

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 23 January 2006.)

ACT

To amend the South African Schools Act, 1996, so as to add new definitions; to clarify the manner in which disciplinary proceedings must be conducted; to provide for a process to establish norms and standards for school funding by means of quintiles; to clarify the charging and payment of school fees; to provide for the right of a learner to participate in all aspects of the programme of a public school; to provide for the alienation of the sets of a public school to amend the Employment of Educators Act, 1998, so as to provide for the refinement of the process of the appointment of educators; to provide for the repeal of laws; and to provide for matters connected therewith.

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

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

1. Section 1 of the South African Schools Act, 1996, is hereby amended by-
 - (a) the insertion after the definition of "Minister" of the following definitions:

"no fee threshold" means the level of funding per learner contemplated in the norms and standards for school funding applicable to a public school which enables the Minister to declare a school a no fee school in terms of this Act;
'norms and standards for school funding' means the national norms and standards for the funding of schools determined by the Minister in terms of section 35;" and
 - (b) the insertion after the definition of "school" of the following definition:

"school fees" means school fees contemplated in section 39 and ~~includes only the portion of the total fee payable by a learner which is payable by the learner or the parent or guardian of the learner~~ in any programme of a public school;

Amendment of section 9 of Act 84 of 1996 as amended by section 7 of Act 48 of 1999

2. Section 9 of the South African Schools Act, 1996, is hereby amended by-
 - (a) the substitution for subsection (1) of the following subsections:

"(1) [Subject to this Act and any applicable provincial law, the] The governing body [of a public school] may, [after a fair hearing] on

reasonable grounds and as a precautionary measure suspend a learner who is suspected of serious misconduct from attending 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]**

but may only enforce such suspension after the learner has been granted a reasonable opportunity to make representations to it in relation to such suspension

(IA) A governing body must conduct disciplinary proceedings in the manner contemplated in section 8 against a learner within seven school days after the suspension of such learner.

(IB) If disciplinary proceedings are not conducted within seven school days after the suspension of a learner, the governing body must obtain the approval of the Head of Department for the continuation of the suspension of such learner.

(IC) A governing body may, if a learner is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8--

(a) impose the suspension of such learner for a period not longer than seven school days or any other sanction contemplated in the code of conduct of the public school; or

(b) make a recommendation to the Head of Department to expel such learner from the public school.

(ID) A Head of Department must consider the recommendation by the governing body referred to in subsection (IC)(b) and must decide whether or not to expel a learner within 14 days of receiving such recommendation.

(IE) A governing body may suspend or extend the suspension of a learner for a period not longer than 14 days pending the decision by the Head of Department whether or not to expel such learner from the public school.";

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

"(2) [Subject to any applicable provincial law, a] 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] disciplinary proceedings contemplated in section 8 were conducted."

(c) the substitution for subsection (4) of the following subsection:

"(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 within 14 days of receiving the notice of expulsion."; and

(d) the addition of the following subsections:

"(6) A learner who has appealed in the manner contemplated in subsection (4), must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department.

(7) The Head of Department, in determining the manner of attendance contemplated in subsection (6)-

(a) must take reasonable measures to protect the rights of other learners at the public school; and

(b) may consider an alternative method of providing education to the learner contemplated in subsection (6).

(8) If the Head of Department decides not to expel a learner as contemplated in subsection (2), the Head of Department may, after consultation with the governing body, impose a suitable sanction on the learner.

(9) If the Head of Department decides not to impose a sanction on the learner, the Head of Department must refer the matter back to the governing body for an alternative sanction in terms of the code of conduct contemplated in section 8, other than expulsion.

(10) The *governing body* must implement the sanction contemplated in subsection (8)."

Substitution of section 35 of Act 84 of 1996

3. The following section is hereby substituted for section 35 of the South African Schools Act, 1996:

"Norms and standards for school funding [of public schools]

35. (1) Subject to the *Constitution* and *this Act*, the *Minister* must determine national quintiles for public schools and national norms and [minimum] standards for [the] school funding [of public schools] after consultation with the *Council of Education Ministers*[, **the Financial and Fiscal Commission**] and the *Minister of Finance*.

