

REPUBLIC OF SOUTH AFRICA

BASIC EDUCATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in
Government Gazette No. of) (The English text is the official text of the Bill)*

(MINISTER OF BASIC EDUCATION)

[B — 2021]

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.
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BILL**To amend—**

- **the South African Schools Act, 1996; to insert and amend certain definitions; to provide that attendance of grade R is compulsory; to amend the penalty provision in the case where the parent of a learner, or any other person, without just cause, prevents a learner who is subject to compulsory attendance from attending school, and to create an offence in respect of the interruption, disruption or hindrance of school activities; to enhance the authority of the Head of Department in relation to the admission of a learner to a public school, after consultation with the governing body of the school; to provide that the governing body of a public school must submit the admission and language policies of the public school to the Head of Department for approval; to provide that the South African Sign Language has the status of an official language for purposes of learning at a public school, and that the Head of Department may direct a public school to adopt more than one language of instruction, where it is practicable to do so, and that, if the Head of Department issues such a directive, he or she must take all necessary steps to ensure that the public school receives the necessary resources to enable it to provide adequate tuition in the additional language of instruction; to provide the Minister with the authority to appoint a person, an organisation or a group of persons to advise on curriculum and assessment related matters; to provide that the code of conduct of a public school must take into account the diverse cultural**

beliefs, religious observances and medical circumstances of learners at the school and to provide for the inclusion of an exemption clause in the code of conduct and for disciplinary proceedings to be dealt with in an age appropriate manner and in the best interests of the learner; to refine the provisions relating to the possession of drugs on school premises or during school activities and to provide for conditions under which liquor may be possessed, sold or consumed on school premises or during school activities; to refine the provisions relating to suspension and expulsion from public school by inserting a definition of serious misconduct; to provide for the prohibition of corporal punishment at school activities and at hostels accommodating learners of a school; to prohibit initiation practices during school activities; to provide for the designation of a public school as a public school with a specialised focus on talent; to further regulate the merger of public schools; to provide for the reasonable use of the facilities of a school for education-related activities without the charging of a fee or tariff; to provide for centralised procurement of identified learning and teaching support material for public schools; to further regulate the withdrawal of the functions of governing bodies; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the composition, and related matters, of governing bodies of schools for learners with special needs; to provide for the membership of a governing body of a public school that provides education with a specialised focus on talent, sports and performing or creative arts; to provide that the Head of Department may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions; to provide that a member of a governing body must declare a direct or indirect personal interest that he or she or his or her family member may have in the recruitment or employment of staff at a public school, or in the procurement of goods and services for a public school, and that the member of the governing

body must recuse himself or herself from a meeting of the governing body under such circumstances; to provide further clarity regarding the prohibition of the remuneration of members of governing bodies; to provide that it is the Minister, and not the Member of the Executive Council, who must make certain determinations in regard to the election of members of governing bodies of public schools; to provide that, where reasonably practicable, only a parent member of a governing body who is not employed by the public school may serve as chairperson of the finance committee; to make a technical amendment in regard to the status of learners serving on governing bodies of public schools; to extend and refine the provisions relating to the closure of a public school; to provide that lease agreements relating to a school's immovable property must be submitted to the Member of the Executive Council for approval and that, in the case of a lease for a period not exceeding 12 months, the approval of the Member of the Executive Council is not required; to further regulate and refine matters relating to the budget of a public school; to further regulate the circumstances under which a governing body may pay additional remuneration, or give any other financial benefit or benefit in kind, to a state employee; to provide that, where the parent of a learner applies for exemption from the payment of school fees and information cannot be obtained from the other parent of the learner, the parent may submit documentary evidence in the form of an affidavit or court order in relation to the other parent; to provide for financial record keeping by the governing body of a public school, for the drawing up of financial statements, and for the presentation of these to a general meeting of parents; to extend the powers of the Head of Department to conduct an investigation into the financial affairs of a public school and to provide that the governing body of a public school must submit quarterly reports on all income and expenditure to the Head of Department; to increase the penalty provision in the case where a person establishes or maintains an

independent school and fails to register it; to empower the Member of the Executive Council to determine conditions when granting a subsidy to an independent school and to provide for financial reporting, by such subsidised independent schools; to further regulate home education; to create an offence where a parent supplies a public school with false or misleading information or forged documents when applying for the admission of a learner or for exemption from the payment of school fees; to provide for a dispute resolution mechanism in the event of a dispute between the Head of Department or the Member of the Executive Council and a governing body; to further regulate the liability of the State for delictual or contractual damages; to extend the power of the Minister to make regulations and to provide for offences to be created in regulations made by the Minister; to amend the Preamble; and to provide for matters incidental thereto; and

- the Employment of Educators Act, 1998, so as to amend certain definitions; to exclude further education and training centres, adult basic education centres and institutions, from the ambit of the Act; to prohibit an educator from conducting business with the State and to create an offence in relation thereto; to extend the powers of the Minister to make regulations; and to provide for matters incidental thereto.

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, section 1 of Act 50 of 2002, section 1 of Act 24 of 2005, section 4 of Act 31 of 2007, and section 4 of Act 15 of 2011

1. Section 1 of the South African Schools Act, 1996, is hereby amended—

(a) by the insertion in subsection (1) before the definition of "*Constitution*" of the following definitions, respectively:

" ***'basic education'*** means grade R to grade 12, as evidenced in the National Curriculum Statement;

'benefit in kind' means any benefit offered or afforded to an employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is not a monetary benefit, including, but not limited to—

(a) exclusive private usage or ownership of a vehicle;

(b) free accommodation;

(c) free phone, including a cell phone;

(d) free holiday;

(e) groceries to the benefit of the employee; or

(f) garden services;

'competent assessor' means an educator registered with the South African Council for Educators as defined in the South African Council for Educators Act, 2000 (Act No. 31 of 2000), or a person or body registered with the South African Qualifications Authority as defined in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);";

(b) by the substitution in subsection (1) for the definition of "*Constitution*" of the following definition:

" **'Constitution'** means the Constitution of the Republic of South Africa, 1996 **[(Act 108 of 1996)]**";

- (c) by the insertion in subsection (1) after the definition of "*Constitution*" of the following definition:

" **'corporal punishment'** means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to—

(a) hitting, smacking, slapping, pinching or scratching with the hand or any object;

(b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and

(c) forcing children to stay in uncomfortable positions, forced ingestion, washing children's mouths out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child's use of the toilet;"

- (d) by the insertion in subsection (1) after the definition of "dangerous object" of the following definitions, respectively:

" **'Department of Basic Education'** means the national 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*;

'drug' means any—

(a) intoxicating or stupefying substance that has a psychological or physiological effect;

(b) substance that has the effect contemplated in paragraph (a) and that is possessed contrary to the code of conduct of a school or contrary to the laws of the country;

(c) substance, the possession or use of which, or the dealing in which, is prohibited without a medical prescription or legal authorisation; or

(d) performance-enhancing drug, prohibited performance-enhancing substance, dependence-producing substance, dangerous dependence-producing substance, undesirable dependence-producing substance, unlawful substance, prohibited substance, illicit substance, illicit drug, or scheduled substance,

contemplated in any South African legislation that deals with the control of medicines and related substances, with drug trafficking, substance abuse in general, and with substance abuse in sport and in any programmes or policies aimed at curtailing social and sport-related substance abuse, and in any international instruments that deal with such matters and to which South Africa subscribes or is a party;"

(e) by the insertion in subsection (1) after the definition of "education department" of the following definition:

" **'education district'** means a district in an area of a province which is demarcated by the *Member of the Executive Council* for administrative purposes;"

(f) by the insertion in subsection (1) after the definition of "grade" of the following definition:

" **'grade R'** means the Reception grade;"

(g) by the insertion in subsection (1) after the definition of "Head of Department" of the following definition:

" **'home education'** means a purposeful programme of education for a learner, alternative to school attendance, which—

