, (021) 461 1111, (031) 232323

web site: www.lifeline.org.za

NICRO

Offers community victim support, youth development and diversion, and trauma counselling.

Tel: (021) 422 1225

e-mail: nicro2wn.apc.org

web site: www.nicro.org.za

2.3 Racism

a Indicators of problems with racism at school

- Conflict between learners being described in racial terms (e.g. the 'whites' are doing this or the 'blacks' are doing that).
- Conflict between learners being described in religious terms.
- Treating one group of learners differently to another.
- Learners only socialising and participating in work groups with people of their race group.
- Educators make remarks that reinforce stereotypes or generalisations about different race groups. This is often based on a lack of awareness of cultural, religious and other norms held by different race groups.

b The causes and effects of the problem

Map out the causes and effects of the problem.

- Which race group is being discriminated against? Racial discrimination happens between many different groups. A group that may seem to be the victim at one stage may be the perpetrator at another time.
- Where does racial prejudice take place? Is it in the classroom when educators advantage one race group over another? Is it on the playground when learners interact?
- Why does racism take place? Do learners lack knowledge about other cultures, or are they taught prejudice at home? This question may be discussed by learners in groups.
- What forms does racism take? Racism can range from being very overt (such as violent physical attacks) to being extremely subtle (such as educators not involving learners of a particular race group in a debate).

Prioritise the issues to tackle in the short term and in the long term.

Decide which causes can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes can be dealt with in the long term.

Possible Partners

- Parents – often children learn racism from parents and other significant role models. Parents may need to be made aware of the effects that racism is having in the school.
- NGO's – there are non-profit organisations that specialise in assisting schools, deal with racism through anti-bias and prejudice training.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem.

c Intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Young people of different races do not interact with one another.	Organise a sporting event in which the racial composition of the teams is mixed. Try to make sure that the sports chosen are ones in which team co-operation is required. These events should be held on an ongoing basis, in order that learners of different race groups have the opportunity to interact regularly.	A sports educator who is sensitive to racism and the subtle ways in which it works. This person should also be a role model to pupils and well liked by them. Sporting facilities are also necessary but if these are not available, another event such as a debating competition between mixed race teams could be held.
Children are learning their racial attitudes outside the school.	Similar approaches to the one above can be taken with parents. For example, parent-learner sports days can help to break down racial stereotypes and build cohesion in the school.	Parents must be willing to make time to attend. Organising such events can be time-consuming, and should be done by a person who is aware of the kinds of racial prejudice in the school.
Classroom practices are based on the assumption that there are homogenous cultures and values in the school.	Review the curriculum and think carefully about the ways in which it might reinforce a dominant culture. For example, does it place more emphasis on particular languages over others? Does it celebrate	A person knowledgeable about diverse cultures and aware of the subtle ways in which racism can take place should be responsible for analysing the curriculum.

	some religious holidays and not others?	
The Problem	Successful Interventions	Useful Resources
Learners have very little understanding of how they can grow and benefit from a mix of cultures at school.	Organise a cultural week at school, ask learners to talk about their culture and tradition, to bring food to share with others and to bring symbols that are linked to their cultures.	Co-operation from the principal and other educators. Support from parents.
When learners use their own languages, some groups feel "left out".	Encourage learners to learn different languages in the classroom; songs, common phrases and greetings are always a good way to begin.	Willing and enthusiastic educators.
The problem of prejudice reduction just seems too big for one educator to cope with!	There are non-profit organisations that can help you with bias and prejudice training in the classroom.	The principal and parents should agree to bring someone into the school to help with prejudice reduction.

d Dealing with problems

Common Problems	Solutions That May Help
Learners are resistant to working or playing in mixed race groups.	Be sensitive to how strong prejudices can be but also take a firm stand and make it clear to learners that race is not a justification for not taking part in mixed race events. If necessary a penalty for not participating can be introduced.
When learners do report racist incidents educators are unwilling to pursue the matter.	It is essential that all reports of racism be taken seriously. A system for complaints can be set up so that a learner who does not get any response to an accusation of racism can take it up with a person who is more senior and, if necessary, the school governing body. Learners should be made aware of the steps that they can take if they have been victims of racism and if their reports of racism have not been addressed.

e Measuring the success of the intervention

Work out a set of questions, for example:

Have interactions and socialising between learners of different race groups become more common?

Next, decide what information is needed in order to answer these questions. For instance, a record will need to be kept of the number of mixed sports teams, the number of learners who interact with people of other race groups, etc.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.
- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

f Information on racism

Although schools have recently become racially integrated, many learners still experience racism at school. Reports of racism vary from derogatory remarks to physical violence between learners of different race groups. Other reports have shown that learners act out racist scenes that they have seen on television. Many educators felt that there was little that could be done about racism and attributed it to 'natural' differences between people of different race groups. Comments such as these show the enormous amount of work that needs to be done with educators if learners are going to interact in a non-racist manner.

g Helpful National Contact Numbers

Numbers for provinces are listed at the back of this book.

Human Rights Commission

Aims to develop an awareness of human rights among the people of South Africa, and investigates complaints of violations of human rights and seeks appropriate redress.

Tel: (011) 484 8300

Web site: www.sahrc.org.za

Rights Africa

Offers advice on human rights, in particular the Bill of Rights

Human Rights Advice Line: 0860 120 120

E-mail: helpline@rightsafrika.co.za

Web site: www.rightsafrika.co.za

2.4 Guns and weapons

a Indicators of Gun use at school

The use of guns at school increases the chances that violent conflict will result in injury or death. A key component to building safe schools is to ensure that the school becomes a gun free zone.

b Causes and effects of the problem

To develop a programme to reduce gun use at school first map out the causes and effects of the problem.

- What is the extent of the gun problem? Often this is difficult to assess, as educators may be unaware of the number of learners and educators who carry weapons. For ways of gaining information about the numbers of learners and educators in possession of guns see the intervention section below.
- Who are the main perpetrators? Are any groups of learners regularly threatened or do certain groups threaten others?
- Where do learners get guns? Is there a particular person who could be supplying them, do some learners possess them legally, or are they taken from family members?
- How are learners getting money for guns?

Often being able to answer these questions can lead more directly to the source of the need for 'self-defence', which may indicate that a learner is being seriously bullied and victimised.

Prioritise the issues to tackle in the short term and in the long term

Decide which causes can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes can be dealt with in the long term.

Possible partners:

- The local police;
- The school governing body;
- The Gun Control Alliance;
- Parents.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem.

c Intervention Programmes

Following are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Guns are being brought to school without educators' knowledge. Learners have easy access to guns.	Some schools have assisted in setting up anonymous hotlines for learners to give information about learners who are carrying guns. Where possible, rewards are offered to learners who call with information. Although the school may be instrumental in setting up such a hotline, it should be co-ordinated from a police station.	Police resources that outline the legislation on gun ownership and guns at school; Parents' co-operation with the programme; Learners' awareness of the hotline and trust in its confidentiality.
Most gun programmes only address learners who have already brought guns to school.	Some schools have developed curricula that help learners assess the risks of handgun ownership, resolve conflicts without violence, and generally make safer decisions.	Educators familiar with youth violence and the role that weapons play in causing violence. Also a person who can facilitate confidential group discussions using role-playing, goal setting and leadership skills.
Learners who have guns acquire status among their peers. Learners often idolise other learners with guns.	Start an aggressive educational campaign that shows learners the effects that guns have and the risks that they take by carrying them. Get learners to sign a pledge, that other schools can also sign, stating that they will act against guns and gun violence. Ensure that the learners themselves write the pledge.	Learner's Representative Councils or other youth organisations to lead the pledge and motivate other learners to sign it. These learners should be role models to others.
Part of the school is apathetic about the use of guns on school property.	Start an inclusive campaign to make your school a gun free zone. Involve as many learners, educators and parents as you can. Provide educational inputs and strong motivations of why a gun free zone would be a good idea.	The police will be of great help in such a campaign. So will Gun Free South Africa.

d Dealing with problems

Common Problems	Solutions That Have Worked
Learners are afraid to give educators information about learners with guns.	The hotline should help with this. Alternatively, learners could be advised to give information directly to the police.

e Measuring the success of the intervention

Work out a set of questions, for example:

Has the hotline been effective? How many reports of guns received through the hotline have led to the arrest of the learner concerned, or to the confiscation of the firearm?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring how effective the hotline has been in reducing the numbers of guns at school, you will need to keep a record of how many calls were made to the hotline and how many of these calls resulted in the confiscation of the gun concerned.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.
- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

f Information on guns

In 1998, 461 children under the age of 12, and 358 minors between 12 and 17 years old, were killed by firearms in South Africa. 88% of gun violence victims are male and handguns are the most common weapons used in firearm murders. This is contrary to the common myth that AK47s are most popular in South Africa.

Since 1994, the number of guns reported lost or stolen has also increased. In 1998, 83 guns were lost or stolen per day. This is known to be a low estimation, as many people do not report a lost firearm for fear of prosecution. It is estimated that there are between 500 000 and 1 million unlicensed firearms in South Africa today.

g Helpful National Contact Numbers

Numbers for provinces are listed at the back of this book

Gun Control Alliance
 Network of organisations calling for stricter control of firearms in South Africa
 Web site: <http://www.gca.org.za>

Gun Free South Africa
 Committed to building a safe and secure nation by working towards the reduction of firearms in society.
 Tel: (011) 403 4590
 E-mail: gunfree@wn.apc.org

2.5 Truancy

a Indicators of truancy or low attendance of learners at school

Truancy may be a symptom of:

- Drug use;
- Criminal activity;
- Youth violence;
- Violence at home;
- Low self-esteem and depression;
- Hopelessness and no sense of future;
- Fear of being bullied;
- Learning difficulties;
- Pregnancy.

Learners who are truant may be a victim of abuse at school or in the home. It is important for educators to find out the causes behind the truancy so that the learner can be assisted. To give support to the learner who is a victim of bullying, follow the guidelines in section one, which details how to assist victims.

b Causes and effects of the problem

To develop a programme at school that begins to deal with truancy, first map out the causes and effects of the problem.

- Which children avoid school? Are they children with learning difficulties? Do they experience family problems or a lack of parental involvement?
- What activities are children taking part in that keep them from school? Children may be reluctant to tell educators where they go during school hours but this is important information as it may explain why the learners are away from school.

Prioritise the issues to tackle in the short term and in the long term.

Decide which causes can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes can be dealt with in the long term.

Possible partners:

- School governing bodies – can help to mobilise and alert parents about what is happening to their children;
- Parents – should be informed about their children's whereabouts. If learners are not at school their parents should know;
- Police – attending school is compulsory for children over seven years old and 'adopt a cop' programmes have been used to address truancy;
- Community members – can inform schools if they notice children out of school during school hours.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem at your school.

c Intervention Programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Involvement in crime or drugs is often a cause of truancy	Programmes in the United States have imposed curfews on young people at night. This can with the co-operation of parents to ensure that children's activities are monitored at all times. Schools can agree to keep parents informed of children's whereabouts during school hours and parents can keep schools informed of children's whereabouts after school hours.	Co-operation from parents and educators.
Truancy is often a symptom of involvement with drugs or gangs.	It is important to address the causes of the problem rather than the symptoms. Do some research into why children are absent from school? It may be that a child who has been taking drugs or who has joined a gang loses interest in school. There are projects that bring together community services, businesses and public and private agencies at schools to prevent children dropping out of school and to reduce related risk factors, such as drug and alcohol abuse, illiteracy, gang involvement, violence and teen pregnancy. The entire community, not just the school, needs to take responsibility for preventing school dropouts and delinquency.	Absence from school has been referred to in the booklet as a symptom of various problems. Think about whether these problems describe the learners who are absent from school. Offer counselling (or refer the child to ChildLine or Lifeline) to address the underlying problem.
Parents are often unable to supervise their children after school.	Setting up an after-school care programme deals with the issues of safety and protection of children, reduces truancy and improves school performance.	Co-operation from parents, teachers and neighbourhood guardian projects.

d Dealing with problems

Common Problems	Solutions That Have Worked
Young people are reluctant to talk about the reasons for their truancy.	Confidential counselling may help young people come to terms with the causes of truancy. This may require the school's participation if truancy is a symptom of bullying or poor academic ability.

e Measuring the success of the intervention

Work out a set of questions, for example:

Has truancy decreased over the last few months?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring how truancy has decreased, you will need to keep records of how many learners are absent at what times of the week or month, and follow up the reasons for this.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success;
- A plan for answering these questions;
- An indication of how the results of the evaluation will be addressed.

f Information on truancy

Truancy is often a symptom that something else is bothering a learner. Keeping young people in school is an important step towards keeping them out of trouble. Young people who skip school are not only more likely to be involved in crime and drugs during school

hours, but truancy is also often the first step to greater involvement in criminal activity. Studies have shown that two-thirds of male juveniles arrested while truant tested positive for drug use. Many police departments have found that rising daytime crime can be traced in part to truancy.

Helpful resources

Truancy is often a symptom that the learner is facing other types of problems such as drug or alcohol abuse, or being a victim of abuse in the home. Use the numbers listed elsewhere in this book to assist with these problems.

g Helpful National Contact Numbers

ChildLine
Offers counselling to young people.
Tel: 0800055555

2.6 Witchcraft

a Indicators of a witchcraft problem at school

- Attacks on people in the community because they are supposedly involved in witchcraft. Attacks are often on women or girl children.
- Typically misfortunes blamed on witches are illness, school failure or even death. If these things are prevalent in a community that believes in witchcraft, 'witch purging' may take place.

b The causes and effects of the problem

Map out the causes and effects of the problem.

- Who is accused of being a witch and who is accusing them? Women are most likely to be accused of witchcraft due to a combination of cultural beliefs and their lack of power in society. People have been known to accuse those whom they consider to be enemies or of whom they are jealous. It is therefore very important to identify who is accusing a person of witchcraft.
- When did the accusations start? Was there any particular event that led up to it?
- Where do the attacks on supposed witches take place? Are there particular areas where it is hard to monitor children?
- What kinds of things are done to people accused of witchcraft?

Prioritise which issues to tackle in the short term and in the long term

Decide which causes can be dealt with in the short term (in one year). Basing decisions on the answers given to the above questions, decide which causes can be dealt with in the long term.

Possible partners:

- Traditional leaders or prominent community members;
- Parents;
- SAPS;
- The Gender Commission.

Once you have set up partnerships and decided how you will communicate and work together, call a meeting to brainstorm what kinds of interventions you can start with. Start by looking at the causes and effects of the problem that you outlined at the start. Try to design interventions that tackle the causes of the problem.

c Intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

The Problem	Successful Interventions	Useful Resources
Witchcraft is rooted in traditional belief systems.	Prevention of attacks should be the first priority. The SAPS in the Northern Province have developed a programme which includes a combination of education for community members and schools, protection for people accused of witchcraft, resettlement villages for those accused of witchcraft, and public rallies by chiefs, churches and politicians to change perceptions of witchcraft.	The co-operation of prominent community leaders and the SAPS.

d Dealing with problems

Common Problems	Solutions That Have Worked
People are afraid to speak about witch purging, especially if many people have been responsible for the attacks. The targets of attacks are usually women. After being accused of witchcraft, a person is very unsafe.	Try to be aware of rumours that are developing. Think of the indicators listed above and respond to any suspicion of witch purging. Education that promotes gender equality is important. Attacks on women are based on the assumption that women are 'naturally' jealous and are therefore prone to witchcraft. These stereotypes should be challenged through education. The SAPS in the Northern Province have settlement villages to protect people accused of witchcraft.

e Measuring the success of the intervention

Work out a set of questions, for example:

Have attacks on 'witches' decreased?

Next, decide what information is needed in order to answer these questions. For instance, if you are monitoring whether attacks on 'witches' have decreased, you will need to keep records of how many accusations were made before the programme and how many have been made since the programme. The local police can assist with gathering this information.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.
- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

f Information on witchcraft

Witchcraft and rituals associated with it have historically been prevalent in South Africa, particularly in rural areas. Witchcraft in itself is not a crime and does not pose a threat to the community. Rather, it is the practice of witch purging or attacks on people thought to be witches that is of concern as it often leads to banishment, assaults on the person and even death.

Women are the primary victims of attacks on witches for several reasons. Firstly it is believed that witchcraft is passed from mother to child in breast milk. Women are also thought to be jealous and envious, which makes them prone to witchcraft, and women are thought to be weak and therefore practice witchcraft to gain control over others. Other explanations have been that with male migration from rural areas, women have been awarded a great deal of power and influence in the community. They are thought to use witchcraft because they have so much power.

g Helpful National Contact Numbers

Gender Equality Commission.

Can provide advice regarding witchcraft-related crimes.

Tel: (011) 403 7182

E-mail: cgeinfo@cge.org.za

Web site: <http://CGE.ORG.ZA>

Section 3: DEALING WITH SEXUAL AND CHILD ABUSE – THE ROLE OF THE EDUCATOR

This section outlines the roles and responsibilities of educators in assisting learners who have been abused.²

3.1 The difficulty of dealing with abuse

Most violence against children is perpetrated within a child's familiar environment by people they know: This makes it very difficult to deal with the problem. Crimes such as rape, incest, child abuse, and sexual assault may be described as 'domestic violence' when they occur within a family, or within any structure that functions, or previously functioned, as a family. Often, adults, such as educators, who spend a lot of time with children are faced with the problem of attempting to intervene in these cases of sexual abuse. Educators, in particular, tend to build special relationships with learners and in those special relationships of mutual trust learners may rely on educators for help.

