

# BASIC EDUCATION LAWS AMENDMENT ACT

## BASIC EDUCATION LAWS AMENDMENT ACT 15 OF 2011

### 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.

*(Assented to 15 September 2011)*

### ACT

#### To amend-

- the National Education Policy Act, 1996, so as to amend or delete certain definitions;
- the South African Schools Act, 1996, so as to amend certain definitions and to define "loan"; to provide for consultation with the Minister of Finance before uniform minimum norms and standards are determined; to ensure that there is no unfair discrimination in respect of official languages; to provide for the

imposition of a suitable sanction if an appeal by a learner who had been expelled from a public school has been upheld by the Member of the Executive Council; to provide for public schools that provide education with a specialised focus on talent; to provide for additional functions of a principal of a public school; to provide for the training of governing bodies by recognised governing body associations; to prohibit political activities during school time; to empower the Member of the Executive Council to identify additional schools that may not charge school fees; and to further regulate the liability of the State for certain damages;

- the Employment of Educators Act, 1998, so as to amend certain definitions; and to regulate afresh the application of the said Act;
- the South African Council for Educators Act, 2000, so as to amend certain definitions; to empower the council to manage a system for the promotion of the continuing professional development of all educators; and to provide the council with funding from money appropriated by Parliament; and
- the General and Further Education and Training Quality Assurance Act, 2001, so as to amend certain definitions;

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 27 of 1996**

1. Section 1 of the National Education Policy Act, 1996, is hereby amended-
  - (a) by the substitution for the definition of "Director-General" of the following definition:

"Director-General" means the Director-General: Basic Education;"

- (b) by the substitution for the definition of "education institution" of the following definition:

"'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]** school contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996);"

- (c) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;" and

- (d) by the deletion of the definition of "student".

### **Amendment of section 3 of Act 27 of 1996, as amended by section 11 of Act 100 of 1997 and section 4 of Act 48 of 1999**

2. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution in subsection (4)(n) for the words preceding the proviso of the following words:

"control and discipline of **[students]** learners at education institutions".

### **Amendment of section 4 of Act 27 of 1996, as amended by section 12 of Act 100 of 1997**

3. Section 4 of the National Education Policy Act, 1996, is hereby amended-
- (a) by the substitution in paragraph (a) for subparagraph (v) of the following subparagraph:
- "(v) of every **[student]** learner to be instructed in the language of his or her choice where this is reasonably practicable;" and
- (b) by the substitution for paragraph (b) of the following paragraph:
- "(b) enabling the education system to contribute to the full personal development of each **[student]** learner, 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;".

### **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, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005 and section 4 of Act 31 of 2007**

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

"'loan' means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the governing body in terms of section 20(4) or (5);";

- (b) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education;"; and

- (c) by the substitution in subsection (1) for paragraph (a) of the definition of "parent" of the following paragraph:

"(a) the biological or adoptive parent or legal guardian of a learner.".

### **Amendment of section 5A of Act 84 of 1996, as inserted by section 5 of Act 31 of 2007**

5. Section 5A of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-".

### **Insertion of section 6B in Act 84 of 1996**

6. The following section is hereby inserted in the South African Schools Act, 1996, after section 6A:

"Non-discrimination in respect of official languages

6B. The governing body of a public school must ensure that-

- (a) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in section 21(1)(b); and
- (b) the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level."

**Amendment of section 9 of Act 84 of 1996, as amended  
by section 7 of Act 48 of 1999 and section 2 of Act 24 of  
2005**

7. Section 9 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

- "(11)(a) If an appeal in terms of subsection (4) by a learner who has been expelled from a public school is upheld by the Member of the Executive Council, the Member of the Executive Council must ensure that a suitable sanction is then imposed on the learner within 14 days of the date on which the appeal was upheld.
- (b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of subsections (8) and (9) apply with the changes required by the context."