(a) is provided under the direction of the learner's parent, primarily in the environment of the learner's home;

(b) may include tutorial or other educational support, if necessary, secured by the parent on specific areas of the curriculum followed by the learner; and

(c) meets the requirements for *home education* contemplated in section 51 of this Act;

(h) by the deletion in subsection (1) of the definition of "*illegal drug*";

(i) by the insertion in subsection (1) after the definition of "learner" of the following definition:

" **'liquor'** means liquor as defined in section 1 of the Liquor Act, 2003 (Act No. 59 of 2003);"

(j) by the substitution in subsection (1) for the definition of "loan" 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 employees appointed by the governing body in terms of section 20(4) or (5), or operational costs as determined in the annual budget contemplated in section 38;"

(k) by the insertion in subsection (1) after the definition of "officer" of the following definition:

" **'other financial benefit'** means any benefit of a monetary nature, including, but not limited to—

(a) exemption from the payment of school fees to the school in respect of the child of an employee, but excluding exemption in terms of the provisions of sections 39 to 41;

(b) a credit card linked to an employee for his or her personal use; or

(c) a petrol card linked to an employee for his or her personal use not related to any school activity;"

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

"(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]**;"; and

(m) by the insertion in subsection (1) after the definition of "registrar of deeds" of the following definition:

" **'required documents'** for learners shall have the following meaning in relation to the following categories of learners—

(a) where at least one or both biological or adoptive parents of a learner are South African citizens, the following documents—

(i) an unabridged Birth Certificate of the learner;

(ii) an immunisation certificate issued in the name of the learner;

(iii) the South African identity documents or cards of the learner's parents; and

(iv) where either or both parents are deceased, the relevant death certificates;

(b) where both parents of the learner are foreign nationals and hold either permanent residence permits or temporary residence visas, the following documents—

(i) the learner's foreign issued birth certificate;

(ii) the learner's passport;

(iii) a study visa or permanent residence permit issued to the learner;

(iv) an immunisation certificate in the name of the learner;

(v) the parents' passports; and

(vi) the parents' temporary residence visas or permanent residence permits;

(c) where the parents of the learner are refugees or asylum seekers, the following documents—

(i) the parent's asylum seeker or refugee visa;

(ii) the learner's asylum seeker or refugee visa;

(iii) an immunization certificate issued in the name of the learner;

(iv) the learner's birth certificate if the learner was born in the Republic;

and

(v) where asylum seeker visas are provided, a refugee or long term study visa must be provided within three years of admission of the

learner; and

(d) where the learner is in alternative care, the following documents—

(i) the relevant court order granting guardianship or custody;

(ii) an immunisation certificate issued in the name of the learner; and

(iii) the learner's unabridged birth certificate."

Amendment of section 3 of Act 84 of 1996

2. Section 3 of the South African Schools Act, 1996, is hereby amended—

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

"(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, starting from grade R on [from] the first school day of the year in which such learner reaches the age of **[seven]** six years and not leaving school until the last school day of the year in which such learner reaches the age of **[fifteen]** 15 years or [the ninth] will complete grade nine, whichever occurs first: Provided that a learner who will turn six after 30 June must start attending grade R the following year.";

(b) by the substitution for subsection (6) of the following subsection:

"(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] 12 months, or to both such fine and such imprisonment;** 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] 12 months, or to both such fine and such imprisonment.**";
- and

- (c) by the addition of the following subsection:

"(7) Any person who, unlawfully and intentionally interrupts, disturbs, or hinders any school activity, or hinders or obstructs any school in the performance of the school's activities is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment."

Insertion of section 4A in Act 84 of 1996

3. The following section is hereby inserted in the South African Schools Act, 1996, after section 4:

"Monitoring learner attendance

4A. (1) The educator, principal and governing body is responsible for promoting and monitoring the attendance of learners at school.

(2) The governing body must ensure that the code of conduct for learners contains rules dealing with punctuality and regular school attendance.

(3) If a learner is absent for three consecutive school days without valid reason, the class teacher concerned must report the absence to the principal.

(4) The principal must, within 24 hours after being informed of the

absence, investigate the matter by making reasonable effort to contact the *parent* of the *learner* by whatever means are suitable for the circumstances of the school and the family concerned and report the matter to the *governing body* of the *school* for further *intervention*."

Amendment of section 5 of Act 84 of 1996, as amended by section 2 of Act 50 of 2002

4. Section 5 of the South African Schools Act, 1996, is hereby amended—

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

"(1) A public school must admit, and provide education to, learners and *must* serve their educational requirements *for the duration of their school attendance* without unfairly discriminating in any way."

(b) by the insertion after subsection (1) of the following subsections:

"(1A) In facilitating the admission of learners to public schools, the *Minister* must establish a National Intergovernmental Committee within 12 months after the commencement of the Basic Education Laws Amendment Act, 2021.

(1B) The *Member of the Executive Council* must establish a Provincial Intergovernmental Committee within 12 months after the commencement of the Basic Education Laws Amendment Act, 2021.

(1C) The function of the National Intergovernmental Committee and a Provincial Intergovernmental Committee shall include providing assistance to public schools that refer cases of learners who have not submitted the required documents to the school, and such assistance shall include acquiring the missing required documents of in respect of such learners.

(1D) The National Intergovernmental Committee and Provincial Intergovernmental Committee will include representatives at the level of Chief Director from the Departments including the—

- (a) Department of Basic Education,
- (b) Department of Social Development,
- (c) Department of Home Affairs,
- (d) Department of Justice and Constitutional Development;
- (e) South African Police Services,
- (f) Department of Employment and Labour,
- (g) Department of International Relations and Co-operative Affairs,
- (h) Department of Health;
- (i) National Treasury; and
- (j) Department Statistics South Africa.

(1E) The meetings of the National Intergovernmental Committee must be chaired by the Director-General and the meetings of the Provincial Intergovernmental Committee must be chaired by the Head of Department or a person designated as prescribed.

(1F) Any learner whose parent, guardian or caregiver has not provided any required documents whether of the learner or such adult person acting on behalf of the learner, during the application for admission, shall nonetheless be allowed to attend school, and the principal of the school must advise the parent, guardian or caregiver to secure the required documents and alert the Provincial Intergovernmental Committee thereof.

(1G) Any parent, guardian or caregiver who refuses to cooperate in securing the required documents on behalf of any relevant learner or themselves, is guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.";

- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The admission age of a learner to a public school to *grade R* is age four turning five by 30 June in the year of admission: Provided that, if a school has limited capacity for admission in *grade R*, preference must be given to learners who are subject to compulsory attendance.";

(d) by the substitution for subsection (5) of the following subsection:

"(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*: Provided that—

(a) the Head of Department, after consultation with the *governing body* of the school, has the final authority, subject to subsection (9), to admit a learner to a public school;

(b) the *governing body* must submit the admission policy of a public school and any amendment thereof to the Head of Department for approval;

(c) the Head of Department may approve the admission policy of a public school or any amendment thereof, or may return it to the *governing body* with such recommendations as may be necessary in the circumstances, together with reasons for such recommendations;

(d) the Head of Department, when considering the admission policy or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the needs, in general, of the broader community in the *education district* in which the public school is situated, and must take into account factors including, but not limited to—

(i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;

(ii) whether there are other schools in the community that are accessible to learners;

(iii) the available resources of the school and the efficient and effective use of state resources; and

(iv) the space available at the school for learners; and

(e) the governing body must review the admission policy determined in terms of this section every three years or whenever the factors referred to in paragraph (d) have changed when circumstances so require, or at the request of the Head of Department.";

(e) by the insertion after subsection (5) of the following subsections:

"(5A) The governing body of each public school must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2021, submit the admission policy of that public school to the Head of Department for approval.

(5B) The Head of Department must respond to the governing body as contemplated in subsection (5)(c) and subsection (5A) within 60 days after receiving the admission policy, failing which, the admission policy will be regarded as having been approved by the Head of Department.