An unfortunate aspect of dealing with domestic violence is that the victim is not always willing to lay a charge against the perpetrator. The most common reasons for this are fear of intimidation, and the controlling behaviour the perpetrator has on the abused child. A child is helpless and powerless in this situation.

Sometimes a mother may believe her abused child, but has limited options and/or resources to deal with the problem. Possible reasons why women and their children may stay in an abusive family:

- Financial dependence on the abuser;
- Custody and maintenance problems for children;
- Love for the abuser, and the hope that he will stop the abuse;
- Having nowhere else to go;
- Religious and cultural beliefs;
- Pride.

Schools are often sites of violence for youth, and this shapes a particular role that educators at schools are expected to play. Educators are called upon to be pro-active in:

- a watching out for signs of abuse;
- b recording the abuse;
- c reporting the abuse; and
- d following the case up with the relevant authorities.

Not only are educators the ones who see learners everyday and often provide perhaps the one stable factor in a child's life, educators themselves are not exempt from being perpetrators of violence. This places an even more difficult task on other educators to expose guilty educators.

² This section draws from a manual developed by the Centre for the Study of Violence and Reconciliation's Gender Programme.

To meet this challenging but very important role in reducing abuse and violence, what skills and knowledge do educators need?

- Educators need to be aware of the role they are expected to play as educators, in the reduction of violence and/or sexual abuse at school and in the home.
- Educators need to have a better understanding of what sexual abuse is.
- Educators need to be able to look out for the signs that a learner is being abused, and need to know how to go about verifying that abuse is in fact being perpetrated.
- Educators need to know what is expected of them in reporting the abuse, and what process to follow once they know a learner is being abused.
- Educators need to know about interventions at school that will prevent further abuse from taking place and that will begin to address the underlying causes of sexual abuse.

In other sections of this book, we outline indicators that educators should be aware of when looking for signs of abuse or violence. In relation to bullying, gangs, truancy, racism, guns and weapons, substance abuse and witchcraft, we suggest ways of dealing with the problems at school, and at a community partnership level. However, when educators are expected to deal with child and/or sexual abuse, perpetrated both at home and at school, the role that they are expected to play, is slightly different. We will outline this role in more detail.

3.2 Educators need to be aware of the role they are expected to play in the reduction of violence and/or sexual abuse

Educators need to take a pro-active role in identifying victims of abuse and in assisting them to deal with the abuse. Do not be passive or quiet about abuse. If you suspect that a learner is being abused, act on your assumption and investigate the matter further immediately. Schools and educators need to take responsibility for acting effectively and timeously in situations of abuse.

In November 2000, an amendment was made by the Department of Education to the Employment of Educators Act (No. 76 of 1998). This amendment requires Provincial Education Departments to dismiss any educator found guilty of having a sexual relationship with a learner, irrespective of the willingness of the learner or the age of the learner. Also the South African Council of Educators Act 2000 was enacted to ensure that when an educator is dismissed on the basis of sexual abuse of a learner, he or she will be deregistered as an educator and may not be appointed as an educator by any provider, including private providers.

3.3 Educators need to have a better understanding of sexual abuse

A child is sexually abused when another person, who is sexually mature, involves the child in a sexual activity that the older person expects to lead to sexual arousal. Child sexual abuse generally consists of three components:

- Exploitation of a child;
- The use of coercion; and
- Gratification gained by the abuser.

Such abuse takes many different forms. The most common sexually abusive behaviour inflicted on children is:

- Verbal abuse.
- Nudity, undressing, or exposing.
- Covertly watching a nude child.
- Kissing in an intimate way.
- Fondling (touching the child in a sexual way).
- Interfering with a child in a sexual manner.
- Forcing a child to engage in any sexual act.
- Sexual intercourse with a child.
- Pornography (exposing a child to this and/or forcing a child to pose for pornographic material).

In an educational institution sexual abuse can also include the promise of improved marks or promotion in exchange for some form of sexual activity.

Educators have raped, sexually assaulted and otherwise sexually abused girls. Sometimes reinforcing sexual demands with threats of physical violence or corporal punishment, educators have sexually propositioned girls and verbally degraded them using highly sexualised language. At times, sexual relations between educators and learners did not involve an overt use of force or threats of force; rather, educators would abuse their authority by offering better grades or money to pressure girls for sexual favours or "dating relationships".

Rape is one of the cruellest forms of violence in our society. The violation not only causes physical pain and harm to the victim, but long-lasting psychological harm. Rape irrevocably alters the way in which the victim perceives the world, herself, her environment and her safety. In most cases the complainant is a woman or girl, but men and boys are also victims of this violation.

There are many different ways in which women and girls are sexually abused. Common words used to describe this abuse include: 'rape', 'date rape', 'gang rape', 'being forced to have sex', 'sexual violence', 'being abused', 'flashing', 'unwanted touching'. In this manual, the terms sexual violence or sexual assault are used to refer to all the ways – from physical force to verbal threats – in which a woman or girl may be made to take part in any kind of sexual act/s despite the fact that she does not want to (i.e. against her will).

3.4 Educators need to be able to look out for the signs that a learner is being abused, and need to know how to go about verifying that abuse is in fact being perpetrated

It is not possible for an educator to be certain that a learner is being abused, by identifying one or two indicators. Educators know their learners, they know how each learner usually behaves. When you see a change of behaviour in a learner, then you need to suspect that something is wrong. The list that follows consists of signs that may indicate that a learner is being sexually abused. Although these signs are not conclusive, a child who displays some of these symptoms, alongside a change in their usual behaviour, may be a suspected victim of child sexual abuse.

These include:

- Unusual knowledge and/or curiosity about sex;
- Sexual acting out / masturbation;
- Withdrawal / being secretive;
- Poor hygiene / compulsive washing;
- Poor peer relationships;
- Poor school performance;
- Sudden unexplained gifts;
- Sleep disruptions / nightmares / bed-wetting;
- Acting out / aggressive / irritable;
- Fear of undressing for sports etc;
- Fearful of home life / running away;
- Clinging / constant need for reassurance;
- Tearfulness;
- Regression;
- Suicide attempts.

If you think that a learner is being abused, act immediately. You should record the learner's behaviour over a few days or weeks. Write down behaviour changes and the learner's reactions to classmates and other educators. You might try and speak with one of the learner's friends, but keep this interview confidential.

If you have a close relationship with the learner, you should try and speak to him or her.

If the learner ends up confiding in you about the abuse, your first reaction will be very important in her healing journey. You need to tell the learner that:

- I believe you;
- I am glad you told me;
- I am sorry this happened to you. You are very brave to tell me;
- It is not your fault;
- I need to speak to other adults in order to help you, but I will tell you everything that I am going to do and say.

The role of the educator is one of reporting the abuse and supporting the learner – not investigating the case. It is not your role to ask the learner for physical signs of abuse. Under no circumstances should you examine the learner. This needs to be done by a nurse or a doctor. You must tell the learner that you need to involve other adults to help stop the abuse. Give the learner options; she may or may not want to report the incident to the police. Inform the principal. He or she should, in consultation with you and an experienced social worker, (and the school governing body if appropriate) decide on how to handle the case.

Crisis intervention: rape

In the case where you, as an educator, are the first person to see a learner who has been raped very recently, you should tell the learner that she must keep all the clothing that she is/was wearing at the time of the sexual assault and must not wash herself, no matter how badly she may want to. She must put her clothes into a paper bag or wrap them in newspaper. She must not place them into any kind of plastic container or packet, as this can interfere chemically with the evidence. Hair, blood, and/or semen may be found on her body or her clothes. If the survivor decides to report the attack, these samples will become crucial evidence against her attacker/s.

- Warn the learner not to drink anything (even water), wash her mouth or take medicine before a doctor examines her, particularly if the attacker has forced the woman or girl to perform oral sex. The sooner a doctor examines her, the greater the chance that she/he will find strong evidence on the victim of her attacker, such as hair, blood or semen.
- Discuss with the victim whether she would like to report the attack to the police. Many women and girls find it difficult to go to the police and she may not feel like making such a decision so soon after an attack.

3.5 Educators need to know what is expected of them in reporting the abuse, and what process to follow once they know a learner is being abused

If you, the principal, the social worker and the victim herself decide to report the abuse, you need to know what to expect.

Your school needs to let the Department of Education's district office know about the abuse. However, do not wait for a response from the district office: go ahead and report the abuse to the police.

When a survivor arrives at a police station, she must inform the police officer at the charge desk that she wants to report a rape or sexual assault. A police officer is not allowed to refuse to open a docket, or tell the victim that she cannot lay a charge, or tell the victim that she does not have enough proof to do so.

- Both the police and the South African Law Commission's Report on Women and Sexual Offences in South Africa (1985) have acknowledged that a District Surgeon need not take the sexual assault survivor's full statement before her medical examination. In fact, as medical evidence is crucial in sexual offences, the medical examination should take priority over the taking of the statement. It has also been argued that a woman or girl is in a much better position (physically and emotionally) to make a full, detailed and comprehensive statement once she has been examined and has had the opportunity to wash herself and change into a new set of clothing. A full statement should only be taken by the investigating officer once the sexual-assault complainant has recuperated sufficiently to do so.
- A survivor can report the incident at any police station. The station where the offence is reported must open the docket (investigation case file) and treat the offence as if it happened in their area. Once the initial investigation has been completed (the first statement has been taken and the medical examination has been done), the docket must then be sent to the station in whose jurisdiction the sexual assault occurred.

- If a survivor does not want to go to a police station, she can contact the station telephonically and ask them to send a patrol car to her – wherever she may be. In certain areas, however, the police may not be able to do this immediately – they may be too busy or might not have enough patrol cars. If this is the case, the victim may have a long wait before the police can come to her. This is a problem that is common in township or rural areas. If the survivor has her own transport, this may be quicker. If she has no transport, it is advisable that she or the person who is making the call on her behalf, especially if the survivor is injured, emphasise the seriousness of the assault so as to make sure that the police arrive as soon as possible. Alternatively, an ambulance should be called to transport the woman or girl to the hospital. The hospital staff will then contact the police.
- It is a survivor's right to have a relative, friend or counsellor with her when she reports a sexual assault, and when a doctor examines her. It should be someone with whom she feels comfortable and who does not inhibit what she says. The support person cannot be a potential witness to the sexual assault incident. This is because her or his presence may influence the contents of the survivor's statement and may result in her or his credibility being questioned at a later stage in court.
- It is the survivor's right to give her statement to the police in a private place. If a survivor finds it easier to talk to a police officer without friends or family listening to her, she may request to be on her own when she does so. If a police officer wants to take her statement in the charge office in front of other people, she can ask to move to a more private place.
- A survivor is entitled to ask to speak to a female police officer. If there are no women on duty, she may ask an available police officer to find a policewoman, although this usually involves a longer wait. Some police stations have staff members who are specially trained to deal with victims of sexual assault.
- The survivor has the right to make her statement in her home language.
- If the police officer who is taking her statement does not speak her language, she/he must find someone to translate the survivor's statement. If a woman or girl signs a statement that has been translated from her home language, she must ensure that the translation is accurate before she appears in court. If it is not accurate, the survivor should make a second statement to either the Investigating Officer or to the prosecutor, explaining the reasons for the inaccuracies of the first statement.
- If nobody at the police station speaks the home language of the survivor, she has the right to ask the officer on duty to find either another police officer or someone from the court who can speak her language. She will then have to wait while such a person is located.

Giving a Statement

When a woman or girl reports a sexual offence to the police, her report is given a special number, called an OB (Occurrence Book) number. The OB number is very important, because it serves as proof that she reported the assault to the police. When reporting a sexual assault, a survivor has two options: to put the sexual assault on record, or to lay a charge.

Putting the incident on record

It is important for the survivor to tell the police clearly if she wants the sexual assault to be put on record only, and does not want the police to investigate the case any further. If the girl is under 18, the case will be investigated. A woman who is 18 years or older can choose to have the incident recorded without an investigation. She will have to sign an affidavit (sworn statement) to this effect. Once the survivor has made her statement, the police officer must refer her to a relevant organisation within that area for counselling and support.

Where sex occurs with a girl under 16 even if the man claims she consented, the law will prosecute the man as if the girl had not consented.

Laying a charge

If the woman or girl wants to lay a charge, the first officer receiving the report will open a docket. The docket will be given a criminal administration number (CAS number), which the complainant must write down. This is called a 'skeleton docket' and is necessary in some situations, for example, where the alleged perpetrator is at large and a description of him by the complainant may lead to a quick arrest. The police officer must then contact an Investigating Officer as soon as possible. If a woman or girl lays a charge, the police will investigate her case and she may have to go to court.

Making the statement

According to SAPS guidelines, an initial statement must be taken, then the medical examination should be done, followed by an in-depth statement that must be taken once the sexual assault survivor has recovered sufficiently (depending on circumstances, ideally from 24 to 36 hours after the assault). However, most often the police will try to get a very detailed story from the survivor when they first speak to her, so that they can start trying to find the person/s who attacked her straight away. If she is badly hurt or very upset, the police may decide to take a short statement from her initially followed by a longer statement afterwards.

The sexual assault survivor will be asked a number of questions, ranging from her name, address, and occupation to the details of the assault. The police officer must write down everything she says in what is called a statement. The complainant may also choose to write the statement herself, or ask a friend to write it for her. The police officer will then rewrite this statement in her/his own writing.

It is important that the victim describes what has happened to her in as much detail as possible. This can be difficult and upsetting, and it may take a long time. However, it is essential to give the police as much information as possible. The sexual assault survivor should tell the police the whole truth about the incident/s – even if she is afraid that certain details might be used to discriminate against her (for instance, the clothes she was wearing, drugs or alcohol she consumed, or kissing the accused prior to the assault, etc). This fear arises from myths about rape, which are perpetuated in society. If the survivor is a credible witness, and her telling the truth from the beginning is the best guarantee of this, there is much more likelihood of a successful prosecution.

Checking the statement

Once the survivor has finished making her statement, the police officer will ask her to read it and then sign it. Alternatively, the survivor may ask the police officer, or someone else, to read her statement back to her, slowly. The survivor must then initial every page and sign it at the end. It is very important to make sure that everything that happened to the victim is written in exactly the way that she told it. If there are mistakes, or if she is not happy with the contents of the statement, she may request that changes be made before she signs it.

Remember

It is crucial for the complainant not to sign her statement until she is completely satisfied with the way it has been written. This statement may be used against her in court.

If the survivor remembers any information, which she did not mention in her original statement, she must inform the police and have it added to the statement.

The sexual assault survivor's statement is extremely important: it is the main article of proof that the court will use to try and win her case and the police use the statement as the basis for their investigation of the case.

The complainant has the right to obtain a copy of her statement. The police can use carbon paper to make a copy of her statement. In this case she must ask for a copy of her statement before the police officer starts to write it down. If she is not given a copy, she must request one. If the police station has neither carbon paper nor a photocopying machine, the complainant should arrange to fetch a copy of her statement within the next week.

Ensuring a conviction

South African law does not give mention to "sexual assault" specifically, but deals with different kinds of crimes such as rape, indecent assault, and incest. A man who sexually assaults a woman or girl can be charged with one or more of these crimes. If the authorities decide that there is not enough proof to charge a man with rape or attempted rape, then they can charge him with a less serious crime like indecent assault. Less serious crimes have lighter sentences (such as a fine, or shorter period in prison).

Sometimes a man may be charged with less serious crimes than those a woman or girl has reported, making the woman or girl feel angry or disappointed. A small consolation is that a man can be found guilty of the less serious crimes, even when the proof is not strong. This means that there is a good chance that a man who has sexually assaulted a woman or girl can be punished in some way; even if she thinks that the punishment is not severe enough for what he has done. When reporting the incident you should keep this in mind. Always ask the police to charge the man with indecent assault as well as the main charge.

Attempted Rape

This is when a man tries (or attempts) to rape a woman or girl. This means that he tries to place his penis into, or against her sexual organs, but does not succeed at doing so, because the woman or girl fights him off, or someone comes along, or something happens and he is stopped.

Indecent Assault

The law describes indecent assault as "an assault, which is in itself, of an indecent character". Acts of indecent assault include a man or woman interfering with a learner's body in a sexual manner.

Incest

Incest is when a man and a woman (or girl), who are prevented from marrying by law because they are family, have sex together. Following this law, it is a crime for a girl's (or woman's) father, stepfather, grandfather, uncle, brother, cousin or adoptive father to have sex with her.

Crimen Injuria

The law describes crimen injuria as the "unlawful, intentional and serious infringement of the dignity or privacy of another". A person's dignity is rooted in self-respect, peace of mind, and privacy. Crimen injuria occurs when a person sends you pornography, makes rude suggestions to you, or spies on you (a "Peeping Tom" or voyeur) when you are undressing.

Vital information

Before leaving the police station, you should ensure that you and the learner write down or have copies of the following because you will need this information to follow up on the case:

- The *OB and CAS numbers* of her case (these numbers are essential if she wants to find out anything about her case from the police or the court).
- A *copy of her statement*, or a time when she can fetch one.
- The *telephone number* of the police station.
- The *name and serial number of the officer who took her statement*.
- The *name and serial number of the officer who will investigate her case* (if the police are unable to give her this name when she reports the case, they must provide her with the name and contact number of an officer who can provide her with this information the following day).
- A *letter from the police*, which the complainant can hand to any police officer if she sees the person/s who assaulted her, so that the police officer can then arrest him/them.
- The *name and phone number* of the CID (Criminal Investigation Division) *Branch Commander* (this person is the head of all the investigating police officers).