(2) The norms and standards for school funding contemplated in subsection (1) must-

- (a) set out criteria for the distribution of state funding to all *public schools* in a fair and equitable manner;
- (b) provide for a system in terms of which *learners* at all *public schools* can be placed into quintiles, referred to as national quintiles for *learners*, according to financial means;
- (c) provide for a system in terms of which all *public schools* in the Republic can be placed into quintiles referred to as national quintiles for *public schools*, according to the distribution of *learners* in the national quintiles for *learners*; and
- (d) determine the procedure in terms of which the *Member of the Executive Council* must apply the criteria contemplated in paragraph (a)

Amendment of section 39 of Act 84 of 1996

4. Section 39 of the South African Schools Act, 1996, is hereby amended by -

- (a) the substitution for subsection (2) of the following subsection:

"(2) A resolution contemplated in subsection (1) must provide for-

- (a) the amount of *schoolfees* to be charged; **[and]**
 - (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *schoolfees*[:]; and
 - (c) a school budget that reflects the estimated cumulative effect of-
 - (i) the established trends of non-payment of schoolfees and
 - (ii) the total partial or conditional exemptions granted to parents in terms of the regulations contemplated in subsection (4).
- and

- (b) the addition after subsection (4) of the following subsections:

"(5) No public school may charge any registration, administration or other fee, except schoolfees as defined in section 1.

(6) A *public school* may not charge a *parent* of a *learner* at that *school* different *schoolfees* based on curriculum or extramural curriculum within the same *grade*.

(7) Despite subsection (1), the *Minister* must by notice in the *Government Gazette* annually determine the national quintiles for *public schools* or part of such quintiles which must be used by the *Member of the Executive Council* to identify *schools* that may not charge *school fees*.

(8) The *Minister* may make a determination in terms of subsection (7) only if sufficient funding, not less than the *no fee threshold*, has been secured to fund *learners* at the *schools* affected by the determination.

(9) The *Member of the Executive Council* must identify and draw a list of all the *schools* contemplated in subsection (7) within his or her province.

(10) The *Minister* must-

- (a) consider the list of *schools* identified in terms of subsection (9);

- (b) compare the list with the determination contemplated in section 35(1); and
- (c) publish the list per *province*, in the Government Gazette if it complies with the determination.

(11) The *schools* contemplated in subsection (7) may, despite that subsection, charge *school fees* if they receive less than the *no fee threshold* from the provincial *education department*.

(12) The right of the *school* to charge *school fees* in terms of subsection (11) is limited to an amount equal to the sum obtained if the actual amount received from the State is deducted from the *no fee threshold*."

Amendment of section 41 of Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the substitution for section 41 of the following section:

"Enforcement of payment of school fees

41 (1) [The governing body of a] 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.

(2) The exemption from payment of *school fees* must be calculated according to the regulations contemplated in section 39(4).

(3) The exemption from payment of *school fees* in terms of *this Act* is calculated retrospectively from the date on which the *parent* qualifies for the exemption.

(4) A *public school* may act in terms of subsection (1) only after it has ascertained that-

- (a) the *parent* does not qualify for exemption from payment of *school fees* in terms of *this Act*;
- (b) deductions have been made in terms of regulations contemplated in section 39(4), for a *parent* who qualifies for partial exemption; and
- (c) the *parent* has completed and signed the form prescribed in the regulations contemplated in section 39(4).

(5) Despite subsection (4), a *public school* may act in terms of subsection (1) if--

- (a) that *school* can provide proof of a written notification to the *parent* delivered by hand or registered post that the *parent* has failed to apply for exemption contemplated in section 39; and
- (b) despite the notice contemplated in paragraph (a), the *parent* fails to pay the *school fees* after a period of three months from the date of notification.

(6) A *public school* may not attach the dwelling in which a *parent* resides.

(7) A *learner* may not be deprived of his or her right to participate in all aspects of the programme of a *public school* despite the non-payment of school fees by his or her *parent* and may not be victimised in any manner, including but not limited to the following conduct:

- (a) Suspension from classes;
- (b) verbal or non-verbal abuse;
- (c) denial of access to-
 - (i) cultural, sporting or social activities of the *school*; or
 - (ii) the nutrition programme of the school for those *learners* who qualify in terms of the applicable policy; or
- (d) denial of a *school* report or transfer certificate."

Insertion of section 58A in Act 84 of 1996

6. The South African Schools Act, 1996, is hereby amended by the insertion after section 58 of the following section:

"Alienation of assets of public school

58A. (1) The *Head of Department* has the right to compile or inspect an

inventory of all the assets of a public school.

(2) No person may alienate any assets owned by a *public school* to another person or body without the written approval of the *Member of the Executive Council*.

(3) Despite subsection (2), the *Member of the Executive Council* may-

- (a) determine that certain categories of assets below a certain value may be alienated without his or her written approval; and
- (b) determine and publish the value contemplated in paragraph (a) by notice in the Provincial Gazette.

(4) The assets of a *public school* may not be attached as a result of any legal action taken against the *school*.

Amendment of section 6 of Act 76 of 1998, as amended by section 15 of the Act 48 of 1999 and section 7 of Act 53 of 2000

7.(1) Section 6 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

(3)(a) Subject to paragraph (m), any appointment, promotion or transfer to 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 in excess and suitable for the post concerned .