(5C) When a public school has, as contemplated in subsection (5)(b) and subsection (5A), submitted its admission policy to the Head of Department, such admission policy will be regarded as the valid admission policy of the school during the 60 day period referred to in subsection (5B), or, if the Head of Department responds to the school's request for approval of the admission policy before the end of the 60 day period, until the earlier date on which the Head of Department responds.

(5D) The governing body of each public school must, after the commencement of the Basic Education Laws Amendment Act, 2021, submit any amendment to the admission policy to the Head of Department for approval, and the Head of Department must respond within 30 days after receiving the

amendment, failing which, the amendment will be regarded as having been approved by the Head of Department."

(f) by the substitution for subsection (9) of the following subsection:

"(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 within 14 days of receiving the notification of the refusal of admission to a public school."; and

(g) by the addition of the following subsections:

"(10) If an appeal contemplated in subsection (9) has been received, the Member of the Executive Council must, within 14 days after receiving such an appeal, consider and decide on the matter and inform the learner or the parent of the learner of the outcome of the appeal.

(11) If the governing body is not satisfied with the decision of the Head of Department as contemplated in subsection (5)(c), the governing body may appeal against the decision to the Member of the Executive Council within 14 days after receiving the decision of the Head of Department.

(12) If an appeal contemplated in subsection (11) has been received, the Member of the Executive Council must, within 14 days after receiving such appeal, consider and decide on the matter and inform the governing body of the outcome of the appeal.

(13) While the Member of the Executive Council considers the appeal, the admission policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process."

Amendment of section 6 of Act 84 of 1996

5. Section 6 of the South African Schools Act, 1996, is hereby amended—

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

"(2) The *governing body* of a *public school* may, subject to subsection (13), determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law: Provided that the language policy of a *public school* must be limited to one or more of the official languages of the Republic as provided in section 6(1) of the Constitution.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) **[A recognised]** South African Sign Language has the status of an official language for purposes of learning at a public school."; and

(c) by the addition of the following subsections:

"(5) The *governing body* must submit the language policy of a *public school* and any amendment thereof to the Head of Department for approval.

(6) The Head of Department may approve the language policy of a *public school* or any amendment thereof, or may return it to the *governing body* with such recommendations as may be necessary in the circumstances, together with reasons for such recommendations.

(7) The Head of Department, when considering the language policy of a *public school* or any amendment thereof for approval, must be satisfied that the policy or the amendment thereof takes into account the language needs, in general, of the broader community in the *education district* in which the public school is situated, and must take into account factors including, but not limited to—

(a) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution* and equity;

(b) section 6(2) of the *Constitution*;

(c) section 29(2) of the *Constitution*;

(d) the changing number of learners who speak the language of learning and teaching at the public school;

(e) the need for effective use of classroom space and resources of the public school; and

(f) the enrolment trends of the public school.

(8) The *governing body* must review the language policy determined in terms of this section every three years or whenever the factors referred to in subsection (7) have changed, when circumstances so require, or at the request of the Head of Department.

(9) The *governing body* of each public school must, within 30 days after the commencement of the Basic Education Laws Amendment Act, 2021, submit the language policy of that public school to the Head of Department for approval.

(10) The Head of Department must respond to the *governing body* as contemplated in subsection (6) within 60 days after receiving the language policy, failing which, the language policy will be regarded as having been approved by the Head of Department.

(11) When a *public school* has, as contemplated in subsection (5) and subsection (9), submitted its language policy to the Head of Department, such language policy will be regarded as the valid language policy of the school during the 60 day period referred to in subsection (10), or if the Head of Department responds to the school's request for approval of the language policy before the end of the 60 day period, until the earlier date on which the Head of Department responds.

(12) The governing body of each public school must, after the commencement of the Basic Education Laws Amendment Act, 2021, submit any amendment to the language policy to the Head of Department for approval, and the Head of Department must respond within 30 days after receiving the amendment, failing which, the amendment will be regarded as having been approved by the Head of Department.

(13) Notwithstanding the provisions of subsection (2), the Head of Department may, where it is practicable to do so and subject to subsection (7), direct a public school to adopt more than one language of instruction.

(14) The Head of Department, in determining whether it is practicable for a public school to have more than one language of instruction, must take into account factors including, but not limited to—

- (a) the best interests of the child, with emphasis on equality as provided for in section 9 of the Constitution and equity;
- (b) the changing number of learners who speak the language of learning and teaching at the public school;
- (c) the need for effective use of classroom space and resources of the public school; and
- (d) the language needs, in general, of the broader community in the education district in which the public school is situated.

(15) The Head of Department may not act in terms of subsection (13) unless he or she has—

- (a) in writing, informed the school and the governing body of his or her intention to act as contemplated in subsection (13) and his or her reasons therefor;

(b) notified the parents associated with the school, and the community in which the school is situated, of his or her intention so to act and the reasons therefor—

(i) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area;

(ii) by causing the principal of the school to—

(aa) hand to every learner a notice containing the relevant information; and

(bb) instruct the learners to hand the notice to their parents; and

(iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;

(c) granted the school, the governing body, the parents associated with the school, and the community in which the school is situated, a reasonable opportunity to make representations to him or her in relation to such action;

(d) conducted a public hearing, on reasonable notice, to enable the community to make representations to him or her in relation to such action; and

(e) given due consideration to any such representations received.

(16) The Head of Department must—

(a) inform the school and the governing body of his or her decision contemplated in subsection (13) and his or her reasons therefor; and

(b) by means of the methods listed in subsection (15)(b), notify the parents associated with the schools, and the communities in which the schools are situated, of the decision.

(17) If the Head of Department acts in terms of subsection (13), he or she must, before his or her directive is implemented, take all necessary steps to

ensure that the public school concerned receives the necessary resources, including, but not limited to—

(a) educators; and

(b) learning and teaching support material,

to enable that public school to provide adequate tuition in the additional language or languages of instruction.

(18) If the governing body is not satisfied with the decision of the Head of Department as contemplated in subsection (6), or with a directive contemplated in subsection (13), the governing body may appeal against the decision or the directive, as the case may be, to the Member of the Executive Council within 14 days after receiving the decision or the directive, as the case may be.

(19) If an appeal contemplated in subsection (18) has been received, the Member of the Executive Council must, within 14 days after receiving such appeal, consider and decide on the matter and inform the governing body of the outcome of the appeal.

(20) While the Member of the Executive Council considers the appeal, the language policy shall remain valid and applicable, and only the provisions that are the subject of the appeal shall be suspended pending the finalisation of the appeal process."

Amendment of section 6A of Act 84 of 1996, as inserted by section 3 of Act 50 of 2002

6. Section 6A of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

"(3) The Minister may, in writing, appoint a person, an organisation or a group of persons to advise him or her in regard to the determination contemplated in subsection (1)."

Amendment of section 8 of Act 84 of 1996, as amended by section 4 of Act 50 of 2002, and section 6 of Act 31 of 2007

7. Section 8 of the South African Schools Act, 1996, is hereby amended—

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

"(1) Subject to the Constitution, this Act and 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*.";

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

"(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, taking into account the diverse cultural beliefs, religious observances and medical circumstances of the learners at the school.";

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

"(4) (a) 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.

(b) Despite paragraph (a), the code of conduct must contain an exemption provision in terms of which a learner, or the parent of a learner, may apply to the governing body for exemption of that learner from complying with certain provisions of the code of conduct on just cause shown.

(c) On receiving an application contemplated in paragraph (b), the school governing body must communicate its decision to the learner, or the parent of the learner, as the case may be, within 14 days after receiving the application, and must in the case of a refusal provide written reasons for the refusal.