3.6 Educators need to know about interventions at school that will prevent further abuse from taking place and that will begin to address the underlying causes of sexual abuse

a Intervention programmes to prevent abuse

The Problem	Successful Interventions	Useful Resources
Many children are unaware of the fact that they are being abused.	The most common approach to abuse is through education. By educating children about what abuse is, what places to avoid, what to do if they are abused, and where to go for help, abuse can be both prevented and addressed when it does happen.	Educators who are knowledgeable about child abuse, and have a good relationship with their learners. They should also be familiar with the process of reporting the abuse.

b Dealing with common problems

Common Problems	Solutions That Have Worked
When children are abused, the abuser often threatens the child or their family to ensure that they do not tell anyone about the abuse.	Children need to be educated about their rights and at the same time be assured that the school will treat information as confidential. In addition, they can be told of anonymous services like ChildLine and the Safe Schools National toll-free call line.
Few children feel comfortable with telling an adult about abuse.	Look for less obvious signs of abuse like symptoms listed above. If there is any concern that a child is being abused, the child should be sent for counselling and, if necessary, medical treatment.
Parents deny the abuse.	Some parents are perpetrators of abuse and will therefore deny it, other parents are afraid that their security in the home will be threatened by the abuser. The school needs to work with parents to reduce child abuse.
Learners do not know how to react if in a compromised situation.	Learning self defence and building confidence.

c How can victim empowerment build a healthy school?

Victim rights apply to learners and educators at school. The way in which an incident of crime or violence is handled at school will affect the way in which both the offender and the victim think about crime, justice, authority and equity in the future.

Educators, representative councils of learners and school governing bodies play an important role in ensuring that appropriate action is taken after an act of violence, and that the victim is empowered to move on without anger.

Educators and learners do not need to deal with the problem of crime and victim empowerment at school on their own, but can draw on the Network of Victim Empowerment Practitioners. Serving the needs of victimised youth is essential not only to the vision of a safe and peaceful school but also of a safe and peaceful society.

Empowered victims help with police investigations by reporting the crime and making a statement. Once a suspect is arrested, their evidence helps decide whether or not bail should be granted. They help with the prosecution, conviction and sentencing of the offender by being a witness for the State, in order to ensure that the offender cannot commit any more crimes.

Empowered victims are less likely to continue the cycle of violence. When a learner at school feels as if he or she has been empowered to contribute to the successful conviction of an offender, she/he feels that justice has been done – and is not left with feelings of anger and revenge.

<p>What are the basic steps to victim empowerment?</p> <p>Step one: <i>Brainstorm why victim empowerment might be helpful in building your school as a safe and healthy school.</i></p> <p>Step two: <i>Find out about community-based victim support initiatives in your area (see whom to contact at the end of this section).</i></p> <p>Step three: <i>Set up a committee of concerned parents, educators and learners who are willing to work as school representatives on the community-based victim support initiatives.</i></p> <p>Step four: <i>Let the school community know how they can access these community initiatives to give support in reporting and dealing with crime and violence.</i></p>

What do community-based victim support initiatives offer?

The police official who takes the victim’s statement, the investigating officer, the health worker or educator who first learns about the incident, or even the prosecutor who will take the case to court, can all refer victims to Victim Support Initiatives in their area.

Victims can access victim support themselves. Services may differ from area to area but generally they offer:

- A shoulder to lean on and an ear to listen.
- Help in contacting family or friends.
- Help in dealing with victims’ feelings after the violence or crime.
- An explanation of the process that needs to be followed in reporting the crime.
- Help in communicating with the SAPS and later with the prosecutor.
- Practical help and advice to avoid further problems.
- Referral to a professional counselling service if the victim was traumatised by his/her experience.

*d Helpful National Contact Numbers***ChildLine**

Offers counselling and support to victims.
Crisis line: 0800055555

LifeLine

Offers 24 hour telephone counselling service, HIV/Aids, trauma, rape, youth counselling, training and outreach programmes.
Tel: (011) 728 1347, (021) 461 1111, (031) 232323
e-mail: llinejhb@iafrica.com
web site: www.lifeline.org.za

Agisanang Domestic Abuse Prevention and Training (ADAPT)

Deals with domestic and sexual abuse, youth who experience abuse.
Tel: (011) 885 3305

NICRO

Offers community victim support, youth development and diversion, and trauma counselling.
Tel: (021) 422 1225
e-mail: nicro@wn.apc.org
web site: www.nicro.org.za

Section 4: SKILLS THAT BUILD RESILIENCE

This section outlines pro-active interventions that schools can take to prevent violence, crime and abuse and to promote safe schools and well-being.

There are many children in South Africa and the rest of the world who face difficult and uncomfortable situations on a daily basis, but who do not follow a path of violence or crime. What makes some youth and children turn to violence while others from the same community do not? Research conducted here and overseas shows that children who do not choose a path of violence or crime, even if they are exposed to violence regularly, have particular “tools” that help them to choose a non-violent pathway. We call these tools “resilience factors” – the tools that help youth to resist a violent pathway and choose a non-violent one.

Some of these resilience factors include a feeling of competency at school, feeling supported and cared for, having a strong sense of self-esteem, having values, being good at problem solving and at communicating effectively, having the confidence to deal with diversity, and being involved in community based or group activities.

Important life skills include the ability to take control, to make plans and decisions, to change personal direction, to ask for help, and to stand back and reflect. Importantly, these are also the skills that enable people to give to others and to their communities. With giving comes a sense of belonging and an increase in self-esteem. An increase in self-esteem results in positive behaviour.

In summary, resilience tools:

- Help you to cope better in life;
- Help you to say NO when you don't want to do something;
- Enable you to do more things for yourself;
- Instill a sense of pride from doing things yourself;
- Help you make decisions that are good for you and your community;
- Give you insight into how the world works;
- Enable you to make discoveries about yourself and the world;
- Enable you to make better choices for yourself and your community;
- Instill a sense of self-respect and self-esteem.

4.1 Skills that build resilience*a Communication skills*

How do good communication skills help to build resilience?

- Good communicators manage effective and successful social interactions that bring quality, meaning and satisfaction to their lives.
- Communication skills facilitate social acceptance, integration and involvement with others.
- Communication skills reduce the chance of interpersonal conflict turning into violent conflict.
- Good communicators are able to express their needs and feelings – a first step in getting those needs met.

What does poor communication lead to?

- Feelings of powerlessness and isolation. If people are unable to express their needs and their feelings, they may turn to activities that make them feel even worse about themselves.
- Introspection and narrow-mindedness.
- Barriers to making contact with others.

b How can learners be helped to communicate more effectively?

In the classroom:

- Be aware of the learners who do not speak often. Encourage them to communicate with you in private and help to build their confidence.
- Don't let the same learners talk all the time.
- Help learners to recognise the difference between good and poor communication; rephrase some of their questions and comments in a supportive manner.
- Ask learners to role-play being a good listener and a bad listener.
- Ask learners to role-play different ways of speaking about their needs and their feelings.

Through intervention programmes:

Following are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

Aim	Method	Useful Resources
To get learners to think about how they communicate.	Ask learners to answer three questions: <ul style="list-style-type: none"> • Why is communication important? • When is communication good? • When is communication bad? Discuss the answers and develop a checklist for good communication.	An educator who is able to communicate well and with whom the learners feel comfortable.
To get learners to realise the effects of good and bad communication.	Ask learners to answer two questions: <p>When communication works it leaves me with feelings of . . .</p> <p>When communication does not work it leaves me with feelings of . . .</p>	An educator who is able to communicate well and with whom the learners feel comfortable.
To get learners to practice listening skills.	Divide learners into pairs. Ask one person in the pair to talk to their partner for about five minutes about something they find interesting. The listener should help the person speaking by asking some questions but do no more than that. After five minutes ask each listener to tell his or her partner what he/she was talking about. Go around the group and ask the "tellers" to give the listeners a mark out of ten, based on how well they thought the listeners had listened. Get them to motivate this mark by giving examples. Then change the listeners around and repeat the exercise.	An educator who is able to communicate well and with whom the learners feel comfortable, and who is able to manage group interactions well.

c Measuring the success of the intervention

Work out a set of questions, for example:

Has communication in your classroom improved since you started using the exercises?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring how communication in the classroom might have improved, you will need to keep a record of examples that show how communication has improved.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.
- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

d Helpful National Contact Numbers

Communication skills are one part of general life skills. There are organisations that you can contact who will deal with communication skills as part of life skills.

4.2 Alternatives to violence

Finding alternatives to violence requires certain skills. How do these skills build resilience in learners?

- Learners come to understand the nature of conflict and violence, and how conflict can escalate into violence when certain behavioural choices are made.
- Learners come to understand that violence is linked to power, and explore alternative ways of testing and expressing their own power.
- Learners develop skills to respond to violence with non-violence.
- Learners develop skills to intervene in violence in a non-violent manner.

- Learners develop skills to speak to one another in a manner that is not threatening or aggressive.
- Learners develop the ability to get in touch with their own feelings of violence and aggression, and in this way begin to make choices as to how they act out their anger and insecurity.
- Learners develop better communication skills and respond to one another's concerns and interests.

a What can violent interaction lead to?

- When all disputes and arguments are settled by resorting to violence, learners begin to believe that violence is the only way to resolve conflict.
- Violent interactions inside and outside the school premises often lead to revenge attacks; it becomes increasingly difficult to break the cycle of violence.
- Violence is often linked to power: Learners who use violence may feel powerful but this power is without substance and can be taken away.
- Educators who use violence or corporal punishment in the classroom are sending out a message that violence is OK.

b How can learners be encouraged to practice principles of non-violence?

In the classroom

- Don't allow learners to be violent in the classroom. But remember not to use violence to tell your learners not to use violence!
- Encourage learners to talk to one another about their feelings of anger in a way that help them to find solutions. Don't be afraid of anger: encourage expression in a constructive manner.
- Discuss the impact and effects that violence has on young people and children – on their self-esteem, their emotional well-being, and their sense of safety.
- Introduce role models such as sports stars, politicians and music stars – people who have achieved power and status in ways that have not involved violence.

c Through intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

Aim	Method	Useful Resources
To help learners resolve conflicts without using violence.	Some schools select learners to be trained as peer counsellors. These peer counsellors are given skills to intervene in conflicts between learners in a manner which encourages dialogue and which is non-violent. Peer mediators become well known in the school and are soon called upon whenever there is a threat of violence breaking out among learners.	Learners who are well-respected and mature to act as mediators.
To encourage educators to use alternative forms of discipline to corporal punishment.	Today maintaining discipline in school is sometimes very difficult for educators. There are, however, successful alternatives to corporal punishment. Discipline should not be viewed in terms of severe punishment or violence. This has been shown NOT to help with changing the behaviour of learners. View discipline as a means of upholding expectations for a code of decent conduct. Provide recognition and reinforcement for newly learned skills and behaviour. Have appropriate expectations for all learners and help to provide learners with the opportunity, support and encouragement to meet those expectations.	Educators who are well informed about effective forms of discipline, and who are flexible and sensitive in their use of discipline. The booklet "Alternatives to Corporal Punishment: The Learning Experience," Department of Education (2000).

d Measuring the success of the intervention

Work out a set of questions, for example:

Has violent interaction between learners in your school decreased since you introduced the peer mediation programme?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring how violence has decreased, you will need to keep a record of incidences of violence over a period of six months.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success;
- A plan for answering these questions;

- An indication of how the results of the evaluation will be addressed.

e Helpful National Contact Numbers

NICRO
Parents Programmes; Family Group Conferencing
Tel: (021) 422 1225
E-mail: nicro@wn.apc.org
Web site: www.nicro.org.za

4.3 Improving self-esteem

How does high self-esteem build resilience?

- Self-esteem is sometimes described as armour against the world. Young people who feel good about themselves find it easier to handle conflicts and resist negative pressure;
- Young people with high self-esteem will enjoy social contact and group activities;
- They will voice discontent without belittling others or themselves. They will say, "I don't understand this" instead of "I'm an idiot".

a What are the effects of low self-esteem?

- People who have low self-esteem battle to cope with challenges and have many self-critical thoughts;
- They become passive, withdrawn and depressed;
- They may not want to try new things or may give up easily;
- They are pessimistic.

b How can learners be encouraged to build self-esteem?

In the classroom:

- Praise learners for effort as well as for tasks well done. Focus on the effort and completion rather than on the outcome. For example, say, "Well, you didn't make the soccer team but I'm really proud of the effort you put into it".
- Be a good role model. Learners will mirror educators who are overly harsh on themselves.
- Encourage the learner to be realistic about situations. If a learner struggles with maths he/she may say, "I'm a bad student". The educator should respond by saying, "You are a good student. Maths is just something you need to spend more time on". Make sure your feedback is positive and accurate. Praise for good decisions (walking away rather than fighting with a fellow learner) will encourage the learner to make the right choice again.
- Encourage learners to become involved in constructive activities. These are activities that encourage co-operation. For instance, in mentoring programmes older learners offer support to new or younger learners.

c Through intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

Aim	Method	Useful Resources
To help learners appreciate the importance of encouraging good self-esteem in others.	Divide learners into small groups to discuss what self-esteem is and the effect that being belittled or put down has on them. Get them think to about good and bad ways of giving another person feedback.	An educator who can manage group discussions and who is knowledgeable about building self-esteem.
To help learners recognise the ways in which they put themselves down.	Help learners think about what kinds of things make them feel bad about themselves and why. Get them to identify statements or feelings that are inaccurate, for example, "I can't do anything right".	An educator who can handle issues sensitively and with compassion.

d Measuring the success of the intervention

Work out a set of questions, for example:

Have learners begun to develop a more accurate perception of their own abilities?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring whether learners are evaluating their abilities more accurately, you will need to record the kinds of things that they say about themselves. It may be useful to get learners to record this themselves and monitor how it changes over time.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success;
- A plan for answering these questions;
- An indication of how the results of the evaluation will be addressed.

4.4 Values and Moral Grounding

How do values and moral grounding build resilience?

- By helping learners to make decisions about "right" and "wrong" in difficult situations;
- By feeling part of a larger society that respects rights and responsibilities;
- By making the learner feel valued and cared for.

a What does a lack of values and moral grounding lead to?

- An environment where educators and learners treat each other without respect, fairness or honesty;
- A lack of understanding of what is considered right and wrong by society;
- Relationships characterised by suspicion and a lack of honesty;
- Learners have no religious, spiritual or political grounding.

b How can educators help learners to develop morals and values?

In the classroom:

- Educators have to treat learners and colleagues with respect. Children mirror the behaviour of adults;
- Learners need to be given opportunities to take on roles that require moral responsibility, particularly in meeting the needs of the school. However, they should not equate moral responsibility with passive obedience;
- Learners should be encouraged to develop social problem-solving skills, as this will instill the values that underpin non-confrontational interaction;
- Learners could be encouraged to explore paths in politics, spirituality and religion.

c Through intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

Aim	Method	Useful Resources
To create an understanding of what good morals are.	Some approaches to character education include using people who are good moral role models. This may entail telling stories about role models such as Nelson Mandela, and discussing why he is a good example of a moral person and what his characteristics are.	An educator who is familiar with historical and political figures and who could give examples of good role models.
To get learners to reflect critically on their own moral beliefs and views.	Learners can reflect on real life events and decide how best to respond to a particular situation.	An educator who is sensitive to the emotions that this exercise may evoke in learners, and who will reinforce their own positive descriptions of themselves.

d Measuring the success of the intervention

Work out a set of questions, for example:

Have learners begun to reflect on the morality of their actions?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring whether learners have begun to consider the morality of their actions, you will need to record the behaviours that reflect good and bad morality and monitor these over time.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success;
- A plan for answering these questions;
- An indication of how the results of the evaluation will be addressed.

e Helpful National Contact Numbers

SchoolNet SA:

Helps design curricula and develop the capacity of educators and learners.

E-mail: info@school.za.

Tel: (031) 250 2366

E-mail: crisp@nu.ac.za

Web site: <http://und.ac.za/und/cadds/cosl.htm>

Rights Africa

Offers advice on human rights, in particular the Bill of Rights.

Human Rights Advice Line: 0860 120 120

E-mail: helpline@rightsafrika.co.za

Web site: www.rightsafrika.co.za

4.5 Preparing learners to navigate the world of work

How does preparing learners to apply for jobs help them build resilience?

- Learners feel confident when they move into the world of work because they know what to expect.
- Learners are given information to help them gain and keep employment after school, increasing self-esteem and confidence.
- Learners are aware of the norms and values that govern workplace interactions, making it easier for them to fit in.
- Learners have the skills to perform jobs well, increasing self-esteem and confidence.

a What does a lack of knowledge and skills about the world of work lead to?

- Lack of confidence when applying for employment.
- An inability to interact in a professional manner when in the workplace.
- A lack of the necessary skills to work effectively.
- Re-enforcement of a negative self-image.
- Giving up on the "world of work" and turning to crime.

b How can learners develop skills to effectively prepare them for employment?

In the classroom:

- Educators need to be aware of their own manner of interacting and dressing at work, and set an example by acting in a professional manner towards their colleagues.
- Educators must insist on appropriate interpersonal skills from learners. These would include respect for others, keeping to time, and being neat and tidy.

c Through intervention programmes

Here are a few examples of interventions that worked in schools. Some may be helpful but remember that each situation is unique and needs its own specific intervention.

Aim	Method	Useful Resources
To teach learners how to apply for work.	Have a series of lessons in which learners go through the newspapers and look for job advertisements. Help them to draft a CV and write a formal letter of application. Have learners role play interviews with one another.	An educator who is able to draft formal letters and CVs and has experience of interviews.
Developing skills for particular jobs.	Take part in a work experience programme. Arrange for learners to 'work' at local businesses and companies for a week so that they can see what work in a field of their interest is like.	The co-operation of local industry and businesses.

d Measuring the success of the intervention

Work out a set of questions, for example:

Do learners know how to write a CV? Apply for a job? Prepare for an interview? Conduct a successful interview?