(b) In considering the applications, the governing body or the council, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to-

- (i) the democratic values and principles referred to in section 7(1);
- (ii) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators ;
- (iii) any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet;
- (iv) a procedure whereby it is established that the candidate is registered or qualifies for registration as an educator with the South African Council for Educators; and
- (v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body or the council, as the case may be.

(c) The governing body or the council, as the case may be, must submit, in order of preference to the Head of Department, a list of-

- (i) at least three names of recommended candidates; or
- (ii) fewer than three candidates in consultation with the Head of Department .

(d) When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body or council, as the case may, has met the requirements in paragraph (b).

(e) If the governing body or council, as the case may be, has not met the requirements in paragraph (b), the Head of Department must decline the recommendation.

(f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable candidate on the list.

- (g) If the Head of Department declines a recommendation, he or she must -
- (i) consider all the applications submitted for that post;
 - (ii) apply the requirements in paragraph (b) (i) to (iv); and
 - (iii) despite paragraph (a), appoint a suitable candidate temporarily or re-advertise the post.

(h) The governing body or the council, as the case may be, may appeal to the Member of the Executive Council against the decision of the Head of Department regarding the temporary appointment contemplated in paragraph (g).

(i) The appeal contemplated in paragraph (h) must be lodged within 14 days of receiving the notice of appointment.

(j) The appeal must be finalised by the Member of the Executive Council within 30 days.

(k) If no appeal is lodged within 14 days, the Head of Department may convert the temporary appointment into a permanent appointment as contemplated in section 6B.

(l) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body or council, as the case may be, was requested to make a recommendation, failing which the Head of Department may, subject to paragraph (g), make an appointment without such recommendation.

(m) Until the relevant governing body or council, as the case may be, 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."

(2) Any vacant post that was advertised before the commencement of this section must be filled in terms of the provisions of the Employment of Educators Act, 1998, as it existed immediately before the commencement of this section if interviews in respect of the vacant post were held before such commencement.

Insertion of section 6B in Act 76 of 1998

8. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 6A of the following section:

"Conversion of temporary employment to permanent employment

6B. The Head of Department may, after consultation with the governing body of a public school or the council of a further education and training institution as the case may be convert the temporary appointment of an educator appointed to a post on the educator establishment of the public school or the further education and training institution into a permanent appointment in that post without the recommendation of the governing body or council, as the case may be."

Repeal of laws

9. The laws mentioned in the second column of the Schedule are hereby repealed to the extent indicated in the third column of that Schedule.

Short title

10. This Act is called the Education Laws Amendment Act, 2005.

SCHEDULE

LAWS REPEALED

(SECTION 9)

No and year of law	Short title	Extent of repeal
Act No. 25 of 1941	Higher Education (Amendment) Act, 1941.	The whole.
Act No. 18 of 1946	Higher Education (Amendment) Act, 1946.	The whole.
Act No. 9 of 1960	Matriculation Exemption Act, 1960.	The whole.
Act No. 82 of 1963	Orange Free State Study Bursary Fund Act, 1963.	The whole.
Act No. 73 of 1969	National Education Policy Amendment Act, 1969.	The whole.
Act No. 90 of 1970	National Study Loans and Bursaries Amendment Act, 1970.	The whole.
Act No. 60 of 1972	Educational Services Amendment Act, 1972.	The whole.
Act No. 5 of 1973	University Education (Agricultural and Veterinary Science Affairs) Act, 1973.	The whole.
Act No. 69 of 1973	Education Laws Amendment Act, 1973.	The whole.
Act No. 92 of 1974	National Education Policy Amendment Act, 1974.	The whole.
Act No. 17 of 1975	National Education Policy Amendment Act, 1975.	The whole.
Act No. 23 of 1978	National Study Loans and Bursaries Amendment Act, 1978.	The whole.
Act No. 25 of 1978	National Education Policy Amendment Act, 1978.	The whole.
Act No. 11 of 1981	Culture and Education Laws Amendment Act 1981	The whole.
Act No 106 of 1981	Vista University Act 1981	The whole
Act No. 16 of 1982	Education Services Amendment Act, 1982	The whole.
Act No. 6 of 1984	Education and Heraldry Laws Amendment Act 1984	The whole.
Act No. 57 of 1985	Universities and Technikons Advisory Council Amendment Act 1985	The whole.
Act No. 71 of 1985	Universities for Blacks, Technikons (Education and Training), Education, and Training Amendment Act 1985	The whole.
Act No. 8 of 1986	National Study Loans and Bursaries Act Repeal Act 1986	The whole.
Act No. 10 of 1986	National Policy for General Education Affairs Amendment Act 1986	The whole.
Act No 40 of 1993	Vista University Amendment Act 1993	The whole