(d) A learner, or the parent of a learner, who has been refused exemption as contemplated in paragraph (c) may, within 14 days of receiving the notice of the decision, appeal to the Head of Department against the decision of the governing body, and the Head of Department must, after considering the reasons for the appeal and the reasons for the refusal by the governing body, communicate his or her decision to the learner or the parent of the learner, as the case may be, and to the governing body, within 14 days after receiving the appeal, and must provide written reasons for his or her decision.";

and

(d) by the addition to subsection (5) of the following paragraph:

"(c) The disciplinary proceedings referred to in this subsection must be age appropriate, must be conducted in the best interests of the learner, and must adhere to the principles of natural justice, fairness and reasonableness prescribed by the Constitution."

Amendment of section 8A of Act 84 of 1996, as inserted by section 7 of Act 31 of 2007

8. Section 8A of the South African Schools Act, 1996, is hereby amended—

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

"(1) (a) Unless authorised by the principal for legitimate educational purposes, no person may bring a dangerous object or **[illegal]** a drug

onto school premises or have such dangerous object or *drug* in his or her possession on school premises or during any school activity.

(b) No person may bring *liquor* onto *public school* premises, or have *liquor* in his or her possession, or consume or sell *liquor* on *public school* premises, or during any *public school* activity.

(c) Notwithstanding the prohibition contemplated in paragraph (b)—

(i) the Head of Department may, upon application from the *governing body* to supplement the resources of the *school*, permit the possession, consumption or sale of *liquor* during any *school* activity, whether it is held on or away from the *school's* premises; and

(ii) the *governing body* of a *public school* may, upon receipt of an application from any person and in consultation with the Head of Department, permit the possession, consumption or sale of *liquor* during any private or religious function held on the *school's* premises: Provided that such possession, consumption or sale may not take place during *school* hours: Provided further that the *governing body* of a *public school*, in consultation with the Head of Department, may attach certain restrictions to the granting of such permission.

(d) The permission contemplated in paragraph (c) relates to—

(i) fund-raising activities of the *school* by the *governing body*;

(ii) the letting of the *school's* premises to members of the community for private functions, church services and the like, in order to augment the *school* fund;

(iii) functions held for the staff of the *school*; and

(iv) instances where staff members live on *school* premises in living quarters provided by the *school*: Provided that the *governing body* of the public

school, in consultation with the Head of Department, may attach to the possession and consumption of liquor in the living quarters of staff members, such restrictions over and above those contemplated in paragraph (c).

(e) In deciding whether or not to grant permission as contemplated in paragraphs (c) and (d), and whether or not to attach restrictions as contemplated in paragraph (c), the governing body of a public school, in consultation with the Head of Department, must take into account at least the following factors:

- (i) Whether the school will be able to provide a staff member delegated by the principal, or a person delegated by a governing body, to monitor the function so as to ensure that liquor is not consumed irresponsibly and is not served to already intoxicated persons, and that the restrictions contemplated in this paragraph and in paragraphs (c) and (g)(ii) are adhered to;
- (ii) whether children will be present at the function; and
- (iii) if children will be present, whether the organisers are willing to give a written undertaking to ensure that liquor will not be available to children.

(f) In all decisions taken in terms of paragraphs (c), (d) and (e), the best interests of the child must remain paramount and the principle to be applied is that of protecting children from exposure to harmful practices such as the irresponsible consumption of liquor.

(g) The possession, consumption or sale of liquor as contemplated in this section is subject to—

- (i) the Liquor Act, 2003 (Act No. 59 of 2003), and any conditions imposed in terms of that Act; and

(ii) any restrictions imposed by the governing body of a public school, in consultation with the Head of Department, as contemplated in paragraph (e).";

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

"(2) Subject to subsection (3), the *principal* or his or her delegate may, at random, search a learner or any group of *learners*, or the property of a learner or group of learners, for any liquor, dangerous object or **[illegal]** *drug*, if a fair and reasonable suspicion has been established—

(a) that liquor, a dangerous object or **[an illegal]** a drug may be found on *school* premises or during a *school activity*; or

(b) that one or more *learners* on *school* premises or **[during]** at a *school activity* are in possession of liquor, dangerous objects or **[illegal]** *drugs*.";

(c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

"(5) Any liquor, dangerous object or **[illegal]** *drug* that has been seized must be—";

(d) by the substitution for subsection (6) of the following subsection:

"(6) If the police cannot collect the liquor, dangerous object or **[illegal]** *drug* from the *school* immediately, the *principal* or his or her delegate must—

(a) take the liquor, dangerous object or **[illegal]** *drug* to the nearest police station; and

(b) hand the liquor, dangerous object or **[illegal]** *drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).";

(e) by the substitution for subsection (7) of the following subsection:

"(7) The police officer who receives the liquor, *dangerous object* or **[illegal]** *drug* must issue an official receipt for it to the *principal* or to his or her delegate.";

(f) by the substitution for subsection (8) of the following subsection:

"(8) The principal or his or her delegate may at random administer a urine or other non-invasive test to any learner or group of learners that is on fair and reasonable grounds suspected of using liquor or **[illegal]** *drugs*, after taking into account all relevant factors contemplated in subsection (3).";

(g) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

"(9) A learner contemplated in subsection (8) may be subjected to a urine or other non-invasive test for liquor or **[illegal]** *drugs* only if —";

(h) by the substitution for subsection (12) of the following subsection:

"(12) A learner may be subjected to disciplinary proceedings if—

(a) liquor, a *dangerous object* or **[illegal]** any drug is found in his or her possession; or

(b) his or her sample tested positive for liquor or **[an illegal]** any drug."; and

(i) by the substitution in subsection (14) for paragraph (a) of the following paragraph:

"(a) a search contemplated in subsection (2) was conducted and liquor, a *dangerous object* or **[illegal]** any drug was found; or".

Amendment of section 9 of Act 84 of 1996, as amended by section 7 of Act 48 of 1999, section 2 of Act 24 of 2005, and section 7 of Act 15 of 2011

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

"(1) (a) The governing body may, on reasonable grounds and as a precautionary measure, suspend a learner who is suspected of serious misconduct from attending school, but may **[only]** enforce such suspension only after the learner has been granted a reasonable opportunity to make representations to it in relation to such suspension.

(b) Serious misconduct by a learner is defined as—

- (i) physical assault of a learner, employee, or other person related to the school, with the intention to cause grievous bodily harm, or the imminent threat to commit such an act, while on school premises or during any school activity, or in any circumstance that could reasonably be connected to the school;
- (ii) any form of harassment, including sexual harassment of a learner, employee or other person related to the school, including via electronic and social media;
- (iii) repeated offences related to bullying, or the imminent threat to commit such an act;
- (iv) the illegal possession of a *drug or liquor*;
- (v) the repeated disruption of the school programme, or the imminent threat to commit such an act;
- (vi) serious transgressions relating to any test, examination, or examination paper;
- (vii) fraud;
- (viii) theft or any other dishonest act to the prejudice of another person;
- (ix) the possession of a dangerous object while on school premises, or during any school activity, or in any circumstance that could reasonably be connected to the school;
- (x) the possession or distribution of pornographic material;
- (xi) engaging in sexual activity on school premises or committing an act of sexual assault, or the imminent threat to commit such an act; and

(xii) any other serious act contemplated in Schedule 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that prejudices the constitutional rights of learners, employees or other persons related to the school."

Amendment of section 10 of Act 84 of 1996

10. Section 10 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) **[No]** Corporal punishment is abolished and no person may **[administer]** inflict or impose corporal punishment **[at a school]** to a learner at a school, during a school activity, or in a hostel accommodating learners of a school.

(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]** fine or to imprisonment."

Amendment of section 10A of Act 84 of 1996, as inserted by section 5 of Act 50 of 2002

11. Section 10A of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A person may not conduct or participate in any initiation practices against a learner at a school, during a school activity, or in a hostel accommodating learners of a school."

Amendment of section 12 of Act 84 of 1996, as amended by section 8 of Act 15 of 2011

12. Section 12 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsections:

"(3A) The governing body of a public school may, in writing, apply to the Member of the Executive Council for the public school to be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3B) The Head of Department may, after consultation with the governing body of a public school, identify the school and recommend to the Member of the Executive Council that the school should be designated as a public school with a specialised focus on talent as contemplated in subsection (3)(a)(iii).