Next, decide what information is needed in order to answer these questions. For instance, if you are measuring whether learners can apply for jobs and write a CV, test them on their ability.

Each action or intervention needs:

- One or two key questions that will indicate whether the intervention has been a success.
- A plan for answering these questions.
- An indication of how the results of the evaluation will be addressed.

e Helpful National Contact Numbers

SchoolNet SA

Helps design curricula and develop the capacity of educators and learners.

Tel: (011) 403 3952

E-mail: info@school.za

Web site: www.school.za

Democracy Development programme (DDP)

Youth empowerment and democracy education

Tel: (031) 304 9305/6

E-mail: ddpl@iafrica.com

Web site in progress

Rights Africa

Offers advice on human rights, in particular the Bill of Rights.

Human Rights Advice Line: 0860 120 120

E-mail: helpline@rightsafrika.co.za

Web site: www.rightsafrika.co.za

Section 5: PROMOTING HEALTHY SCHOOLS

This section outlines how schools can assist learners who are facing problems that affect their performance at school and sometimes even threaten their life.

Many young South African are exposed to learning environments that are potentially damaging to their physical, mental, social and emotional well-being. Because learners spend so much time at school it is crucial that these schools are transformed into places that not only promote intellectual development, but physical and emotional health and well-being.

The World Health Organisation defines a health-promoting school as follows:

'The health-promoting school aims at achieving healthy lifestyles for the total school population by developing supportive environments conducive to the promotion of health. It offers opportunities for, and requires commitments to, the provision of a safe and health-enhancing social and physical environment'.

This section will focus on two areas that, if left unattended, are likely to contribute to an unhealthy school environment, and, if properly addressed, can make a real difference to the physical and emotional health and wellbeing of learners and educators. These areas are particularly relevant in South Africa today: HIV/AIDS and suicide. The fourth area of focus in this section looks at healthy alternatives – activities that young people can get involved in at school that will enhance their physical health and emotional, mental and social development.

5.1 HIV/AIDS

a How does knowledge of HIV/AIDS build a healthy school and child?

There are two main issues to consider when dealing with AIDS at school. Firstly steps need to be taken to educate people about the virus and ways of staying healthy. Secondly learners must be educated so that the school community supports and nurtures those who are HIV positive rather than making them feel unwanted and alone.

It was estimated in 2002, that 16 million people in South Africa were infected with HIV/AIDS. This means that every school will be affected by the epidemic. Children as a group are particularly vulnerable to the effects of HIV/AIDS – by the year 2010 there will be at least 2 million children orphaned by AIDS.

What is HIV/AIDS?

HIV is a virus that gets into the body and flows through the bloodstream. AIDS is the disease that is caused by HIV. When a person is diagnosed HIV positive they do not automatically have AIDS but AIDS will develop over time. Poverty and a poor diet hasten death.

HIV is spread by the direct contact of body fluids from an infected person to another. The blood of the infected person contaminates the uninfected person. There are four ways in which HIV is spread from one person to another:

- Through sexual contact with a person who is infected. This can include sexual intercourse, oral or anal sex (including rape and unsafe sex);
- The sharing of intravenous needles that still contain infected blood;
- Through contact with blood injuries;
- From mother to child before or during birth, as well as through breast milk after birth.

HIV cannot be spread through saliva, mosquitoes or tears. HIV cannot penetrate the skin, so the blood of an HIV infected person is only a risk to you if you have cuts on your skin that come into contact with the blood.

At the moment there is no cure for HIV/AIDS although scientists are trying to develop a cure for it. Drugs (such as AZT) can prolong the life of an HIV infected person, but these are extremely expensive and not widely available in South Africa. There are three possible ways to a cure for AIDS:

- To develop a drug that will kill HIV when it enters the blood;
- To develop a vaccine that will prevent people contracting the disease;
- To educate people world wide about the dangers of AIDS and how infection can be prevented.

Schools have an important role to play in ensuring that infected and affected learners are not faced with prejudices, and that they receive the care and comfort that they need. Learners who are HIV positive also need to learn that having HIV is NOT a life sentence, if drugs and treatment are available.

In addition, young people between the ages of 15 and 24 years are the group most likely to be infected with HIV. They need to be educated about how the disease is spread and how safer sexual practices can prevent infection. They also need to be aware of the difficulty of being diagnosed HIV positive, and be empowered to offer support and care to their friends who are infected and affected.

b What are the basic steps to addressing HIV/AIDS in a school?

Step one: *Brainstorm what kinds of programme the school could run to address two priorities: education about the virus and safe practices, AND education which instills in the school community empathy and support for those who are HIV positive.*

Step two: *Gather as much information about these two areas of concern. Local libraries may have information, otherwise the nearest AIDS Training and Information Centre (ATIC) can provide the necessary information.*

Step three: *Set up a health advisory committee of concerned people who will work towards the goals of educating the school community about AIDS and creating a supportive environment. They can be responsible for drafting school policy about HIV/AIDS. This committee may include health care workers from clinics, parents and learner representatives, and the school governing body.*

Step four: *Identify community organisations and resources and let the school community know how these resources can be accessed. Some of these are listed below.*

c What do community-based initiatives offer?

Community-based organisations (CBO's) offer many services. These include:

- Information for educators and learners on HIV transmission and prevention;
- Counselling and support for those infected or affected;
- Confidential testing for HIV. No test can be done without the consent of the individual;
- Workshops that help people who have negative attitudes towards those that are HIV positive, to be more accepting and supportive.

A community approach to addressing HIV in schools is essential for many reasons.

- Belonging to social networks has a positive impact on health. Social support for HIV positive people has been shown to prolong their life;
- Interventions designed will be appropriate for the community;
- Government does not have the resources to address HIV/AIDS alone.

First aid kit in schools should include:

Rubber gloves, mouth to mouth cover, various bandages, disinfectant, cotton wool, blanket, clean water, bucket, sponge.

d Helpful National Contact Numbers

AIDS Training Information and Counselling (ATIC)

Offers training and information on AIDS and confidential counselling, testing and education to those infected and affected.

Tel: (011) 725 6710

E-mail: aidsprog@mj.org.co.za

AIDS Help Line

Offers counselling and information.

Tel: 0800 0123 22

E-mail: rolandp@lifeline.org.za

The AIDS Consortium

Provides information on HIV/AIDS, offers meetings, networking, activism, resources.

Tel: (011) 403 0265 / 0390

E-mail: aidscons@global.co.za

Web site: www.aidsconsortium.org.za

Department of Education AIDS Guidelines

Web site: www.education.gov.za/HIVAIDS/EmergencyAIDS

5.2 Dealing with stress and suicide

a How can awareness of suicide build healthy schools?

Information on suicide equips educators to identify learners at risk of committing suicide and to intervene to help those learners. It is important to remember that suicide is a symptom of problems in young people's lives and that the problems (rather than the suicide) should, in the long run, be the focus of interventions. This means that although it is necessary, at the time when a child threatens suicide, to intervene to prevent their death, in the long run it is important to address the reasons why the child wanted to die.

Good mental health and emotional well-being is essential if young people are to be successful in their academic and social lives. Learners who are emotionally healthy take part in school activities and are productive; they are an asset to the school. Educators do not need to address suicide on their own, as there are a number of places that can provide assistance and professional services to young people (see the end of this section).

b What are the basic steps to addressing suicide?

Step one: *Brainstorm why it is important to address suicide in your school.*

Step two: *Find out what initiatives to prevent suicide are available locally in your area.*

Step three: *Set up a committee of concerned parents, educators and learners who are willing to work as school representatives on community-based suicide prevention initiatives.*

Step four: *Let the school community know how they can access these community initiatives to address suicide.*

Information on suicide

Suicide is increasingly common among young people in South Africa. However, most young people who attempt or commit suicide have communicated their desire to commit suicide to another person before they carry it out. This suggests that it is possible to prevent suicide if learners, educators and caregivers are aware of the signs of suicide. These include:

- Decreased academic performance and skipping classes.
- Death or suicide themes in artistic or creative work.
- Withdrawal from friends and activities.
- Depression, mood changes, sleeplessness or inattention.
- Recent loss of loved one, or break-up with girlfriend/boyfriend.

Many myths exist about suicide. For example, it is sometimes believed that young people who talk about suicide will not actually commit suicide. It is important that learners and educators realise that all suicidal threats are serious and are often a plea for help from the young person. Few suicides happen without warning although people often do not recognise the intention. If the intention to commit suicide has been recognised, any person can intervene although the services of a professional counsellor may also be required.

What do community-based suicide initiatives offer?

People working on suicide prevention initiatives can be contacted by the person who is threatening suicide, or by a concerned party. Although these initiatives vary from place to place, in general they will offer:

- Counselling for the person who is considering, or has attempted, suicide, and their loved ones.
- Information and advice to educators and caregivers about how to cope with suicide, or suicide threats and attempts.
- Information on how to intervene when a young person is at risk of committing suicide.
- Training on how to help teenagers who are suicidal.

c Helpful National Contact Numbers

ChildLine

Can provide counselling for young people contemplating suicide.

Tel: 0800055555

SAPS

Tel: 10111

5.3 Substance abuse

Educators at schools need to be able to assist learners who abuse drugs and alcohol.

a Signs of abuse

Here are some signs to look out for that may indicate a learner abuses drugs and alcohol:

- drop in scholastic achievements;
- sudden mood swings e.g. from sullen and moody to happy and alert;
- unusual aggression or apathy;
- change of friends;
- loss of interest in hobbies, sport and school;
- becoming secretive, exhibiting furtive behaviour and lying;
- tiredness and bouts of drowsiness;
- unexplained loss of possessions and money;
- unusual smells of stains on the body and clothes;
- change in appearance. Less interest in personal hygiene. Weight loss or gain;
- drug related paraphernalia such as clothes and jewellery

Please remember that some of these symptoms could be confused with those of normal adolescence. So don't over-react but don't allow your reality to be challenged either. Look for general patterns of changes.

b Why do young people take drugs?

There is no easy answer to this question; any number of reasons could include:

- it feels good to get "stoned";
- it's the fashionable thing to do;
- boredom;
- curiosity, some people just want to try a new experience;
- pressure from friends;
- the thrill of doing something different;
- an escape from problems at home or at school;
- a way to acquire confidence and self esteem;
- parental disapproval;
- it's there so why not try it? Drugs are usually bought from friends, in clubs and on the street;
- it's illegal and therefore may seem exciting;
- everyone does it!

It does not really help to map out the causes and effects of the problem as we did in the other sections. The important thing is to have a procedure and protocol for managing situations so that individual educators are not handling these situations on their own.

Possible partners

- You should identify partners locally: social workers, school clinics, the South African National Council of Alcohol and Drug Dependence (SANCA) and other NGOs as well as the SAPS. The only problem with involving the police is that immediately it becomes a legal issue, and often the police are seen as "the enemy", so its important to look at appropriate interventions.

- School governing bodies and parents: schools cannot enforce a “no drugs” programme if parents allow drug taking at home, or do not realise the extent of the problem. Parents may need information on how to deal with drugs in the home in order for any intervention to be successful.
- Community and business leaders: They may be important role models for young people and can help to motivate learners to become successful.

c Practical and realistic interventions

Unlike the other sections in this book, it is very difficult to identify the cause of the problem. The cause is generally very complicated and is basically a societal cause. It is therefore far better to look at individual interventions that work.

Interventions that worked:

The Problem	Successful Interventions	Useful Resources
Educators are aware that learners are taking drugs but feel helpless to intervene.	Schools that deal successfully with drug abuse train educators with specific skills in how to detect drug abuse, how to treat and help learners, how to involve the parents and how to best design a structured intervention with the learner.	Educators willing to be trained, an NGO or social worker that can offer the training.
Educators and learners are unsure of what to expect when a drug problem is identified.	A crucial part of successfully tackling drug abuse is the development and implementation of a drug policy at school. This policy helps educators to follow a certain course of action that has proved to be successful.	The school governing body, educators, learner representatives and someone who is experienced in the field could run a workshop to develop a school policy on drugs.
Once a learner is taking drugs, it seems very difficult to intervene and offer alternatives.	It has been proved that high impact education programmes on an ongoing basis in the school, have very positive results. These education programmes should not be didactic or punitive but should engage learners in a manner that they can relate to.	Educators to be committed to ongoing education programmes, experts in the field to constantly update methodology and approach.

d Common obstacles or problems

Common Problems	Solutions That May Help
Learners are unlikely to tell educators about drug use because of the severe consequences.	Educators need to be trained to look out for signs of drug use. This training should also involve how to intervene successfully in a way that does not alienate the learner but actually assists in his or her recovery. It is very, very important that educators do not promise to treat the matter confidentially; by keeping secrets and not taking any action, an educator may be giving tacit approval of the behaviour and become an enabler instead of actually helping with the problem. Educators need training as far as boundaries etc are concerned.
Learners who are worried about their friends taking drugs do not tell educators for fear of betraying them.	Some schools use an “anonymous box” where learners can anonymously post information about substance abuse in the school. However, these anonymous boxes can have a negative impact if the information posted in them is taken as FACT. The information must be investigated correctly. The section in the school policy dealing with “rumours” should explain the procedure for investigating information.

e Measuring the success of the intervention

Interestingly enough if a school programme is successful there may be more learners presenting with problems rather than less. A successful programme identifies and assists learners with coming to terms with their own abuse. Therefore, a successful programme may result in more learners asking for help. To measure the success of the programme therefore, it is no good measuring if the number of learners involved in drug abuse has decreased; rather ask questions of educators about the success of the programme.

Work out a set of questions, for example:

How well did educators manage substance abuse situations? Are they more confident? Are they more able to identify a learner with problems? Have structured interventions been successful? Have learners who have been through a treatment programme been successfully reintegrated into the school system and stayed clean?

f Helpful National Contact Numbers

South African Council on Alcoholism and Drug Dependence (SANCA)
National organisation offering prevention and treatment (in- and outpatient) of alcohol and other drug abuse.
P O Box 30622
Braamfontein, 2017
Tel: (011) 725 2722
E-mail: sanca@sn.apc.org
Web site: <http://wn.apc.org/sanca>

ChildLine
Taking drugs is often a sign that a child is experiencing personal or family problems and lacks self-esteem and confidence. ChildLine offers counselling and advice to these young people.
Tel: 0800055555

Alcoholics Anonymous (AA)
Offers help to people suffering from alcohol abuse.
P O Box 46339
Orange Grove 2119
Tel: (011) 341 0608/9
Fax: (011) 6401413
Web site: www.alcoholics.org.za

Section 6: BUILDING HEALTHY ALTERNATIVES

Many South African schools are so desperately under-resourced that extra-mural and extra-curricular activity has been limited. However, the value of extra-mural activities is becoming widely acknowledged. Sport, music, art and drama, to name but a few, provide physical and emotional outlets for young people and channel energies which in an environment of uncertainty and violence, could so easily lead to criminal and violent activity.

Being part of an active team, activity or organisation can help youth "rise above" their social circumstances.

Art and music help youth to deal with trauma and deep-rooted psychological issues. Encouraging young people to express their thoughts and feelings through art, music or drama can have a tremendous impact on the school environment, and the importance of structuring these opportunities into the school day cannot be overestimated.

Sport is a tremendously important outlet for young people and an essential component of any health-promoting programme. Sports stars are mostly good role models and can motivate their fans to follow a healthy lifestyle. Educators can build on the admiration young people have for their sporting heroes and heroines by encouraging learners to participate in sport. Although competitive sport is important in setting goals and developing team spirit and leadership, it is more important that young people do sport for the enjoyment of it without feeling under pressure to perform. A healthy body is conducive to a healthy mind and spirit and ultimately contributes to the general health of a school or community.

Youth involved in sport, music and art often have:

- An improved self-image and body awareness;
- Better communication skills;
- An increased ability to use energy purposefully;
- Reduced abusive and disruptive behaviour;
- Better interaction with peers and others;
- Increased independence and self-direction;
- Improved creativity and imagination;
- Better emotional expression and adjustment.

Examples of healthy activities:

- Reading;
- Philosophy group;
- Scouts and guides;
- Family planning and teenage mothers group;
- Gardening and growing vegetables;
- Sport;
- Drama;
- Music / choir;
- Chess;
- Debating;
- Ballet;
- Youth club involvement;
- First aid training;
- Environmental club;
- Small business development.

Helpful National Contact Numbers

Sport for All
Develops sports facilities in townships.
Tel: (031) 502 4542
E-mail: pennyc@sportforall.org
Web site: www.sportforall.org

SchoolNet SA
Helps develop the capacity of learners.
Tel: (011) 403 3952
E-mail: info@school.za
Web site: www.school.za

Planned Parenthood of South Africa (PPSA)
Offers counselling and education on family planning, pregnancy, abortion.
Tel: (011) 482 4601 / 403 7740
e-mail: ppsa@ppsas.org.za
Web site: http://ppsas.org.za

READ Education Trust
Provides books with educational value to all grades.
Tel: (011) 339 5940
e-mail: books@read.co.za
Web site: www.read.org.za

Girl Guides Association of South Africa
Gives girls the opportunity to develop life and leadership skills while having fun.
Tel: (011) 795 3741
e-mail: ggasa@sn.apc.org
Web site: www.come.to/saguiding

SA Scout Association
Develops in young people spiritual awareness, respect for others and a willingness to serve the community through physical activity and mental challenges.
Tel: (011) 339 2711
e-mail: gauteng@scouting.org.za
Web site: www.scouting.org.za

Southern African Association of Youth Clubs
Youth service organisation aiming to improve quality of life of South African youth by offering youth enhancement programmes, advocacy and networking.
Tel: (011) 674 5405
e-mail: saayc@sn.apc.org

Section 7: APPROACHES TO EVALUATING CRIME PREVENTION / YOUTH PROGRAMMES

7.1 Why evaluate?

- There is generally a lack of information in South Africa on what kinds of programmes work in which situations and why. Evaluating programmes helps us to choose which one is best for our school.
- Evaluations tell us whether our intervention is working and which aspects of it are working best, and where we need to improve. It is a way of finding out whether we have reached the goal that we set for ourselves.
- Evaluating a programme helps to convince potential donors to give money to the programme. It also tells them how their money is being spent, and how effectively it is being spent.
- Evaluations provide us with proof that our programme works!
- Evaluations often highlight new problems that need investigating in the school. For example, a programme aimed to reduce drug use among learners may alert you to the fact that there are very low levels of parental supervision after school hours.