## Amendment of section 12 of Act 84 of 1996

8. Section 12 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) A public school may be\_

(i) an ordinary public school [or];

(ii) a public school for learners with special education needs; or

(iii) a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

(b) Subject to the relevant provisions of this Act, the Minister must determine norms and standards for school funding and norms and standards for governance and educator provisioning for public schools contemplated in paragraph (a)(iii).".

## Amendment of section 16A of Act 84 of 1996, as inserted by section 8 of Act 31 of 2007

9. Section 16A of the South African Schools Act, 1996, is hereby amended by the deletion in subsection (2) of the word "and" at the end of paragraph (f), the insertion in that subsection of the word "and" at the end of paragraph (g) and the addition to that subsection of the following paragraphs:

"(h) assist the governing body with the management of the school's funds, which assistance must include-

(i) the provision of information relating to any conditions imposed or directions issued by the Minister, the Member of the Executive Council or the Head of Department in respect of all financial matters of the school contemplated in Chapter 4; and

(ii) the giving of advice to the governing body on the financial implications of decisions relating to the financial matters of the school;

(i) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school;

(j) be a member of a finance committee or delegation of the governing body in order to manage any matter that has financial implications for the school; and

(k) report any maladministration or mismanagement of financial matters to the governing body of the school and to the Head of Department."

## **Amendment of section 19 of Act 84 of 1996**

10. Section 19 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

"(3) The norms and standards for school funding must include-

(a) criteria for authorising a governing body association to perform the functions contemplated in subsection (4);



(b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the Head of Department in relation to the performance of the functions contemplated in subsection (4);

(c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and

(d) criteria for granting a governing body an allocation for contribution towards membership of a recognised governing body association.

(4) (a) The Head of Department may request a recognised governing body association or other appropriate training authority to train members of a governing body of a particular school or group of schools and to build the capacity contemplated in section 25(4).

(b) For the purposes of paragraph (a), the Head of Department-

(i) must enter into an agreement with the governing body association;

(ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and

(iii) may include a request for the training of members of a governing body of a school that is not a member of the governing body association requested to conduct the training in the agreement contemplated in subparagraph (ii)."

## Insertion of section 33A in Act 84 of 1996

11. The following section is hereby inserted in the South African Schools Act, 1996, after section 33:

"Prohibition of political activities during school time

33A.(1) No party-political activities may be conducted at a school during school time determined by the governing body of the school in terms of section 20(1)(f).

(2) The party-political activities contemplated in subsection (1) include, but are not limited to-

(a) campaigning;

(b) the conducting of rallies;

(c) the distribution of pamphlets and fliers; and

(d) the hanging or putting up of posters and banners.

(3) A member of a political party may not, for the purposes of conducting party-political activities, encroach on the school time.

(4) A school may not allow the display of material of a party-political nature on its premises unless such party-political material is related to the curriculum at the school."

## **Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001**

12. Section 36 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:
- "(4) (a) A governing body may, with the approval of the Member of the Executive Council-
- (i) lease, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and
  - (ii) allow any person to conduct any business on school property to supplement the school fund.
- (b) A governing body may not allow any activity on school property that is hazardous or disruptive to learners or prohibited by this Act.
- (5) For the purposes of subsection (4), 'school property' means immovable property owned by the State, including property contemplated in sections 13 and 55 and any immovable property bought by a school from the school funds or donations to the school."

## **Amendment of section 39 of Act 84 of 1996, as amended by section 4 of Act 24 of 2005**

13. Section 39 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

"(13) Subject to subsection (7), the Member of the Executive Council may, after consultation with the relevant governing bodies, annually by notice in the Provincial Gazette identify additional public schools within his or her province that, although they have not been included in the list of schools contemplated in subsection (10)(c), may not charge school fees.

(14) The schools contemplated in subsection (13) must be the schools that have been ranked as the poorest schools in that province falling outside the list of schools contemplated in subsection (10)(c).

(15) The Member of the Executive Council may act in terms of subsection (13) only if sufficient funding has been secured in the province to fund learners in the schools affected by such action.

(16) For the purposes of subsection (15), 'sufficient funding' means funding that is not less than the no fee threshold."

## **Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999 and section 12 of Act 31 of 2007**

14. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) Subject to paragraph (b), the State is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section."

## Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000 and section 58 of Act 16 of 2006

15. Section 1 of the Employment of Educators Act, 1998, is hereby amended-

- (a) by the substitution for the definition of "departmental office" of the following definition:

"'departmental office' means any office or institution controlled or administered by the Department of Basic Education or any provincial department of education, but does not include any public school **[or adult basic education centre]**";

- (b) by the substitution for the definition of "Department of Education" of the following definition:

"'Department of Basic Education' means the department established in terms of section 7(2), read with Schedule 1, of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for basic education at national level";

- (c) by the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General: Basic Education";

- (d) by the substitution for paragraph (a) of the definition of "employer" of the following paragraph:

"(a) an educator in the service of the Department of Basic Education, means the Director-General;"; and

(e) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Basic Education";.

### **Substitution of section 2 of Act 76 of 1998, as amended by section 58 of Act 16 of 2006**

16. The following section is hereby substituted for section 2 of the Employment of Educators Act, 1998:

"Application of Act

2. This Act applies in respect of the employment of educators at-

(a) public schools; and

(b) departmental offices."

### **Substitution of certain expressions in Act 76 of 1998**

17. The Employment of Educators Act, 1998, is hereby amended-

(a) by the substitution for the expression "Department of Education", wherever it occurs, of the expression "Department of Basic Education"; and

(b) by the substitution for the expression "adult basic education

and training", wherever it occurs, of the expression " adult education and training".

### **Amendment of section 1 of Act 31 of 2000, as amended by section 19 of Act 31 of 2007**

18. Section 1 of the South African Council for Educators Act, 2000, is hereby amended-

(a) by the substitution for the definition of "institution" of the following definition:

**"institution" means any school[, further education and training institution or adult learning centre] contemplated in the South African Schools Act, 1996 (Act No. 84 of 1996); and**

(b) by the substitution for the definition of "Minister" of the following definition:

**"Minister" means the Minister of Basic Education;".**

### **Amendment of section 5 of Act 31 of 2000**

19. Section 5 of the South African Council for Educators Act, 2000, is hereby amended by the substitution in paragraph (b) for subparagraph (iv) of the following subparagraph:

**"(iv) must manage a system for the promotion of the continuing professional development of all educators;".**

## Amendment of section 19 of Act 31 of 2000

20. Section 19 of the South African Council for Educators Act, 2000, is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

"(aA) money appropriated by Parliament;".

## Amendment of section 1 of Act 58 of 2001, as amended by section 8 of Act 1 of 2004 and section 2 of Act 50 of 2008

21. Section 1 of the General and Further Education and Training Quality Assurance Act, 2001, is hereby amended-

- (a) by the substitution for the definition of "department of education" of the following definition:

"department of education" means-

- (a) the [department] Department of Basic Education, which is responsible for school education at national level [or];
- (b) a department responsible for school education in a province; or
- (c) the Department of Higher Education and Training, which is responsible for further education and training colleges and adult education and training centres at national level;"

- (b) by the substitution for the definition of "Director-General" of the following definition:



"Director-General", in respect of functions relating to-

- (a) school education, means the Director-General **[of the department responsible for education at national level]**; Basic Education; and
- (b) further education and training colleges and adult education and training centres, means the Director-General: Higher Education and Training"; and
- (c) by the substitution for the definition of "Minister" of the following definition:

"Minister", in respect of functions relating to-

(a) school education, means the Minister of Basic Education; and

(b) further education and training colleges and adult education and training centres, means the Minister of Higher Education and Training;"

## Saving

22. The provisions of this Act must not be construed as limiting, amending, repealing or otherwise altering the administration and powers and functions entrusted by the legislation identified in item 1.7 of the Schedule to Proclamation No. 44 of 2009, published in Government Gazette No. 32367 of 1 July 2009, to the Minister of Higher Education and Training insofar as the administration and powers and functions pertain to further education and training colleges and adult education and training centres.

## Short title

23. This Act is called the Basic Education Laws Amendment Act, 2011.