(3C) The Member of the Executive Council may, in writing, designate a public school from which an application contemplated in subsection (3A) has been received, and a school identified and recommended as contemplated in subsection (3B), as a school with a specialised focus on talent as contemplated in subsection 3(a)(iii), if it is in the interest of education in the province and if the school complies with the norms and standards determined by the Minister in terms of subsection (3)(b).

(3D) Before designating a public school as a school with a specialised focus on talent as contemplated in subsection 3(a)(iii), the Member of the Executive Council must—

(a) give written notice to the school in question, and to its governing body, of the intention to designate the public school as a school with a specialised focus on talent and of the reasons therefor;

(b) notify the parents associated with the school, and the community in which the school is situated, of the intention to designate the public school as a school with a specialised focus on talent and of the reasons therefor—

(i) by means of a notice in at least one newspaper circulating in the area where the school in question is situated, if any newspapers circulate in that area;

(ii) by causing the principal of the school in question to—

- (aa) hand to every learner at the school a notice containing the relevant information; and
- (bb) instruct the learners to hand the notice to their parents; and
- (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
- (c) give the school in question, and its governing body, and any other interested persons, an opportunity to make representations within a period of not less than 90 days from the date of the notices and communication referred to in paragraph (b);
- (d) give due consideration to any such representations received; and
- (e) be satisfied that the employers of staff at the public school have complied with their obligations in terms of the applicable labour law."

Amendment of section 12A of Act 84 of 1996, as inserted by section 8 of Act 48 of 1999

13. Section 12A of the South African Schools Act, 1996, is hereby amended—

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

"(2) Before merging two or more *public schools*, the *Member of the Executive Council* must—

- (a) give written notice to the schools in question, and to their governing bodies, of the intention to merge them and of the reasons therefor;
- (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]** notify the parents associated with the schools, and the communities in which the schools are situated, of the intention to merge the schools and of the reasons therefor—

- (i) by means of a notice in at least one newspaper circulating in the area where the schools in question are situated, if any newspapers circulate in that area; and
 - (ii) by causing the principals of the schools in question to—
 - (aa) hand to every learner at each school a notice containing the relevant information; and
 - (bb) instruct the learners to hand the notice to their parents; and
 - (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
 - (c) give the **[governing bodies of the]** schools in question, and their governing bodies, 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]** notices and communication referred to in paragraph (b);
 - (d) **[consider]** give due consideration to any such representations received; 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.";
- (b) by the insertion after subsection (2) of the following subsection:

"(2A) (a) The Member of the Executive Council must, within 30 days after receiving the representations referred to in subsection (2)(c), take a decision on whether or not to go ahead with the merger, and—

- (i) in writing, inform the schools in question, and their governing bodies, of the decision; and
- (ii) by means of the methods listed in subsection (2)(b), notify the parents associated with the schools, and the communities in which the schools are situated, of the decision.

(b) If the Member of the Executive Council fails to act in terms of paragraph (a), the contemplated merger will be deemed to have lapsed.

(c) If the decision of the Member of the Executive Council is to go ahead with the merger, he or she must ensure that the merger is proceeded with within 30 days after giving notice as contemplated in paragraph (a).";

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

"(4) (a) If the Member of the Executive Council decides to merge the public schools in question, he or she must, after consultation with the governing bodies of the public schools that are to be merged, determine, by notice contemplated in subsection (1)—

(i) the date of establishment of the public school;

(ii) the name of the public school; and

(iii) the physical location and official address of the public school.

(b) The single school contemplated in subsection (1) must be regarded as a new public school.";

(d) by the substitution for subsection (6) of the following subsection:

"(6) (a) **[The]** After the notice as contemplated in subsection (4)(a) has been published, the governing bodies of the schools that are to be 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, which single interim governing body will govern the new school for a period not exceeding three months.

(b) The interim governing body must—

(i) elect office bearers;

(ii) decide on the budget **[and]**;

(iii) reach consensus about differences in codes of conduct and school fees[,] and, if applicable, about contractual obligations and the utilisation and disposal of movable assets; and

(iv) make recommendations to the Head of Department on personnel matters, as well as on any issue that is relevant to the merger or which is prescribed in terms of this Act,

until a new governing body is constituted in terms of sections 23 and 28.

(c) The Member of the Executive Council may extend the period referred to in paragraph (a) once for a further period not exceeding three months."; and

(e) by the addition of the following subsections:

"(8) A merger contemplated in subsection (1) does not affect the liability of any person to be disciplined or prosecuted for any misconduct, crime or offence.

(9) A learner is subject to the code of conduct applicable to the new single public school as from the date of the merger contemplated in subsection (1), but if any proceedings in respect of a charge of misconduct had been instituted or commenced before the date of the merger, such proceedings must continue in terms of the code of conduct relevant to the public school immediately before the merger.

(10) The new single public school or the Head of Department, as the case may be, may undertake rationalisation or redeployment of its workforce according to operational requirements in accordance with sections 189 and 189A of the Labour Relations Act, 1995 (Act No. 66 of 1995), the Employment of Educators Act, 1998 (Act No. 76 of 1998), and any ratified collective agreement that deals with the rationalisation or redeployment of a workforce.

(11) If two or more public schools are merged into a single public school in terms of subsection (1), the new single public school continues with all academic programmes offered by the former public schools under the programmes applicable to the respective public schools immediately before the date of the merger, until such programmes are amended or restructured by the governing body or education department, where applicable."

Amendment of section 18A of Act 84 of 1996, as inserted by section 6 of Act 50 of 2002

14. Section 18A of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (4) of the following subsection:

"(4A) The code of conduct referred to in subsection (1) must provide that all members of a governing body must disclose on an annual basis, all his or her financial interests and the financial interests of his or her spouse, partner and immediate family members, including but not limited to the following—

(a) shares and other financial interests in an entity;

(b) sponsorships;

(c) gifts, hospitality, sponsorship or other benefit received from an entity or person conducting business with the public school;

(d) immovable property; and

(e) any matter of financial interest."

Amendment of section 20 of Act 84 of 1996, as amended by section 6 of Act 100 of 1997, section 4 of Act 53 of 2000, section 3 of Act 57 of 2001, and section 9 of Act 31 of 2007

15. Section 20 of the South African Schools Act, 1996, is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph:

"(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]** education-related activities, without the charging of a fee or tariff: Provided that, in determining the conditions, the Head of Department must consult with the governing body of the school, which consultation must include the matter of the payment of necessary and reasonable expenses arising from the use of the facilities;".

Amendment of section 21 of Act 84 of 1996, as amended by section 10 of Act 48 of 1999

16. Section 21 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (3) of the following subsection:

"(3A) Notwithstanding the provisions of subsections (1)(c) and (3) and section 22, the Head of Department may, in consultation with the governing body, centrally procure identified learning and teaching support material for public schools on the basis of efficient, effective and economic utilisation of public funds or uniform norms and standards."

Substitution of section 22 of Act 84 of 1996

17. The following section is hereby substituted for section 22 of the South African Schools Act, 1996:

"Withdrawal of functions [from] of governing [bodies] body

22. (1) The Head of Department may, on reasonable grounds, withdraw **[a function]** one or more functions of a governing body.

(2) The Head of Department may not take action **[under]** in terms of subsection (1) unless he or she has—

- (a) in writing 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;
- (c) given due consideration to any such representations received; and
- (d) informed the governing body of his or her final decision, in writing.

(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 immediately thereafter—

- (a) furnishes the governing body with written reasons for his or her actions;
- (b) **[gives]** grants the governing body a reasonable opportunity to make representations to him or her relating to such actions;
- (c) duly considers any such representations received; and
- (d) informs the governing body of his or her final decision, in writing.

(4) The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (1) or (3).