7.2 Getting to grips with the language of evaluation

Throughout the section several terms will be used. These terms are explained below.

Terms	Definition
Objectives	Your goals. The results you want to achieve through your programme.
Inputs	The resources you need in order to carry out your programme. These may be educators, funds, resources etc.
Outputs	The products of the programme. For example, "six high impact educational work shops", a "training course for educators resulting in six trained educators".
Impact/outcome	The result of the programme. For example "a 50% reduction in drug use in the school following an education workshop".
Monitoring	Keeping track of the programme progress. Monitoring what you are investing in the project (such as time, money) and whether the programme is being carried out according to plan. This is the most basic form of evaluation.
Evaluation	Finding out whether the programme is achieving its goal – such as reducing high rates of absenteeism in the school.

Terms	Definition
Confounding variables	External factors (outside of your programme) that may shape your programme results. If you are running self-esteem workshops for learners, a potential confounding variable could be a similar project being run by the local church. When you measure the learner's self-esteem you won't know whether it is due to your programme or the church's programme.
Formative evaluation	This is an evaluation of the process of implementing your programme i.e. not the results, but the way in which the programme was run. Was the programme implemented as planned? Were there factors that stood in the way of its implementation? What parts of the programme went smoothly?
Outcome evaluation or summative evaluation	This asks the questions: "What changes took place? What was the impact of our programme? Did it change things at school?" For example: Compared to before the programme was implemented, how much has drug use in the school decreased?
Indicators	An indicator is used to measure how successful the programme has been. For example, finding out how many learners have been absent from the attendance register would be an indicator of rates of absenteeism. If you want to know whether levels of attendance at school have increased, your baseline data could be the attendance records before the programme was introduced. These will be compared with the attendance records after the programme has been run.
Base-line information	This is information you need before the programme starts so that you can measure it against information at the end of the programme. For example if your programme aims to increase the awareness of HIV/AIDS, you will need to do a survey with learners before you begin the programme to record their opinions and knowledge. This information is called base-line information. After the programme is finished you will conduct a summative evaluation to see if learner attitudes and knowledge has changed.

7.3 What questions does an evaluation aim to answer?

- Did we implement all the steps in our programme plan? We all start out with a plan, at the end of the programme we need to ask ourselves, were any steps in our plan left out? Why were they left out?
- Did we achieve our outcome? An outcome is the final result of the programme: did we achieve our result? If you had planned to reduce truancy, you would ask "have levels of truancy been reduced and by how much?"
- How do we know that the results (such as reduced truancy) are because of our programme? Were there any other programmes or factors (confounding variables) that might have also contributed to reducing truancy? What are they?
- What factors made the programme work well?
- Was the programme successful because educators were very involved? Because parents and the school governing body prioritized the programme? Because the materials were very effective?
- What factors made it difficult to implement the programme?
- What obstacles did you face? Where should we place more of our efforts in the future?
- Is the programme cost effective? This is difficult to measure but you need to ask: "was our programme cost-effective?" Cost may include several things such as money, staff time or equipment used such as paper, pens etc. If clear records are kept of how much is spent, the cost per child enrolled in the programme can be worked out. Similarly, the time invested per child can be established. For example if you introduce a drug education programme for 12 learners for one hour a week over a three-month period (i.e. you invest 12 hours), the cost in time would be one hour per child. This investment can then be weighed up against the success of the programme in reducing drug use among learners.

7.4 Who should do the evaluation?

Internal versus external evaluations

Sometimes a person inside the school who has been involved in the programme design does the evaluation. We support the idea of the evaluation being internal; educators do not feel that they are being judged or treated like guinea pigs and the evaluation is more useful because educators ask and answer the questions that are most important to them. There are several advantages and disadvantages of an internal evaluation:

Advantages of an internal evaluation

- People from within the programme often have a better understanding of the programme and how it has worked.
- It is more cost-effective. Many people leave out the evaluation stage of their programme because they don't have the resources. This is a very bad idea because it means you are unsure whether your programme makes any difference at all.

Disadvantages of an internal evaluation

- We live in a society where many factors impact on our behaviour, attitudes and lifestyle. It is often very difficult to isolate one programme and say, "the reason that bullying has decreased in our school is because of this one programme". Ideally, programme implementers should be on the lookout for other factors that may also influence the current programme.
- Sometimes the kinds of changes that we are wanting are very hard to measure. For example, if we implement a programme to improve the self-esteem of learners, how do we know that it works? Self-esteem is very difficult to measure because we can't observe or count it. In many cases we have to rely on what learners tell us has changed for them.

- The language of evaluation can at times be confusing. It is important to remember that the evaluation is for your benefit only and is used to improve your programme and perhaps secure funding for it. It is therefore not necessary for you to use or understand all the jargon that can go with evaluations.

7.5 Key principles in evaluating youth programmes

- There is no right way to do an evaluation. There are many different kinds of evaluations that are useful for different purposes, at different times in a programme's history.
- Ideally you should decide what you are going to evaluate and how you will evaluate it at the start of your programme. Therefore if you have to collect base-line information, you can do so at the start.
- Most programmes in schools spring not from a need to answer a set of questions, but from the desire to act NOW. This action usually expands and improves over time and our evaluation methods should be able to accommodate this.
- Programme evaluation should be a collaboration from the beginning. This collaboration should be between all stakeholders involved in the programme. E.g. parents, learners, educators etc.
- It is important for an evaluator to be someone who communicates well with the programme staff and is able to clearly explain what is needed for the evaluations, how it will proceed, the costs, benefits and the limitations. This should be planned at the beginning of the evaluation so that you do not collect all your information and then disagree about what it means. This is especially important if an outside evaluator is used.

The main purpose of evaluation is to provide information that is useful to the programme and can meet the programme needs. This cannot be accomplished if the evaluation is simply handed over to an evaluation expert without the programme staff understanding what will be done and how it will be done.

- An incremental approach to evaluation should be taken. This means that the results of the evaluation should be used to build up your programme. For example, if the evaluation of a programme to reduce gun carrying at school shows that children are predominantly bringing their parent's guns to school, then the next phase of the project may include a parent education component. Also aspects of the programme that were initially thought to be important may, after evaluation, not be important and might be dropped from the next phase of the programme.

Educators are reluctant to spend time doing evaluations. How can we change this so that educators support evaluations?

- Make sure everyone "buys into" the value that evaluations add to programmes, research and funding.
- A lack of resources should not prevent an evaluation from taking place. Rather, when resources are scarce, evaluations are essential so that you can spend resources in the place where they will be most effective.
- If you make sure from the beginning that the evaluation is a consultative process and that all programme staff understand the value of the evaluation and how it will be done, they will be more supportive of the evaluation.
- Make evaluations participatory and collaborative. All programme staff, parents, and community members will have ideas about how the programme has worked and how it should be changed. It is these ideas that are most useful for evaluations.
- Design evaluations that are realistic and that do not place too much pressure on programme staff.
- Ensure that programmes will benefit directly from the evaluation. Make sure that the questions you ask will inform the running of, and the content of, the programme.
- Make sure that the questions you ask can be measured. For example it is not useful to ask whether children are happier. Rather ask how are they happier? Are they doing better at school? Have their relationships improved?

Developing good indicators

- Indicators should be related to your objectives. If you aim to reduce racism in school, an indicator could be the amount of time learners spend with members of race groups other than their own before and after the programme.
- Indicators must be clear, specific and measurable.
- Indicators should describe the result and the degree to which the result has taken place. It is not enough to say that attendance in class has improved, how much has it improved? How many children that were truant before the programme are now attending regularly?
- Indicators can also include the aspects of the daily lives of the programme staff. They may include questions such as "how did you spend your time?" If during a self-esteem workshop most of the educators time was spent discussing problems of child abuse, then perhaps child abuse needs to be addressed as a separate aspect of the programme or instead of the existing one.
- All involved in the programme must agree on the indicators that will be used.

7.6 Some ideas to get you started

How to evaluate a programme that is going to be implemented?

Example: tackling bullying in school

You will first plan your programme carefully

For example:

Programme objectives

Broad objectives of the programme:

- To create a school environment where learners feel safe and can concentrate on their studies.
- To teach learners to respect one another and to express aggression in healthy ways.

Specific objectives:

- To reduce the levels of bullying in the school.

Designing an evaluation framework

You now need to ask “what do we want to measure in this programme?”

- Do you want to measure the process of how the programme was implemented and how well you followed the plan?
- Did you want to evaluate the impact of the programme? What did it change at your school?
- Do you want to evaluate the cost of the programme?

Let’s say you want to measure all three aspects of your programme:

a Measuring the process of how your programme was implemented:

- Keep a record of which activities took place, when they took place, who implemented them and how long they took to implement. Record anything that happened during these activities e.g. low learner turn out, workshop raised new problems. You will use these records at the end of your programme to see if you followed the programme plan and to see whether activities changed along the way to make the programme more effective. Another useful tool is to get the project participants to keep diaries throughout the programme. In this way you might be able to track the process better.
- What activities took place that were not included in the plan? What effect did these changes have on the programme?

b Measuring the impact of your programme:

Your programme aims to reduce the levels of bullying. How will you do this? Develop a set of indicators that will help you measure the decline of bullying. Do you have any records on how many children were reported by monitors for bullying before you started the programme? Or how many learners complained of being bullied? At this point you may want to collect some of this base-line information by having educators count the number of incidents of bullying that they see in the school. Remember to define carefully what you mean by bullying!

You may set aside one week to collect base-line information. Each educator will be given a book in which they note every incident of bullying that happens in their class and what kind of bullying it is. At the same time, if possible, records will be collected to see how many reports of bullying there have been in the six months prior to the programme. Someone will need to summarise this information.

After the programme is finished, count the number of incidents of reported and counted bullying before and after the programme. Work out by what percent bullying has decreased. For the focus group discussions, take detailed notes and find out what the most common themes are. For example, do most learners feel that the programme helped them to feel safer? Did they feel that it lessened bullying in the classroom but not on the playground? Did they find the education workshops too short or too long?

As part of your strategy to reduce bullying you may implement a programme aimed at teaching monitors conflict management skills and learners how to manage anger. You will need to think about how both of these could be evaluated. How will you decide whether learners are managing their conflicts any better than they did in the past?

c Measure the cost of the programme

Cost may include several things such as money, staff time or equipment used such as paper, pens, etc. If clear records are kept of how much is spent, the cost per child enrolled in the programme can be worked out. Similarly the time invested per child can be established. This amount will then be measured against the success of your programme. The calculation is done by taking the overall cost of the programme and dividing it by the number of learners involved in the programme.

(Overall cost of project/number of learners = cost per learner). For example, if the project cost R200 000 to complete and 40 learners were involved in the programme, then the cost per learner is $200\ 000 / 40 = R5000$. The cost is R5000 per learner. You can then decide if this is too costly to take to other schools. You can also calculate the budget if you wanted to re-run the programme with 400 more learners.

Timing your evaluation

Do not evaluate when learners are writing exams or otherwise distracted. If there has been a serious incident of violence on the school grounds, this may impact on the levels of bullying in the school. For example, if there has been a shooting, levels of conflict may be very high. This needs to be taken into account when you evaluate your programme. The shooting would be an example of a confounding variable. Also consider for how long you want to conduct the evaluation. For example, one week after the programme bullying may have reduced by 50% but is this still true six months later? The length of your evaluation will depend on the resources and time you have available, and what indicators you use.

Helpful Contact Numbers

Province	Sexual Abuse/Child Abuse	HIV/AIDS	Safe Schools/ Life Skills	Substance Abuse
EASTERN CAPE	Family and Marriage Society of Southern Africa (FAMSA) 263 Oxford Street Southernwood East London Tel: (043) 743 8277 Fax: (043) 743 8277 LifeLine/ChildLine 3 Craigellon Mansions 3 St James Road Southernwood East London Crisis Tel: (043) 722 2000 Office & Fax: (043) 743 7266	AIDS Training Information and Counselling Centre (ATICC) City Health Dept, 30 Beaconsfield Road, East London 5201 P O Box 984 East London 5200 Tel: (043) 705 2969 Fax: (043) 743 9743 atic@iafrica.com	Project for Conflict Resolution and Development 22 Hurd Street Newton Park Port Elizabeth P O Box 34240 Newton Park 6055 Tel: (041) 363 5651 Fax: (041) 363 5652	SANCA Alcohol and Drug Centre P O Box 863 Port Elizabeth 6000 Tel: (041) 436 071 Fax: (041) 411 704
WESTERN CAPE	Child Abuse and Therapeutic Training Services (CATTS) Kenilworth Clinic Kenilworth Road Kenilworth P O Box 24525 Lansdowne 7779 Tel: (021) 797 1400 Fax: (021) 788 9217	C.H.A.I.N – Children's HIV/AIDS Network Child Health Unit, 46 Sawkins Road, Rondebosch 7700 Tel: (021) 685 4103 Fax: (021) 689 5403	Centre for Conflict Resolution Youth Project P O Box 1228 Cape Town 8001 Tel: (021) 422 2512 Fax: (021) 422 2622	AL-ANON and Alateen 616 Pearl House, Strand Street Cape Town 8001 Tel: (021) 418 0021
NORTHERN CAPE	National Institute for Crime Prevention and Reintegration of Offenders (NICRO) Room 325 3rd floor Perm Building, Kimberley P O Box 3207 Kimberley 8301 Tel: (053) 831 1715 Fax: (053) 831 1715 nicron@wn.apc.org	AGANG Aids Service 272 Jackson Makodi Street Unit 1 Pampierstad 8566 P O Box 92 Pampierstad 8566 Tel: (053) 996 1254	NICRO Permanent Building Ground Floor Woodley Street Kimberley 8301 Tel / Fax: (053) 831 1715	SANCA P O Box 909 18 Market Square, Kimberley 8301 Tel: (0531) 81 1699 Fax: (0531) 81 2937/6
KWAZULU NATAL	Umbilo Crisis Centre SAPS Umbilo 36 Deodar Avenue Congella, Durban 4001 Tel: (031) 205 3383 Fax: (031) 203 2449	AIDS Foundation of South Africa (AFSA) Musgrave Methodist Church Complex 237 Musgrave Road, Berea 4001 Central P O Box 50582 Musgrave Road 4062 Tel: (031) 202 9520 Fax: (031) 202 9522 admin@aids.org.za http://www.aids.org.za	Independent Projects Trust (IPT) 2702 Old Mutual Centre, 27th Floor 303 West Street Durban KwaZulu Natal iptnet@wn.apc.org Crime Reduction in Schools Project (CRISP) Tel: (031) 260 2366	SANCA P O Box 1991 Durban 4000 Tel: (031) 303 2202 Fax: (031) 303 1938
FREE STATE	Family and Marriage Society of South Africa (FAMSA) Universitas, 10 Strauss St. Bloemfontein Tel: (051) 525 2395 Fax: (051) 522 4199	AIDS forum Thaba Nchu Seloshesha 9783 P O Box 257 Seloshesha 9783 Tel: (051) 873 2233 Fax: (051) 873 2233	The Centre for Citizenship Education & Conflict Resolution P O Box 12376 Brandhof, 9324 Tel: (051) 448 8200 Fax: (051) 448 3517	Dept of Social Welfare & Population Development P O Box 695 Bloemfontein Tel: (051) 432 4842 Fax: (051) 403 3046
GAUTENG	Family Life Centre (FAMSA) 1 Cardigan Road Parkwood Tel: (011) 788 4784 Fax: (011) 788 4781	AIDS Consortium 4TH Floor Auckland House 185 Smit Street, Braamfontein 2001 P O Box 31104 Braamfontein 2017 Tel: (011) 403 0265 Fax: (011) 403 2106 aidsconc@global.co.za	Centre of Violence and Reconciliation Braamfontein Centre 23 Jorrisen Street, Braamfontein P O Box 30778, Braamfontein 2017 Tel: (011) 403 5650 Fax: (011) 339 6785	SANCA National Directorate P O Box 30622 Braamfontein 2001 Tel: (011) 725 5810 Fax: (011) 725 2722

MPUMALAN GA	Greater Nelspruit Rape Intervention Project (GRIP) 17 Liberty Street, Steiltis, Nelspruit 1200 Tel / Fax: (013) 744 9463 Cell: 083 310 1321	AIDS Training Information & Counselling Centre (ATICC) 7 Bell Street, Nelspruit, 1201 P O Box 45 Nelspruit 1200 Tel: (013) 759 2167 Fax: (013) 752 3700	Manna for Youth P O Box 4148 Witbank 1035 Tel: (0135) 656 2793 Fax: (0135) 656 2797	SANCA Help Centre P O Box 1073 4 Hope Street Nelspruit 1200 Tel: (013) 752 4376 Fax: (013) 752 5099
NORTH WEST	LifeLine Palladium House corner Klopper & Van Zyl Streets Rustenburg P O Box 5050 Rustenburg 0300 Crisis Line: (014) 597 2000 Office: (014) 594 1455 Fax: (014) 594 1455 llrustnw@mweb.co.za	Naledi Life Skills Training & AIDS Information Centre Stand 3770 Danville (opp Mafikeng Provincial Hospital, Mmabatho 2735 P O Box 3244 Mmabatho 2735 Tel: (018) 383 3978 Fax: (018) 383 3978	Women Against Community Abuse 568 Newton section, Bapong Village Brits 250 P O Box 121 Sonop 258 Tel: (012) 254 1375 Fax: (012) 700 0815	Alcoholics Anonymous (AA) P O Box 4941 Mmabatho 2735 Tel: (0140) 84 5171 Fax: (0140) 84 5171
LIMPOPO PROVINCE	Family and Marriage Society of South Africa (FAMSA) Medjenta Park 15 Peace Street, Tzaneen 8580 P O Box 4133 Tzaneen 0850 Tel: (015) 307 4833	AIDS Training Information and Counselling Centre (ATICC) Cnr Potgieter & Diaz Streets, Polokwane 0700 P O Box 111 Polokwane 0700 Tel: (015) 290 2363 Fax: (015) 290 2364	Youth Commission 154 Van Rensburg Street Polokwane 0699 Tel: (015) 291 3678 Fax: (015) 291 1156	SANCA P O Box 1174 Polokwane 0700 Tel: (0152) 295 3700 Fax: (0152) 291 2709

NATIONAL CURRICULUM STATEMENT – Grades R-9 (2002)

OVERVIEW

This document must be read as part of the Revised National Curriculum Statement Grades R-9 (Schools).

This Revised National Curriculum Statement Grades R-9 (Schools) includes:

1. An Overview
2. Eight Learning Area Statements:
 - Languages
 - Mathematics
 - Natural Sciences
 - Social Sciences
 - Arts and Culture
 - Life Orientation
 - Economic and Management Sciences
 - Technology

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PREFACE

The development of a national curriculum is a major challenge for any nation. At its broadest level, our education system and its curriculum express our idea of ourselves as a society and our vision as to how we see the new form of society being realised through our children and learners. Through its selection of what is to be in the curriculum, it represents our priorities and assumptions of what constitutes a 'good education' at its deepest level.

This curriculum is written by South Africans for South Africans who hold dear the principles and practices of democracy. It encapsulates our vision of teachers and learners who are knowledgeable and multi-faceted, sensitive to environmental issues and able to respond to and act upon the many challenges that will still confront South Africa in this twenty first century.

But we must also be realistic about what a curriculum can and cannot achieve. Inequality and poverty still plague the educational experience of too many families and their children. The curriculum is and will be differently interpreted and enacted in diverse contexts. We will improve and implement it to the best of our ability. We will also make the most strenuous efforts to enable the realisation of its vision through addressing all those issues which make up teaching and learning.

This requires the commitment and participation of all who work in education. We need the full cooperation of the Government, parents, teachers, learners and the community at large. I trust this Revised National Curriculum Statement will embody the ideals which will promote such cooperation.

PROFESSOR KADER ASMAL, MP
Minister of Education

FOREWORD

At its special meeting of 12 September 1997, the Heads of Education Departments Committee recommended the Draft Statement of the National Curriculum for Grades R-9 for Ministerial approval. It was referred to and approved by the Council of Education Ministers at its meeting of 29 September 1997 as three separate policy documents for the Foundation Phase, the Intermediate Phase and the Senior Phase.

At its meeting in June 2000, the Council of Education Ministers agreed that the Statement of the National Curriculum for Grades R-9 should be revised in accordance with the recommendations of the Report of the Review Committee (31 May 2000) to streamline and strengthen Curriculum 2005.

A Ministerial Project Committee to Streamline and Strengthen Curriculum 2005 was subsequently established for the task. The process of revision was begun in January 2001 with approximately 150 curriculum developers drawn from the educational community. On 30 July 2001, the Draft Revised National Curriculum Statement for Grades R-9 (Schools) was released for public comment for a period of three months. In November, public hearings were held on the curriculum. Once the public comment and contributions at the public hearings were received and analysed, the curriculum working groups of the Ministerial Project Committee were reconvened in December 2001 to incorporate suggested changes for improvement. The revised National Curriculum Statement is the result of that process.

This document and the eight Learning Area Statements published as Addenda constitute the Revised National Curriculum Statement Grades R-9 (Schools). The Revised National Curriculum Statement Grades R-9 (Schools) will replace the Statement of the National Curriculum for Grades R-9 approved in 1997 once it is introduced into the system.

A comprehensive and participatory implementation strategy and plan will be developed with all relevant social partners to ensure the successful introduction of the Revised National Curriculum Statement Grade R-9 (Schools).

The current Assessment Policy of 23 December 1998 (Government Gazette No 19640) and the Language-in-Education Policy of 14 July 1997 (Government Gazette No 17997) need to be read in conjunction with the Revised National Curriculum Statement Grades R-9 (Schools). The Assessment policy also needs to be read alongside the relevant section of each Learning Area Statement. Until 2008, the policy currently related to certification will prevail. Thereafter the General Education and Training Certificate aligned to this Revised National Curriculum Statement will come into force. The General Education and Training Certificate for compulsory schooling is a whole qualification for schools based on the extent to which the learning outcomes are achieved through the Grade 9 assessment standards.

DIRECTOR-GENERAL
THAMI MSELEKU

BACKGROUND

South Africa's democratic government inherited a divided and unequal system of education. Under apartheid, South Africa had nineteen different educational departments separated by race, geography and ideology. This education system prepared children in different ways for the positions they were expected to occupy in social, economic and political life under apartheid. In each department, the curriculum played a powerful role in reinforcing inequality. What, how and whether children were taught differed according to the roles they were expected to play in the wider society.

Curriculum change in post-apartheid South Africa started immediately after the election in 1994 when the National Education and Training Forum began a process of syllabus revision and subject rationalisation. The purpose of this process was mainly to lay the foundations for a single national core syllabus. In addition to the rationalisation and consolidation of existing syllabi, the National Education and Training Forum curriculum developers removed overtly racist and other insensitive language from existing syllabi. For the first time curriculum decisions were made in a participatory and representative manner. But this process was not, nor did it intend to be, a curriculum development process.

The *Lifelong Learning through a National Curriculum Framework* document (1996) was the first major curriculum statement of a democratic South Africa. It was informed by principles derived from the White Paper on Education and Training (1995), the South African Qualifications Act (NO 58 of 1995) and the National Education Policy Act (No 27 of 1996). In terms of the White Paper, it emphasised the need for major changes in education and training in South Africa in order to normalise and transform teaching and learning in South Africa. It also stressed the need for a shift from the traditional aims-and-objectives approach to outcomes-based education. It promoted a vision of:

A prosperous, truly united, democratic and internationally competitive country with literate, creative and critical citizens leading productive, self-fulfilled lives in a country free of violence, discrimination and prejudice.

The National Education Policy Act (No 27 of 1996) provided for the development of the following curriculum design tools to support an outcomes-based approach:

- Critical Cross-Field Outcomes (later to be known as the critical and developmental outcomes, and first formulated in the South African Qualifications Authority Act of 1995)
- Specific Outcomes
- Range Statements
- Assessment Criteria
- Performance Indicators
- Notional Time and Flexi-Time
- Continuous Assessment, Recording and Reporting

Additional curriculum design tools were formulated in succeeding years and included:

- Phase Organisers
- Programme Organisers
- Expected Levels of Performance
- Learning Programmes

In October 1997, the Statement of the National Curriculum for Grades R-9 was published in terms of Government Notice 1445. The Assessment Policy in the General Education and Training band for Grades R-9 and Adult Basic Education and Training, was introduced in December 1998 (Regulation 19640). Introduced into schools in 1998, Curriculum 2005 and its implementation were reviewed by a Ministerial Committee in 2000. The brief of the review was the structure and design of the curriculum, teacher orientation, training and development, learning support materials, provincial support to teachers in schools and implementation time-frames. The Ministerial Review Committee presented its report on 31 May 2000.

The Review Committee recommended that strengthening the curriculum required streamlining its design features and simplifying its language through the production of an amended National Curriculum Statement. It further recommended that this Revised National Curriculum Statement should reduce the curriculum design features from eight to three: critical and developmental outcomes, learning outcomes and assessment standards. It should also align curriculum and assessment. In addition, it recommended that implementation needed to be strengthened by improving teacher orientation and training, learning support materials and provincial support. It also recommended the relaxation of time-frames for implementation.

In June 2000, the Council of Education Ministers accepted the curriculum recommendations of the Review Committee. In July 2000, Cabinet resolved that:

The development of a National Curriculum Statement, which must deal in clear and simple language with what the curriculum requirements are at various levels and phases, must begin immediately. Such a Statement must also address the concerns around curriculum overload and must give a clear description of the kind of learner in terms of knowledge, skills, values and attitudes – that is expected at the end of the General Education and Training band.

The revision of the Curriculum 2005 resulted in a Draft Revised National Curriculum Statement of Grades R-9 (Schools). This Draft Revised National Curriculum Statement for Grades R-9 (Schools) was made available for public comment on 30 July 2001. It was subsequently revised in the light of public comment during 2001/2002. The revised National Curriculum Statement is thus not a new curriculum but a streamlining and strengthening of Curriculum 2005. It keeps intact the principles, purposes and thrust of curriculum 2005 and affirms the commitment to outcomes-based education.

As this curriculum revision process has proceeded, the practice in schools from Grades R-9 has continued in terms of previous policy. When the Revised National Curriculum Statement Grades R-9 (Schools) becomes policy, it will replace the Statement of the National Curriculum for Grades R-9 approved in 1997. Introduction of the Revised National curriculum Statement Grades R-9 (Schools) in the Foundation Phase is planned for 2004.

This document introduces and provides background to the eight Learning Area Statements that form the foundation of the Revised National Curriculum Statement Grades R-9 (Schools) in the General Education and Training band.

THE CONSTITUTION, VALUES, NATION-BUILDING AND THE CURRICULUM

The Constitution of the Republic of South Africa, 1996 (Act No108 of 1996) provides the basis for curriculum transformation and development in contemporary South Africa. The preamble to the Constitution states that the aims of the Constitution are to:

- Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.
- Improve the quality of life of all citizens and free the potential of each person.
- Lay the foundations for a democratic and open society in which Government is based on the will of the people and every citizen is equally protected by law.
- Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

The Manifesto on Values, Education and Democracy (Department of Education, 2001) identifies ten fundamental values of the Constitution. These are:

- Democracy
- Social Justice and Equity
- Non-Racism and Non-Sexism
- Ubuntu (Human Dignity)
- An Open Society
- Accountability (Responsibility)
- Respect
- The Rule of Law
- Reconciliation

The Manifesto further identifies 16 strategies for familiarising young South Africans with the values of the Constitution. These strategies find expression in the Revised National Curriculum Statement and include:

- Nurturing a culture of communication and participation in school.
- Role modelling: promoting commitment as well as competence amongst educators.
- Ensuring that every South African is able to read, write, count and think.
- Infusing the classroom with a culture of human rights.
- Making Arts and Culture part of the curriculum
- Putting history back into the curriculum.
- Learning about the rich diversity of cultures, beliefs and world views within which the unity of South Africa is manifested.
- Making multilingualism happen.
- Using sport to shape social bonds and nurture nation-building at schools.
- Ensuring equal access to education.
- Promoting anti-racism in schools.
- Freeing the potential of girls as well as boys.
- Dealing with HIV/AIDS and nurturing a culture of sexual and social responsibility.
- Making schools safe to learn and teach in and ensuring the rule of law.
- Promoting ethics and the environment.
- Nurturing the new patriotism, or affirming a common citizenship.

The Constitution expresses the nation's social values and its expectations of the roles, rights and responsibilities of citizens in a democratic South Africa. The Bill of Rights places pre-eminent value on equality, human dignity, life, and freedom and security of persons. These and other rights to freedom of religion and belief, expression and association, exist side-by-side with socio-economic rights. Each person has a right to freedom from poverty, homelessness, poor health and hunger.

The Revised National Curriculum Statement seeks to embody these values in the knowledge and skills it develops. It encourages amongst all learners an awareness and understanding of the rich diversity of cultures, beliefs and world views within which the unity of South Africa is manifested.

THE KIND OF LEARNER THAT IS ENVISAGED

The challenge for the Revised National Curriculum Statement is how the goals and values of social justice, equity and democracy can be interwoven across the curriculum. The promotion of values is important not only for the sake of personal development, but also to ensure that a national South African identity is built on values different from those that underpinned apartheid education. The kind of learner envisaged is one who will be imbued with the values and act in the interests of a society based on respect for democracy, equality, human dignity, life and social justice.

The curriculum aims to develop the full potential of each learner as a citizen of a democratic South Africa. It seeks to create a lifelong learner who is confident and independent, literate, numerate and multi-skilled, compassionate, with a respect for the environment and the ability to participate in society as a critical and active citizen.

THE KIND OF TEACHER THAT IS ENVISAGED

Educators at all levels are key contributors to the transformation of education in South Africa. Teachers have a particularly important role to play. The National Curriculum Statement envisions teachers who are qualified, competent, dedicated and caring and who will be able to fulfil the various roles outlined in the Norms and Standards for Educators of 2000 (Government Gazette No 20844). These see teachers as mediators of learning, interpreters and designers of Learning Programmes and materials, leaders, administrators and managers, scholars, researchers and lifelong learners, community members, citizens and pastors, assessors and learning area/phase specialists.

STRUCTURE OF THE REVISED NATIONAL CURRICULUM STATEMENT GRADES R-9 (SCHOOLS)

The Revised National Curriculum Statement consists of this overview document and eight Learning Area Statements.

There are eight Learning Areas in the National Curriculum Statement. A Learning Area is a field of knowledge, skills and values which has unique features as well as connections with other fields of knowledge and Learning Areas. In this Revised National Curriculum Statement, the Learning Areas are:

- Languages
- Mathematics
- Natural Sciences
- Technology
- Social Sciences
- Arts and Culture
- Life Orientation
- Economic and Management Sciences

The relationship between human rights, a healthy environment and social justice is addressed in each Learning Area Statement.

The Learning Area Statements provide a guideline of requirements and expectations from Grades R to 9 for schools in the General Education and Training band.

PRINCIPLES OF THE REVISED NATIONAL CURRICULUM STATEMENT

The Revised National Curriculum Statement Grades R-9 (Schools) builds on the vision and values of the Constitution and Curriculum 2005. These principles include:

Social Justice, a Healthy Environment, Human Rights and Inclusivity

The curriculum can play a vital role in creating awareness of the relationship between human rights, a healthy environment, social justice and inclusivity. In some countries this is done through subjects such as civics. The Revised National Curriculum Statement has tried to ensure that all Learning Area Statements reflect the principles and practices of social justice, respect for the environment and human rights as defined in the Constitution. In particular, the curriculum attempts to be sensitive to issues of poverty, inequality, race, gender, age, disability, and such challenges as HIV/AIDS.

The Revised National Curriculum Statement adopts an inclusive approach by specifying minimum requirements for all learners. The special educational, social, emotional and physical needs of learners will be addressed in the design and development of appropriate Learning Programmes.

Outcomes-based Education

Outcomes-based education considers the process of learning as important as the content. Both the process and the content of education are emphasised by spelling out the outcomes to be achieved at the end of the process. In the Revised National Curriculum Statement learning outcomes and assessment standards were designed down from the critical and developmental outcomes.

The critical and developmental outcomes are a list of outcomes that are derived from the Constitution and are contained in the South African Qualifications Act (1995). They describe the kind of citizen the education and training system should aim to create. The critical outcomes envisage learners who will be able to:

- Identify and solve problems and make decisions using critical and creative thinking.
- Work effectively with others as members of a team, group, organisation and community.
- Organise and manage themselves and their activities responsibly and effectively.
- Collect, analyse, organise and critically evaluate information.
- Communicate effectively using visual, symbolic and/or language skills in various modes.
- Use Science and Technology effectively and critically showing responsibility towards the environment and the health of others.
- Demonstrate an understanding of the world as a set of related systems by recognising that problem-solving contexts do not exist in isolation.

The developmental outcomes envisage learners who are also able to:

- Reflect on and explore a variety of strategies to learn more effectively.
- Participate as responsible citizens in the life of local, national, and global communities.
- Be culturally and aesthetically sensitive across a range of social contexts.
- Explore education and career opportunities.
- Develop entrepreneurial opportunities.

The Revised National Curriculum Statement attempts to embody and uphold a democratic vision of the society and the citizens that should emerge from our school system.

By means of the Learning Area Statements, the Revised National Curriculum Statement identifies the goals, expectations and outcomes to be achieved through related learning outcomes and assessment standards. The learning outcomes for each Learning Area are provided later in this document. The assessment standards are in the actual Learning Area Statements that are published as Addenda to the document.

The outcomes and assessment standards emphasise participatory, learner-centred and activity-based education. They leave considerable room for creativity and innovation on the part of the teachers in interpreting what and how to teach.

The South African version of outcomes-based education is aimed at stimulating the minds of young people so that they are able to participate fully in economic and social life. It is intended to ensure that all learners are able to develop and achieve to their maximum ability and are equipped for lifelong learning.