(5) **[Any person aggrieved by a decision of]** If the Head of Department acts in terms of **[this section may appeal against the decision to the Member of the Executive Council]** subsection (1) or (3), he or she must appoint sufficient qualified persons to perform the withdrawn function or functions, as the case may be, for a period not exceeding three months.

(6) The Head of Department may extend the period referred to in subsection (5) by further periods not exceeding three months each, but the total period may not exceed one year.

(7) The persons contemplated in subsection (5) must, within the period of their appointment, build the necessary capacity to ensure that the governing body will thereafter be able to perform the functions that it previously failed to perform.

(8) The persons contemplated in subsection (5) shall have exclusive voting rights and decision making powers on any function that they have been appointed to perform.

(9) 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*, and the *Member of the Executive Council* must communicate his or her decision to the aggrieved person within 30 days after receiving the appeal and must provide written reasons for his or her decision."

Amendment of section 23 of Act 84 of 1996, as amended by section 11 of Act 48 of 1999

18. Section 23 of the South African Schools Act, 1996, is hereby amended—
by the substitution for subsection (6) of the following subsection:

"(6) A governing body may co-opt a member or members of the community, or persons from outside the community, with the relevant expertise, to assist it in discharging its functions."

Amendment of section 24 of Act 84 of 1996, as amended by section 7 of Act 100 of 1997

19. Section 24 of the South African Schools Act, 1996, is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:

"(2) Subject to this Act, the [***Member of the Executive Council***] *Minister* 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]**."; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) The **[Member of the Executive Council]** Minister must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).".

Insertion of section 24A in Act 84 of 1996

20. The following section is hereby inserted in the South African Schools Act, 1996, after section 24:

"Membership of a governing body of a public school with a specialised focus on talent, including sport, performing arts or creative arts

24A. (1) The provisions of section 23, excluding subsection (5), will apply to a governing body of a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts, as contemplated in section 12(3)(a)(iii).

(2) The authority to co-opt a member or members of the community as contemplated in section 23(6) includes the authority to co-opt relevant experts in the specialised focus of the public school, whether from inside or outside the community."

Substitution of section 25 of Act 84 of 1996, as amended by section 4 of Act 57 of 2001

21. The following section is hereby substituted for section 25 of the South African Schools Act, 1996:

"Dissolution of governing body

25. (1) The *Head of Department* may, on reasonable grounds, dissolve a governing body that has ceased to perform its functions in terms of this Act or any provincial law.

(2) If the *Head of Department* acts in terms of subsection (1), he or she must appoint sufficient suitably qualified persons to perform all the functions of the governing body for a period not exceeding three months.

(3) The *Head of Department* may extend the period referred to in subsection (2) by further periods not exceeding three months each, but the total period may not exceed one year.

(4) The persons contemplated in subsection (2) shall have exclusive voting rights and decision making powers on all the functions of the governing body.

(5) The *Head of Department* may not take action in terms of subsection (1) unless he or she has—

(a) in writing, 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;

(c) given due consideration to any such representations received; and

(d) informed the governing body of his or her final decision, in writing.

(6) If the *Head of Department* has dissolved a governing body as contemplated in subsection (1), he or she must ensure that a new governing body is elected in terms of this Act, within a year after the appointment of the persons contemplated in subsection (2).

(7) 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, and the Member of the Executive Council must communicate his or her decision to the aggrieved person within 14 days after receiving the appeal and must provide written reasons for his or her decision."

Substitution of section 26 of Act 84 of 1996

22. The following section is hereby substituted for section 26 of the South African Schools Act, 1996:

"Recusal by member of governing body

26. (1) Before a governing body discusses, or decides on, the recruitment or employment of staff, or the procurement of goods and services for the public school, a member must declare to the governing body any direct or indirect personal interest that the member or any of his or her family members or close friends or business partners has, including—

(a) a personal interest—

(i) in an entity conducting business with the school; or

(ii) in a business or a commercial or financial activity undertaken by the governing body of the school;

(b) a financial or other obligation to an entity conducting business with the school; and

(c) a gift, hospitality, sponsorship or other benefit received from an entity conducting business with the school.

(2) Any person may in writing inform the chairperson of a governing body or the principal of a school of a possible conflict of interest concerning a governing body member.

(3) A governing body member must recuse himself or herself and withdraw from a meeting of the governing body for the duration of the discussion and decision-making on an issue in which the member has a personal interest as contemplated in subsection (1).

(4) If a governing body has knowledge that a member who is present has a personal interest in a matter, the governing body may not take a decision on that matter until the member has withdrawn as contemplated in subsection (3).

(5) Where a governing body member contravenes the provisions of this section, the *Head of Department* may, after due process as contemplated in the code of conduct for the members of the governing body—

(a) suspend the governing body member; or

(b) terminate the membership of the governing body member.

(6) This section applies, with the necessary changes, to committees of a governing body and committee members.

(7) For the purposes of this section, family member means a parent, sister, brother, child or a spouse of a member of the governing body, and includes—

(a) a person living with that member as if they were married to each other, namely a life partner;

(b) a relative who resides permanently with that member; and

(c) any other relative who is dependent on such member."

Amendment of section 27 of Act 84 of 1996

23. Section 27 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) No member of a *governing body* may be remunerated in any way for the performance of his or her duties or for the attendance of meetings and school activities.".

Amendment of section 28 of Act 84 of 1996

24. Section 28 of the South African Schools Act, 1996, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"Subject to *this Act*, **[and any applicable provincial law, *the Member of the Executive Council*]** the *Minister* must, by notice in the **[Provincial]** *Gazette*, determine—".

Amendment of section 29 of Act 84 of 1996, as amended by section 12 of Act 48 of 1999

25. Section 29 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) (a) 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*.

(b) Where reasonably practicable, only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the finance committee of that public school."

Amendment of section 32 of Act 84 of 1996

26. Section 32 of the South African Schools Act, 1996 is hereby amended—

(a) by the substitution for the heading of the following heading:

"Status of [minors] learners on governing bodies of public schools";

(b) by the substitution for subsections (1), (2) and (3) of the following subsections:

"(1) A member of a governing body who is a **[minor]** learner may not contract on behalf of a public school.

(2) A member of a governing body who is a **[minor]** learner 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]** learner incurs no personal liability for any consequence of his or her membership of the governing body."; and

(c) by the addition of the following subsection:

"(4) A member of a governing body who is a learner may not take part in meetings at which recommendations for the appointment of staff to the school are decided on, or form part of interview panels relating to the appointment of staff, whether educators or non-educators, or in any other way be involved in the appointment of staff to the school."

Substitution of section 33 of Act 84 of 1996

27. The following section is hereby substituted for section 33 of the South African Schools Act, 1996:

"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]** in terms of subsection (1) unless he or she has—

- (a) in writing informed the school and 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]** notified the parents associated with the school, [a reasonable opportunity to make representations to him or her in relation to such action] and the community in which the school is situated, of his or her intention so to act and the reasons therefor—
- (i) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area;
- (ii) by causing the principal of the school to—
- (aa) hand to every learner a notice containing the relevant information;
- and
- (bb) instruct the learners to hand the notice to their parents; and
- (iii) by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible;
- (c) **[conducted a public hearing on reasonable notice, to enable]** granted the school, the governing body, the parents associated with the school, and the community in which the school is situated a reasonable opportunity to make representations [to him or her] in relation to such [actions] action; [and]
- (d) conducted a public hearing, on reasonable notice, to enable the community to make representations in relation to such action; and
- (e) given due consideration to any such representations received.

(3) (a) Notwithstanding the provisions of subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, close a public school in his or her sole discretion if no learners are registered at that school.

(b) The Member of the Executive Council may not act in terms of paragraph (a) unless he or she has verified, by means of a site inspection by an official nominated by him or her, that no learners are registered at that school.