A High Level of Skills and Knowledge for All

The Revised National Curriculum Statement aims at the development of a high level of knowledge and skills for all. It sets and holds up high expectations of what South African learners can achieve. Social justice requires that those sections of the population previously disempowered by the lack of knowledge and skills should now be empowered. The Revised National Curriculum Statement aims to provide for a stronger base from which to enable the development of a high level of skills and knowledge by all. It does so by specifying the combination of minimum knowledge and skills to be achieved by learners in each grade and setting high, achievable standards in all the Learning Areas.

Clarity and Accessibility

The Revised National Curriculum Statement aims at clarity and accessibility both in its design and language. Two design features – learning outcomes and assessment standards – clearly define for all learners the goals and outcomes necessary to proceed to each successive level of the system. In addition, the Revised National Curriculum Statement will be available in all official languages and braille.

Progression and Integration

The principle of integrated learning is integral to outcomes-based education. Integration ensures that learners experience the Learning Areas as linked and related. It supports and expands their opportunities to attain skills, acquire knowledge and develop attitudes and values encompassed across the curriculum.

It is important that the curriculum sets out progressively more complex, deeper and broader expectations of learners. Conceptual progression is a term used to describe this feature of a curriculum. In the Revised National Curriculum Statement, the assessment standards in each Learning Area Statement provide the conceptual progression in each Learning Area from grade to grade.

At the same time, learners should not deal with assessment standards in isolation. Links must be made within and across learning outcomes and Learning Areas. The achievement of an optimal relationship between integration across learning areas and conceptual progression from grade to grade are central to this curriculum.

The ongoing development of teachers, school management teams and departmental support personnel is an important facet of this goal.

STRUCTURE AND CONCEPTS USED IN THE LEARNING AREA STATEMENTS

Each Learning Area Statement consists of three sections:

An introduction: This section introduces the National Curriculum Statement and the particular Learning Area– its goals and unique features.

A section on learning outcomes and assessment standards: These express the requirements and expectations of learners by grade at the Foundation (Grades R-3), Intermediate (Grades 4-6) and Senior (Grades 7-9) Phases. The Foundation Phase focuses on primary skills, knowledge and values to ensure the development of further learning. The learning outcomes and assessment standards should be seen as minimum or essential knowledge, values and skills to be covered but should not be all that is taught. They indicate what is essential for progression through the system and are designed in relation to the Grade 9 requirements.

A section on assessment: This section outlines principles and guidelines for assessment and makes suggestions for recording and reporting assessment.

Reference lists: This section usually includes abbreviations, acronyms and a glossary.

What is a Learning Outcome?

A learning outcome is derived from the critical and developmental outcomes. It is a description of what (knowledge, skills and values) learners should know, demonstrate and be able to do at the end of the General Education and Training band. A set of learning outcomes should ensure integration and progression in the development of concepts, skills and values through the assessment standards. Learning outcomes do not prescribe content or method.

What is an Assessment Standard?

Assessment standards describe the level at which learners should demonstrate their achievement of the learning outcome(s) and the ways (depth and breadth) of demonstrating their achievement. They are grade specific and show how conceptual progression will occur in a Learning Area. They embody the knowledge, skills and values required to achieve learning outcomes. They do not prescribe method.

How different is an Assessment Standard from a Learning Outcome?

The learning outcomes describe what learners should know and be able to do. Assessment standards describe the minimum level, depth and breadth of what is to be learnt. In practical terms this means that learning outcomes can and will, in most cases, remain the same from grade to grade while assessment standards change from grade to grade.

The assessment standards also contribute towards the qualification. In the case of the General Education and Training band, this means the General Education and Training Certificate.

Learning support materials and teacher development programmes will play an important role in interpreting and giving expression to the learning outcomes and assessment standards.

LEARNING PROGRAMMES

The Revised National Curriculum Statement Grades R-9 (Schools) will be implemented in schools by means of Learning Programmes. Learning Programmes are structured and systematic arrangements of activities that promote the attainment of learning outcomes and assessment standards for the phase.

Whereas the Revised National Curriculum Statement stipulates the concepts, skills and values on a grade-by-grade basis, Learning Programmes specify the scope of learning and assessment activities per phase. Learning Programmes also contain work schedules that provide the pace and the sequencing of these activities each year as well as exemplars of lesson plans to be implemented in any given period. The underlying principles and values of the Revised National Curriculum Statement also underpin the Learning Programmes.

Learning Programmes must ensure that all learning outcomes and assessment standards are effectively pursued and that each learning area is allocated its prescribed time and emphasis. Learning Programmes will be based on relationships amongst learning outcomes and assessment standards, without compromising the integrity of Learning Areas.

Learning Programmes Per Phase

In the Foundation Phase, there are three Learning Programmes: Literacy, Numeracy and Life Skills.

In the Intermediate Phase, Languages and Mathematics are distinct Learning Programmes. Learning Programmes must ensure that the prescribed outcomes for each learning area are covered effectively and comprehensively. Schools may decide on the number and nature of other Learning Programmes based on the organisational imperatives of the school, provided that the national priorities and developmental needs of learners in a phase are taken into account.

In the Senior Phase, there are eight Learning Programmes based on the Learning Area Statements.

Teachers will be responsible for the development of Learning Programmes. The Department of Education will provide policy guidelines for the development of Learning Programmes in order to support this process. Provinces will develop further guidelines where necessary in order to accommodate diversity.

Teacher education programmes will build the capacity of teachers, school management teams and departmental support personnel to develop, implement, manage and support the development of Learning Programmes.

Learning Programme Guidelines

To ensure achievement of national standards set by the Revised National Curriculum Statement, policy guidelines for relevant and appropriate Learning Programmes will be developed at national level in collaboration with provinces. These guidelines will emphasise the principle of integrated learning and the achievement of an optimal relationship between integration across learning areas and conceptual progression from grade to grade. The National Education Policy Act (1996, section 3, paragraph 4) empowers the Minister of Education to determine, among other things, such a national policy guideline for the development of Learning Programmes.

These policy guidelines will provide information and guidance on:

- Integration within and across learning areas
- Clustering of assessment standards
- Relationships between learning outcomes
- Time allocation
- Assessment
- Barriers to learning
- Designing a Learning Programme
- Policy and legislation
- Training, development and delivery
- Resourcing and support
- Planning and organisation

These guidelines will be applied within the context of existing policy and legislative frameworks such as the six White Papers on Education, the National Education Policy Act (1996), the South African Schools Act (1996) and the Employment of Educators Act (1998). Learning Programme guidelines will offer a framework to address specific learner and contextual needs.

Time Allocations

In terms of Section 4 of the Employment of Educators Act, (1998), the formal school day for teachers will be seven hours. In terms of the National Education Policy Act, (1996), the formal teaching time per school week is 35 hours. This is set out in the following table:

Phase	Grade	Time	
Foundation Phase	R, 1 and 2	22 hrs	30 mins
	3	25 hrs	
Intermediate Phase	4, 5 and 6	26 hrs	30 mins
Senior Phase	7	26 hrs	30 mins
	8 and 9	27 hrs	30 mins

The formal teaching time allocations for the Foundation Phase are presented below as percentages of the times in the table above:

Learning Programme	Time (%)
Literacy	40%
Numeracy	35%
Life Skills	25%

Time allocations as percentages of time (presented in the table above) for Intermediate and Senior Phases, are:

Learning Area Programme	Time (%)
Languages	25%
Mathematics	18%
Natural Sciences	13%
Social Sciences	12%
Technology	8%
Economic and Management Sciences	8%
Life Orientation	8%
Arts and Culture	8%

Guidelines for planning are provided in the Learning Programme Guidelines.

ASSESSMENT

Each Learning Area Statement includes a detailed section on assessment. Within an outcomes-based framework the most suitable assessment methods that accommodate divergent contextual factors are used. Assessment should provide indications of learner achievement in the most effective and efficient manner, and ensure that learners integrate and apply knowledge and skills. Assessment should also help students to make judgments about their own performance, set goals for progress and provoke further learning.

The Revised National Curriculum Statement aligns the curriculum with assessment policy contained in the Assessment Policy (*Government Gazette* No. 19640 of 1998). A common guideline for teachers is contained at the end of each Learning Area Statement.

GENERAL EDUCATION AND TRAINING CERTIFICATE

All teaching and learning from Grade R to 9 contributes to the type of learner envisaged by the National Curriculum Statement. Assessment of this learning takes place on a continuous basis throughout the ten years of school. The assessment and certification of this cumulative learning take place at the end of Grade 9 when learners who meet the specified requirements will be awarded a General Education and Training Certificate.

The General Education and Training Certificate for compulsory schooling is a whole qualification for schools based on the extent to which the learning outcomes are achieved through the Grade 9 assessment standards.

Until 2008, the policy currently related to certification will prevail. Thereafter the General Education and Training Certificate aligned to this Revised National Curriculum Statement will come into force.

LEARNING AREAS: DEFINITIONS AND OUTCOMES

Languages

Definition

The Languages Learning Area Statement includes:

- All eleven official languages: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.
- Languages approved by the Pan South African Language Board (PANSALB) and the South African Certification Authority (SAFCERT) such as braille and South African Sign Language.

In a multilingual country like South Africa it is important that learners reach high levels of proficiency in at least two languages, and that they are able to communicate in other languages.

The Languages Learning Area Statement follows an additive or incremental approach to multilingualism:

All learners learn their home language and at least one additional official language.

- Learners become competent in their additional language, while their home language is maintained and developed.

The Languages Learning Area Statement covers all official languages as:

- Home languages

- First additional languages
- Second additional languages

Learners' home languages should be used for learning and teaching whenever possible. This is particularly important in the Foundation Phase where children learn to read and write. When learners have to make a transition from their home language to an additional language for learning and teaching, careful planning is necessary.

Outcomes

1. **Listening:** The learner is able to listen for information and enjoyment, and respond appropriately and critically in a wide range of situations.
2. **Speaking:** The learner is able to communicate confidently and effectively in a spoken language in a wide range of situations.
3. **Reading and Viewing:** The learner is able to read and view for information and enjoyment, and respond critically to the aesthetic, cultural and emotional values in texts.
4. **Writing:** The learner is able to write different kinds of factual and imaginative texts for a wide range of purposes.
5. **Thinking and Reasoning:** The learner is able to use language to think and reason, and access, process and use information for learning.
6. **Language Structure and Use:** The learner knows and is able to use the sounds, words and the grammar of a language to create and interpret texts.

Listening and speaking; reading and viewing; writing; thinking and reasoning; and the knowledge of sounds, words and grammar, although presented as separate outcomes, should be integrated in teaching and assessment.

Mathematics

Definition

Mathematics is a human activity that involves observing, representing and investigating patterns and quantitative relationships in physical and social phenomena and between mathematical objects themselves. Through this process new mathematical ideas and insights are generated.

Mathematics uses its own specialised language that involves symbols and notations for describing numerical, geometric and graphical relations. Mathematical concepts build on one another, thereby creating a coherent structure.

Mathematics is a product of investigation by different cultures; it is a purposeful activity in the context of social, political and economic goals and constraints. It is not value-free or culturally-neutral.

Outcomes

1. **Numbers, Operations and Relationships:** The learner is able to recognise, describe and represent numbers and their relationships and can count, estimate, calculate and check with competence and confidence in solving problems.
2. **Patterns, Functions and Algebra:** The learner is able to recognise, describe and represent patterns and relationships, and solves problems using algebraic language and skills.
3. **Space and Shape:** The learner is able to describe and represent characteristics and relationships between 2-D shapes and 3-D objects in a variety of orientations and positions.
4. **Measurement:** The learner is able to use appropriate measuring units, instruments and formulae in a variety of contexts.
5. **Data Handling:** The learner is able to collect, summarise, display and critically analyse data in order to draw conclusions and make predictions, and to interpret and determine chance variation.

Natural Sciences

Definition

What is today known as 'Science' has its roots in African, Arabic, Asian, American and European cultures. It has been shaped by the search to understand the natural world through observation, codifying and testing ideas, and has evolved to become part of the cultural heritage of all nations. It is usually 'characterised by the possibility of making precise statements which are susceptible of some sort of check or proof' (McGraw-Hill Concise Encyclopaedia of Science and Technology, 2nd Edition, p. 1647).

The Natural Sciences Learning Area Statement envisages a teaching and learning milieu that recognises that the people of South Africa have a variety of learning styles as well as culturally influenced perspectives. The Natural Sciences Learning Area starts from the premise that all learners should have access to a meaningful science education. Meaningful education has to be learner-centred. It has to help learners to understand not only scientific knowledge and how it is produced but also the environmental and global issues. The Natural Sciences Learning Area aims to provide a foundation on which learners can build throughout life.

The Natural Sciences Learning Area Statement promotes scientific literacy. It does this by focusing on:

- The development and use of science process skills in a variety of settings.
- The development and application of scientific knowledge and understanding.
- Appreciation of the relationships and responsibilities between Science, society and the environment.

Outcomes

1. **Scientific Investigations:** Learners act confidently on their curiosity about natural phenomena; they investigate relationships and solve problems in Science, Technology and environmental contexts.
2. **Constructing Science Knowledge:** Learners know, interpret and apply scientific, technological and environmental knowledge.

3. **Science, Society and the Environment:** Learners are able to demonstrate an understanding of the interrelationships between Science and Technology, society and the environment.

Social Sciences

Definition

The Social Sciences study relationships between people, and between people and the environment. These relationships vary over time and space. They are also influenced by social, political, economic and environmental contexts, and by people's values, attitudes and beliefs.

The concepts, skills and processes of History and Geography form key elements of the Social Sciences Learning Area Statement. Environmental education and human rights education are integral to both History and Geography.

The Social Sciences Learning Area Statement is concerned with what learners learn and how learners learn, and how learners construct knowledge. The Learning Area Statement encourages learners to ask and find answers to questions about society and the environment in which they live.

This Learning Area Statement aims at contributing to the development of informed, critical and responsible citizens who are able to participate constructively in a culturally diverse and changing society. It also equips learners to contribute to the development of a just and democratic society.

Outcomes

History

1. **Historical Enquiry:** The learner is able to use enquiry skills to investigate the past and present.
2. **Historical knowledge and Understanding:** The learner is able to demonstrate historical knowledge and understanding.
3. **Historical Interpretation:** The learner is able to interpret aspects of history.

Geography

1. **Geographical Enquiry:** The learner is able to use enquiry skills to investigate geographical and environmental concepts and processes.
2. **Geographical Knowledge and Understanding:** The learner is able to demonstrate geographical and environmental knowledge and understanding.
3. **Exploring Issues:** The learner is able to make informed decisions about social and environmental issues and problems.

Arts and Culture

Definition

The Arts and Culture Learning Area Statement covers a broad spectrum of South African arts and cultural practices. Arts and Culture are an integral part of life, embracing the spiritual, material, intellectual and emotional aspects of human endeavour within society.

Culture expresses itself through the arts and ways of living, behaviour patterns, heritage, knowledge and belief systems. Cultures are not static – they have histories and contexts, and they change, especially when they are in contact with other cultures.

The approach towards culture in this Learning Area Statement encourages learners to:

- Move from being passive inheritors of culture to being active participants in it.
- Reflect creatively on art, performances and cultural events.
- Identify the connections between art works and culture.
- Understand the geographical, economic and social contexts in which Arts and Culture emerge.
- Identify the links between cultural practice, power and cultural dominance.
- Analyse the effects of time on culture and the Arts.
- Understand how the arts express, extend and challenge culture in unique ways.

The approach towards Arts in this Learning Area Statement moves from a broad experience involving several art forms within diverse cultural contexts towards an increasing depth of knowledge and skill by the 8th and 9th Grade. The integrity of discrete art forms and the value of integrated learning experiences are recognised. The Learning Area Statement strives to create a balance between developing generic knowledge about Arts and Culture, and specific knowledge and skills in each of the art forms.

Outcomes

1. **Creating, Interpreting and Presenting:** The learner is able to create, interpret and present work in each of the art forms.
2. **Reflecting:** The learner is able to reflect critically on artistic and cultural processes, products and styles in past and present contexts.
3. **Participating and Collaborating:** The learner is able to demonstrate personal and interpersonal skills through individual and group participation in arts and culture activities.
4. **Expressing and Communicating:** The learner is able to analyse and use multiple forms of communication and expression in Arts and Culture.

Life Orientation

Definition

The concept Life Orientation captures the essence of what this Learning Area Statement aims to achieve. It guides and prepares learners for life and its possibilities. Life Orientation specifically equips learners for meaningful and successful living in a rapidly changing and transforming society.

The Life Orientation Learning Area Statement develops skills, knowledge, values and attitudes that empower learners to make informed decisions and take appropriate actions regarding:

- Health promotion
- Social development
- Personal development
- Physical development and movement
- Orientation to the world of work

Together, these five focus areas of the Life Orientation Learning Area Statement address the human and environmental rights outlined in the Constitution.

Outcomes

1. **Health Promotion:** The learner is able to make informed decisions regarding personal, community and environmental health.
2. **Social Development:** The learner is able to demonstrate an understanding of and commitment to constitutional rights and responsibilities and show an understanding of diverse cultures and religions.
3. **Personal Development:** The learner is able to use acquired life skills to achieve and extend personal potential to respond effectively to challenges in his/her world.
4. **Physical Development and Movement:** The learner is able to demonstrate an understanding of, and participate in activities that promote movement and physical development.
5. **Orientation to the World of Work:** The learner is able to make informed decisions about further study and career choices.

Economic and Management Sciences

Definition

The Economic and Management Sciences Learning Area Statement involves the study of private, public or collective use of different types of resources in satisfying people's needs and wants, while reflecting critically on the impact of resource exploitation on the environment and people.