(4) (a) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public school if, in the case of a primary school, 135 or fewer than 135 learners are registered at that school, and, in the case of a secondary school, 200 or fewer than 200 learners are registered at that school: Provided that the provisions of this subsection do not apply where the Member of the Executive Council has, before the commencement of the Basic Education Laws Amendment Act, 2021, acted in terms of subsection (2).

(b) The Member of the Executive Council may not act in terms of paragraph (a) unless he or she has—

- (i) given written notice to the school and the parents of the learners of that school;
- (ii) by means of a notice in at least one newspaper circulating in the area where the school is situated, if any newspapers circulate in that area, and by means of any other acceptable form of communication that will ensure that the information is spread as widely as possible, given notice of his or her intention to close the school and invited comment;
- (iii) consulted with the parents of the learners of the school and afforded them an opportunity to make representations within a period of not less than 30 days from the date of the notice or communication referred to in subparagraphs (i) and (ii);
and
- (iv) considered any representations and any comments received after publication of the notice or communication referred to in subparagraphs (i) and (ii).

(5) After the consultation contemplated in subsections (2) and (4)(b), the Member of the Executive Council must decide whether or not to go ahead with the closure of the school and must—

- (a) inform the school and the governing body of his or her decision; and
- (b) by means of the methods listed in subsection (2)(b), notify the parents associated with the school, and the community in which the school is situated, of the decision.

(6) If the decision is to go ahead with the closure, the *Member of the Executive Council* must, where applicable and before the closure takes place, make alternative arrangements for the learners of the school to attend another school that is able to accommodate those learners and, where appropriate, make arrangements for the transport of qualifying learners to that school.

(7) If a *public school* is closed in terms of [subsection (1)] this section, 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*.

(8) The *Member of the Executive Council*, in determining whether to act under subsection (1) or (4), must take into account—

(a) the needs, in general, of the broader community in the *education district* in which the public school is situated; and

(b) factors including, but not limited to—

(i) the best interests of the child, with emphasis on equality as provided for in section 9 of the *Constitution*, and equity;

(ii) whether there are other schools in the community that are accessible to learners; and

(iii) the efficient and effective use of state resources."

Amendment of section 36 of Act 84 of 1996, as amended by section 5 of Act 57 of 2001, and section 12 of Act 15 of 2011

28. Section 36 of the South African Schools Act, 1996, is hereby amended—

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

"(2) Despite subsection (1), a *governing body* may not, without the written approval of the *Member of the Executive Council*, enter into any *loan*, lease or overdraft agreement **[so as to supplement the school fund, without the written approval of the *Member of the Executive Council*]** for any purpose."; and

(b) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph:

"(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]**, or lease such property for such purpose: Provided that such approval is not required for a lease of a period not exceeding 12 months; and".

Amendment of section 37 of Act 84 of 1996, as amended by section 6 of Act 57 of 2001

29. Section 37 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The governing body of a public school must establish a school fund and administer it in accordance with **[directions]** directives issued by the Head of Department."

Amendment of section 38 of Act 84 of 1996, as amended by section 7 of Act 57 of 2001, and section 7 of Act 50 of 2002

30. Section 38 of the South African Schools Act, 1996, is hereby amended—

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

"(3) When [The] notice is given to the parents as contemplated in subsection (2) [must also inform]—

(a) the budget, together with a document explaining the budget, must be made available to the parents by means of the existing communication channels of the school; and

(b) the parents must be informed that the document and the budget will be available for inspection at the school at least 14 days prior to the meeting.";
and

(b) by the addition of the following subsections:

"(4) If a governing body finds it necessary to—

(a) deviate from the initial budget that has been approved as contemplated in subsection (2), and the deviation will be 10% or more of the initial budget;
or

(b) reallocate funds for use for a purpose different to that which was approved by the parents as contemplated in subsection (2),

the governing body must present such deviation or reallocation to a general meeting of parents convened specifically for that purpose, on at least 14 days' notice, for consideration and approval by a majority of parents present and voting.

(5) When notice is given to the parents as contemplated in subsection (4)—

(a) a document explaining and providing reasons for the deviation or reallocation must be made available to parents by means of the existing communication channels of the school; and

(b) the parents must be informed that the document will be available for inspection at the school at least 14 days prior to the meeting.

(6) A quorum of 10% of parents is required for the general meetings of parents contemplated in subsections (2) and (4).

(7) If the quorum contemplated in subsection (6) is not reached at the general meeting of parents—

(a) the chairperson shall determine the date, time and place for the second meeting of the general meeting and notify parents 14 days prior to such meeting;

(b) the principal shall, at least seven days prior to the date of the second general meeting, distribute the copy of the notice to every learner at the school with an instruction to hand the notice to the parents; and

(c) there shall be no quorum required at the second general meeting."

Amendment of section 38A of Act 84 of 1996, as inserted by section 2 of Act 1 of 2004

31. Section 38A of the South African Schools Act, 1996, is hereby amended—

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

"(2) A governing body may apply to the employer for approval to pay a state employee any **[payment]** remuneration, or to give to a state employee any other financial benefit, or benefit in kind [contemplated in subsection (1)]."

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

"(3) Such application must be lodged in writing in the office of the employer and must state—

(a) full details of the nature and extent of the **[payment]** remuneration, other financial benefit, or benefit in kind;

(b) the reasons for the remuneration, other financial benefit, or benefit in kind;

(c) if practicable, the monetary value of the remuneration, other financial benefit, or benefit in kind;

(d) the process that will be followed and the resources that will be used to compensate or remunerate the state employee; and

- (e) the extent of compliance with section 20(5) to (9).";
- (c) by the substitution for subsection (6) of the following subsection:
- "(6) An employer **[must]** may not unreasonably refuse an application **[contemplated]** referred to in subsection (2)."; and
- (d) by the substitution for subsection (8) of the following subsection:
- "(8) The **[payment]** remuneration, other financial benefit, or benefit in kind contemplated in subsection (1) must be reflected in the school's budget, as presented to the general meeting of parents as contemplated in section 38(2), and in such reflection in the budget, any remuneration, other financial benefit, or benefit in kind must, if practicable, be accorded a monetary value.".

Amendment of section 41 of Act 84 of 1996, as amended by section 5 of Act 24 of 2005

32. Section 41 of the South African Schools Act, 1996, is hereby amended by the insertion after subsection (2) of the following subsections:

- "(2A) Notwithstanding subsection (2), a parent may submit to the governing body an affidavit, as proof that the other parent of the learner—
- (a) is untraceable;
- (b) is unwilling to provide the first-mentioned parent with particulars of his or her total annual gross income;
- (c) has failed to provide the first-mentioned parent with particulars of his or her total annual gross income despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so; or
- (d) has provided the first-mentioned parent with incomplete or inaccurate particulars about his or her total annual gross income and has refused to rectify the deficiency or has failed to do so despite the lapse of a reasonable time after a request by or on behalf of the first-mentioned parent that he or she do so.

(2B) Although the affidavit contemplated in subsection (2A) constitutes sufficient proof, a parent may also submit to the governing body a court order or any other documentary evidence that would support the proof contemplated in subsection (2A)."

Substitution of section 42 of Act 84 of 1996

33. The following section is hereby substituted for section 42 of the South African Schools Act, 1996:

"Financial records and statements of public schools

- 42.** The *governing body* of a *public school* must—
- (a) keep records of all investments, donations and 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 reflecting all the investments, donations and funds received and spent by the *public school* in accordance with the guidelines determined by the *Member of the Executive Council*;
 - (c) present the financial records and statements to a general meeting of parents; and
 - (d) inform the parents that the financial records and statements will be available for inspection at the school at least 14 days prior to the meeting referred to in paragraph (c)."

Amendment of section 43 of Act 84 of 1996, as amended by section 10 of Act 31 of 2007

34. Section 43 of the South African Schools Act, 1996, is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively:

"(4) If the [**Member of the Executive Council**] Head of Department deems it necessary, on just cause shown, he or she may—

(a) authorise suitably qualified officers to conduct an investigation into the financial affairs of a public school and, where necessary, after consultation with the governing body, access documents relevant for the purposes of the investigation;

(b) request the Auditor-General to undertake an audit of the records and financial statements of a public school; or

(c) appoint forensic auditors or forensic investigators to conduct a forensic investigation into the financial affairs of a public school.