In particular, the Economic and Management Science Learning Area Statement deals with:

- The nature, processes and production of goods and services.
- The South African economy and socio-economic systems in different countries.
- Investment and financial management and planning skills, either for private, public or collective ownership.
- Entrepreneurial skills and knowledge needed to manage human lives and environments.

Outcomes

1. **Knowledge and Understanding of the Economic Cycle:** The learner is able to demonstrate knowledge and understanding of the economic cycle in addressing the economic problem.
2. **Understanding of Sustainable Growth and Development:** The learner is able to demonstrate an understanding of sustainable growth, reconstruction and development, and reflect critically on related processes.
3. **Managerial, Consumer and Financial Knowledge and Skills:** The learner is able to demonstrate knowledge and the ability to apply responsibly a range of managerial, consumer and financial skills.
4. **Entrepreneurial Knowledge and Skills:** The learner is able to demonstrate entrepreneurial knowledge, skills and attitudes.

Technology

Definition

Technology has existed throughout history as an activity in which people use a combination of knowledge, skills and available resources to develop solutions to meet their daily needs and wants. Some of these solutions are in the form of products while some solutions involve a combination of products to make systems.

Today, people still have needs and wants. Solutions are still developed through activities that combine knowledge, skills and available resources. However, the knowledge, skills and resources used today are different because of the accelerating developments in technology. Today's society is complex and diverse.

Economic and environmental factors and a wide range of attitudes and values need to be taken into account when developing technological solutions. It is in this context that technology is defined as:

The use of knowledge, skills and resources to meet people's needs and wants by developing practical solutions to problems while considering social and environmental factors.

Outcomes

1. **Technological Processes and Skills:** The learner is able to apply technological processes and skills ethically and responsibly using appropriate information and communication technologies.
 2. **Technological Knowledge and Understanding:** The learner is able to understand and apply relevant technological knowledge ethically and responsibly.
 3. **Technology, Society and Environment:** The learner is able to demonstrate an understanding of the interrelationships between Science, Technology, Society and the environment over time.
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EDUCATION CONVENTION DECLARATION

NATIONAL EDUCATION CONVENTION

on

“Delivering Quality Public Education for All”

University of Port Elizabeth
24-27th November 2002

DECLARATION

Background

A National Education Convention, comprising four hundred delegates representing national and provincial Departments of Education, teacher unions, the South African Council for Educators (SACE) and the Education, Training and Development Practices Sector Education and Training Authority (the ETDP SETA), met in Port Elizabeth from 24-27th November 2002, in order to review progress in the transformation of the education system, to map out future priorities, and to commit themselves to work together to achieve the agreed upon goals. To facilitate this task the Convention delegates broke into six different commissions, which are listed below, each of which identified issues for negotiations, for further research, or for implementation.

The Convention was convened as an education sector follow-up to the Public Sector Job Summit convened in Polokwane last year. It is hosted by the Education Labour Relations Council (the ELRC), which brings together the three teacher unions – SADTU, NAPTOSA and the SAOU – and the national and provincial Departments of Education, for the purposes of collective bargaining.

The Council has accepted that its contribution can go beyond the traditional collective bargaining concerns of salaries and conditions of service, and encompass the well-being of the education system more generally. With this in mind, it has used the Convention to announce the launch of three major programmes, which will be run together with SACE. These programmes are:

- The Induction and Orientation of new teachers
- Women and Gender issues at schools, and
- A Campaign to improve the image of public education and the teaching profession.

Preamble

The National Education Convention was guided by the Theme: “**Delivering Quality Public Education for All**”, with an emphasis on the following principles:

- the crucial role played by public education in the reconstruction and development of South African society;
- the imperative to ensure equal access to educational provision and the need to redress past inequalities; and
- the need for a concerted effort to constantly improve the quality of educational delivery.

Statement

With the above principles in mind, we the delegates to the National Education Convention, declare as follows and commit ourselves to the undertakings in the attached table:

This Convention agreed that the public has a legitimate expectation of quality in education, and that achieving quality in education was an ongoing task, for which all have to share responsibility. It recognises that the definition of quality in education is contextual, and not a static concept, and is related to the complex interaction between learners, educators, institutions and the Departments of Education. It believes that the quality of education is influenced by many factors, including the conditions for learning and teaching, such as infrastructure and the availability of materials, as well as the support provided to institutions. The knowledge levels, skills, attitudes and practices of educators are the other major determinants of quality.

The Convention accepts that human resources, and educators in particular, are central to the education system, and that well-trained and committed people are key to achieving quality in education. These human resources comprise the teachers, school principals, professional support staff, and the administrative staff in education, and a high level of professionalism is needed from all during this rapidly changing and constantly challenging educational environment. The pursuit of quality in education therefore requires a concerted national teacher development

strategy, as well as an integrated approach for the assessment and evaluation of performance at all levels of the system.

Convention also recognises that adequate financial resources are essential for the achievement of quality in education, and that these must be effectively used to promote equity and quality. Because the resources for education are limited, these should be skewed towards redressing the inequalities in education.

Accordingly, the parties to the Convention committed themselves to work together on the following key elements to ensure quality education for all:

- **On Human Resources** To develop a national strategy for educator development, linked to a management strategy, and with appropriately staffed structures, which will contribute to a culture of high performance; To establish a national database of skills, and of development programmes, which will be available to employers and employees; To monitor supply and demand factors, and to intervene where necessary to ensure an adequate supply of qualified teachers in the future; To take steps and support all efforts to improve the image of the profession.
- **On Quality Management** To establish a Task Team to investigate and propose an Integrated Quality Management System, in which the various policies and instruments are aligned, and which will inform the framework for teacher development; To agree on the nature and purpose of the GETC and FETC, and how the assessment of learners should be conducted; To agree on and respect the roles and responsibilities of each party, and of the various statutory bodies responsible for quality assurance.
- **On the Resourcing of Education** To strive to secure adequate resources for the provision of quality education, and to ensure that these are used to redress inequalities; To ensure that the instruments for the funding of education, including post-provisioning and the funding norms, as well as user fees, are to the advantage of the poor.
- **On Labour Relations** To ensure clarity on the role for all structures dealing with human resources, including the ELRC, SACE, and the ETDP SETA, and ensure that these work in a mutually supportive fashion; To arrange opportunities to discuss suggested changes to legislation with the recognised structures; To a renewed commitment of parties to fair, honest and constructive negotiations, according to an agreed programme and timeframes, in order to improve service delivery.
- **On HIV and AIDS** That special attention be given to the care of educators, including voluntary counselling and testing, treatment, and communication in regard to service benefits for infected educators; That models for the education of orphans be investigated and implemented, together with other departments, NGOs and CBOs; That schools, as the centre of community life, establish support networks to inform and assist members of the community.
- **On the Curriculum, Human Rights and Inclusivity** To eliminate all barriers to access, including poverty, race, culture, language or disability; To provide materials and training to teachers on inclusivity and human rights; To promote the provision of sport, art and culture in schools, as mechanisms to enhance integration, and ensure funding and facilities for these.

This Declaration, with the attached Table of Recommendations, was agreed to by all parties to the Education Labour Relations Council, and issued by the Convention on 27th November 2002

A full report of the Convention, with the details of each recommendation, and a newspaper supplement, will be published in due course.

The Education Labour Relations Council will sit before the end of this year, to assess the recommendations of the Convention, to formalise those recommendations that can be dealt with as resolutions of the Council, and to develop action plans with time frames for implementation.

Other recommendations will be dealt with by the relevant structures and parties, including the development of action plans, and with the same sense of urgency.

The parties will also meet to assess the overall value of the Convention, and to decide on any follow-up in future.

Signed in Port Elizabeth on 27th November 2002, on behalf of:

Department of Education
SADTU
NAPTOSA
SAOU
SACE
ETDP SETA

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RECOMMENDATIONS OF THE CONVENTION

RECOMMENDATIONS OF THE NATIONAL EDUCATION CONVENTION

The recommendations of the Convention have been placed in three categories:

- issues on which further research is required;
- issues that should be taken for agreement to the relevant structures and forums; and
- issues which should be implemented in terms of an agreed plan of action.

The table below summarises these matters in each of the six areas of focus:

Topic	Issues for research	Issues for agreement	Issues for implementation
Human Resources in Education	<p>To research and propose a systematic framework to guide the initial and in-service training of human resources.</p> <p>Role of SGBs in HRD;</p> <p>Need to look at policy on substitutes to support teacher development;</p> <p>Need for Supply and Demand of educators to be investigated in terms of impact of HIV/Aids and poaching from overseas;</p> <p>Research reasons for turnover and retention of educators in the system;</p> <p>Database of educator skills, including unemployed educators;</p> <p>Investigate appropriate incentives to attract and retain educators;</p> <p>Need to investigate capacity needs of the various levels of the education system (administration and support)</p>	<p>To ensure that Continuous Professional Development and Life Long Learning is an entitlement for employees, and a responsibility of both the employer and the employee.</p> <p>To link the development of employees to the salary and grading system, to performance and to career paths;</p> <p>Need to establish fully funded teacher development directorates at provincial level and attach a reference group to the announced National Task Team on Teacher Development.</p>	<p>To use the Skills Planning processes, and the skills levies for Skills Development, for the training of teachers, managers, professional and administrative staff;</p> <p>The development of a register of skills programmes;</p> <p>Need for strategy for reskilling of educators in relation to the needs of the new FET;</p> <p>Need for a campaign to improve status and image of the profession to encourage new recruits and retention – role of SACE here;</p> <p>To speedily develop a systematic framework for in-service training of human resources;</p> <p>Develop EMIS to inform skills needs of the system and availability of programmes.</p>

Topic	Issues for research	Issues for agreement	Issues for implementation
The Resourcing of Education	<p>Need to investigate the current methods of poverty ranking of schools to ensure fairness and effective redress;</p> <p>Research the impact of the Post Provisioning Model for educators on curriculum, redress and equity and with respect to new FET and farm schools;</p> <p>Research the impact of school fees on access to education, redress and equity;</p> <p>Research the management and impact of school feeding schemes to ensure effective utilisation of resources;</p> <p>Update research to address infrastructure backlogs and costs, employing a needs-based model of resourcing. Need for additional funding to address outstanding backlogs in poor schools, and ensure available funds are used in a cost effective way. Need for accommodation to attract teachers to rural areas;</p> <p>The effective use and sustainability of conditional grant funding;</p> <p>Research into the adequacy of the current budget process in terms of addressing needs and nationally defined minimum standards for education provision – eg in relation to teacher:pupil ratios. These ratios need to be equalised across provinces;</p> <p>Need to investigate inputs against more efficient and effective educational outputs</p>	<p>Need for a staffing formula for the supply of support staff to schools (administrators, cleaners, security etc);</p> <p>MTEF process – all parties agreed that this be opened up so that social partners can input at the appropriate point in the budgeting process;</p> <p>Need to roll our Early Childhood Development as a priority for access, quality and equity;</p> <p>Commitment to improving teacher:pupil ratios over time.</p> <p>HIV/Aids – need to budget for hostels to house orphans, substitute teachers etc</p> <p>Feeding schemes to address orphans, poor, and extended to all age groups.</p>	<p>Within SASA, learners cannot be excluded from public schools on financial grounds. The law must be applied with respect to access and exemptions from school fees;</p> <p>Need to communicate the PPM to school managers clearly;</p> <p>Commitment to convene a forum to consult and debate the Ministerial Review of funding mechanisms to be presented in 2003;</p> <p>Feeding schemes need for role players to be involved in monitoring.</p>
HIV and AIDS and Education	<p>The relevance of current policies, including conditions of service, in the context of AIDS;</p> <p>To improve data collection and analysis which will monitor the unfolding impact of HIV and AIDS in education;</p> <p>The provision of support for infected and affected learners and educators;</p> <p>The provision of counselling and treatment for educators.</p>	<p>The adaptation of prevention and care programmes to take into account the socio-economic context and values of the community; need for monitoring systems.</p>	<p>To strengthen existing structures for implementation of programmes for lifeskills and HIV/Aids education;</p> <p>To use the Aids in Education Conference report to develop a comprehensive programme of action to tackle the impact of AIDS in education; and</p> <p>To build on the multi-disciplinary Alliance established at the AIDS and Education Conference to implement the programme.</p>

Topic	Issues for research	Issues for agreement	Issues for implementation
<p>Curriculum, Human Rights and Inclusivity</p>	<p>Evaluating the realisation of human rights in the curriculum;</p> <p>Explore status and resourcing of sports, arts and culture, and training of educators in this respect;</p> <p>More research on multi-grade teaching, eg in farm schools and necessary support;</p> <p>Skills audit for the implementation of revised FET Curriculum and requirements for reskilling;</p> <p>The provisioning and funding of ABET;</p> <p>ABET curriculum design, qualifications and pedagogy to be investigated and aligned. Investigate status and recognition of ABET educators.</p>	<p>Need for recognition and development of ECD educators;</p> <p>Assessment procedures to be developed (and simplified) in outcomes based education, and training for educators in this respect;</p> <p>Need for focus on gender and HIV/Aids in the curriculum;</p> <p>Need for greater articulation between GET, FET and HET in terms of curriculum support in the interests of redress and inclusion.</p>	<p>Need for advocacy around barriers to access (fees etc);</p> <p>Promote inclusive practices (and learning materials) at institutions, in regard to gender, language, race and culture, or special needs – and training for all educators in this respect;</p> <p>Promote employment equity in the workplace and equality at institutions;</p> <p>Provide resources and support for the development of teachers in regard to human rights and values;</p> <p>Reskilling of educators for FET and managing the transition to new FET.</p>
<p>Labour Relations in Education</p>	<p>The relationship between primary and secondary legislation;</p> <p>The effect of evolving case law on the development of new legislation;</p> <p>The separation of collective, individual and other labour matters;</p> <p>Alignment of PSA and EEA especially in respect of non educators working for education departments;</p> <p>Need to look at mechanisms for appeal in terms of the EEA;</p> <p>The mandating process and the value of 'pre-negotiations';</p> <p>The effect of NEPAD on education legislation;</p> <p>The role of the ELRC in supporting educational research;</p> <p>Investigate the aspect of re-enrolment in the SACE Act.</p>	<p>To ensure the harmonization of legislation covering the education sector, in order to promote access and quality;</p> <p>To ensure that the ELRC endures as an independent body; with the ability to provide support and assistance to other Bargaining Councils;</p> <p>To establish and maintain formal and effective links between the ELRC, SACE and the ETDP SETA;</p> <p>Continuous training for all education employees in order to maintain sound labour relations;</p> <p>A programme for negotiations, and a mechanism to ensure that negotiations translate into improve delivery; amongst others focussing on rewards and incentives, workload and salary grading;</p> <p>Skills Development Levies Act – employers must budget for skills development. Government must contribute to administration of SETAs;</p> <p>To ensure a common understanding of the legal interpretation of consultation and negotiation in labour and administrative law.</p>	<p>Arranging opportunities for the recognized structures to discuss suggested changes to legislation and impacts of application, such as NEPAD, and several sections of the EEA;</p> <p>A review of the effectiveness of the ELRC in every sphere; applying the principles of the PFMA, reflecting on the main functions of the ELRC, and the position of the ELRC viz the national priorities;</p> <p>A renewed commitment to fair, honest and constructive negotiations to improve service delivery;</p> <p>Reflecting on the macro issues involving the employment of first time entrants into the profession.</p>

Topic	Issues for research	Issues for agreement	Issues for implementation
Quality Management	<p>To learn from existing programmes and instruments for the promotion of quality;</p> <p>to investigate an integrated quality management system, at all levels of the system, which will result in sustainable development and improvement in the quality of public education;</p> <p>to research and establish the capacity and nature of GETC: and the implementability of GETC at this stage. Research capacity of the system to ensure quality education for all learners. Capacity to support implementation;</p> <p>(Some similar concerns regarding the implementability of FETC at this stage);</p> <p>Need for teacher development policy to link to for example DAS;</p> <p>Solving the problems identified in some of the present QM processes and policies with the purpose of refining and improving the instruments and processes e.g. issue of languages used in MLA instruments used for systemic evaluation;</p> <p>Ongoing review of QM processes and policies to enable refinement and improvement;</p> <p>Development of criteria/indicators to evaluate other parts of the system: NDOE, PDOEs against agreed upon standards for effective delivery and support.</p>	<p>To analyse and agree on the roles and responsibilities of each party in contributing to the quality of public education;</p> <p>To agree on the role of agencies who have a legal responsibility for quality assurance;</p> <p>Definitions/common understanding required:</p> <p>What is meant by</p> <ul style="list-style-type: none"> • quality • quality assurance • quality management. 	<p>Establish a post-Convention task team to develop an integrated Quality Management system; to align the components of quality management policies for more effective implementation, bearing in mind the different purposes, different target groups and different indicators and to link the information obtained from appropriate;</p> <p>Develop an integrated quality management system;</p> <p>QM processes to teacher development and to develop a strategy/policy/framework for teacher development e.g. DAS, WSE, WSPs, SE and teacher Development;</p> <p>Investigate the roles and legal responsibilities of different structures, organisations, organs in an integrated QMS;</p> <p>To develop indicators and procedures for evaluating all levels of the system in respect of input processes and outputs.</p>

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NATIONAL PROFESSIONAL TEACHERS' ORGANISATION OF SOUTH AFRICA (NAPTOSA)

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This is a federation of trade unions representing:

- South African Union for Vocational and Specialised Education (SAUVSE)
- Cape Teachers' Professional Association (CTPA)
- National Union of Educators (NUE)
- Independent Teachers' Union of South Africa (ITUSA)
- Association of Professional Educators of Kwazulu-Natal (APEK)
- Free State Teachers' Association (OFSATA)
- Union of South African Professional Educators (USAPE)
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