(5) A governing body must submit to the Head of Department[,]—

(a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure in accordance with directives issued by the Head of Department; and

(b) 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."

Amendment of section 46 of Act 84 of 1996

35. Section 46 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any person who contravenes subsection (1) is guilty of an offence and liable, upon conviction, [**liable**] to a fine or to imprisonment for a period [**of three**] not exceeding 12 months, or to both such fine and such imprisonment."

Amendment of section 48 of Act 84 of 1996

36. Section 48 of the South African Schools Act, 1996, is hereby amended—

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

"(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*, subject to conditions determined by the *Member of the Executive Council*."; and

(b) by the addition of the following subsection:

"(6) An *independent school* must submit to the *Head of Department*—

(a) within 30 days after the end of each quarter, a copy of the quarterly report on all income and expenditure relating to the subsidy contemplated in subsection (2), in accordance with directives issued by the *Head of Department*; and

(b) within 6 months after the end of each financial year, a copy of the audited or examined annual financial statements relating to the subsidy contemplated in subsection (2)."

Substitution of section 51 of Act 84 of 1996

37. The following section is hereby substituted for section 51 of the South African Schools Act, 1996:

"Home education

51. (1) If the parent of a learner who is subject to compulsory attendance as contemplated in section 3(1) chooses to educate the learner at home, such parent must apply to the Head of Department for the registration of the learner to receive home education.

(2) The Head of Department must approve the application and register the learner as contemplated in subsection (1)—

(a) if he or she is satisfied that—

(i) education at home, as provided for in this Act, is in the best interests of the learner;

(ii) the parent understands what home education entails and accepts full responsibility for the implementation of home education for the learner; and

(iii) the proposed home education programme is suitable for the learner's age, grade level and ability and predominantly covers the acquisition of content and skills at least comparable to the relevant national curriculum determined by the Minister; and

(b) if the parent undertakes to—

(i) make suitable educational resources available to support the learner's learning;

(ii) monitor the learner's academic progress;

(iii) arrange for the learner's educational attainment to be assessed by a competent assessor—

(aa) annually, up to the end of the year in which the learner reaches the age of 15 years or completes grade 9, whichever occurs first; and

(bb) against a standard that is not inferior to the standard determined in the National Curriculum Statement; and

(iv) submit to the *Head of Department*, at the end of each phase and as evidence of the *learner's* educational attainment, the *learner's* assessment report, signed by the *competent assessor*.

(3) In considering the application, the *Head of Department* may require a delegated official to conduct a pre-registration *home education* site visit and consultation with the parents and *learner* to verify the information supplied in the application documentation and to provide support, where necessary, with the application process.

(4) If the *Head of Department* is satisfied that the parent does not meet the requirements set out in subsection (2), or if the outcome of the process set out in subsection (3) fails to satisfy the *Head of Department* that *home education* is in the best interests of the *learner*, the *Head of Department* must decline to register a *learner* to receive *home education*.

(5) If a parent educates a learner at home, and that *learner* has, at the time of the commencement of this section, not been registered as contemplated in this section, the parent must, within 30 days after the commencement of this section, apply to the *Head of Department* for the registration of the learner to receive *home education*.

(6) If the *Head of Department* does not respond within 60 days of receipt of an application for *home education* as contemplated in subsection (1) and subsection (5), the application shall be deemed to have been approved, on condition that the applicant must be able, on request, to produce proof that an application for registration to receive *home education* was submitted.

(7) A *learner* who is registered to receive *home education* is exempted from school attendance as contemplated in section 3 of the Act.

(8) The parent of a *learner* who has been registered as contemplated in subsection (1) or subsection (5) must notify the *Head of Department* at the end of the—

(a) Foundation Phase (grades R to 3);

(b) Intermediate Phase (grades 4 to 6); and

(c) Senior Phase (grades 7 to 9),

of his or her intention to continue educating the *learner* at home.

(9) A parent who wishes to continue educating a *learner* at home after the *learner* has reached the age of 15 years or has completed grade 9, whichever occurs first, or who wishes to start educating such learner at home at such time, is not required to apply for registration, as contemplated in subsections (1) and (5), or to notify the *Head of Department*, as contemplated in subsection (8).

(10) After a home-educated *learner* has completed grade 9 or has reached the age of 15 years, whichever occurs first, the parent may enrol the *learner* at a *public school* or an *independent school* for the completion of grades 10 to 12.

(11) If the parent of a *learner* contemplated in subsection (9) desires the learner to eventually write the National Senior Certificate examination, such parent must, before the learner embarks on any studies following grade 9, ensure that the *learner* complies with the requirements stipulated in regulation 7(4A) of the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate Examination (published under R872 in *Gazette* No. 31337 of 29 August 2008), for a learner receiving *home education*.

(12) The *Head of Department* must cancel a learner's registration to receive *home education* if, after investigation, the *Head of Department* is satisfied that *home education* is no longer in the best interests of the *learner*.

(13) The *Head of Department* may not decline to register a *learner*, as contemplated in subsection (4), or cancel the registration of a learner, as contemplated in subsection (12), before—

(a) informing the parent, in writing, of his or her intention so to act and the reasons therefor;

- (b) granting the parent a reasonable opportunity to make representations to him or her, which opportunity must include discussions relating to such intention;
- (c) giving due consideration to any such representations received; and
- (d) providing the parent with written reasons for his or her decision.

(14) (a) The parent of a learner may appeal to the Member of the Executive Council, within 30 days of receiving notice—

- (i) that the Head of Department has declined the application to register the learner to receive home education; or
- (ii) that the Head of Department has cancelled the learner's registration to receive home education.

(b) If the parent of a learner is of the opinion that any decision of the Head of Department in relation to the home education of the learner in question is unreasonable, such parent may appeal to the Member of the Executive Council within 30 days of receiving notice of such decision.

(15) If an appeal contemplated in subsection (14) is received, the Member of the Executive Council must, within 30 days of receiving such appeal, consider and decide on the matter and, in writing, inform the parent of the outcome of the appeal.

(16) The Minister may make regulations relating to registration for, and the administration of, home education."

Amendment of section 59 of Act 84 of 1996, as amended by section 10 of Act 100 of 1997

38. Section 59 of the South African Schools Act, 1996, is hereby amended—

- (a) by the substitution for the heading of the following heading:

"Duty [of schools] to provide information.";

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

"(2) Every *school* must provide such information about the *school* as is reasonably required by the *Head of Department*, or by the Director-General of the **[national]** *Department of Basic Education* in consultation with the *Head of Department*."; and

(c) by the addition of the following subsection:

"(3) If, when applying for admission to a public school or for exemption from the payment of school fees, the parent of a learner, or any other person—

(a) submits or provides information which he or she knows to be false or misleading; or

(b) submits a document which he or she knows to be forged; or

(c) submits a document and claims that it is a true copy of the original when in fact it is not a true copy,

such person is guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment."

Insertion of section 59A in Act 84 of 1996

39. The following section is hereby inserted in the South African Schools Act, 1996, after section 59:

"Dispute resolution

59A. (1) If a dispute arises between the *Head of Department* and a governing body, the following procedure must be followed:

(a) All attempts must be made by the parties to resolve the dispute informally.

(b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken:

(i) The aggrieved party must give the other party written notice of the dispute;
and

(ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof.

(c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(d) If the parties cannot resolve the dispute as contemplated in paragraphs (a), (b) and (c), the governing body may appeal to the *Member of the Executive Council* against the decision that gave rise to the dispute.

(e) If an appeal contemplated in paragraph (d) has been received, the *Member of the Executive Council* must, within 30 days after receiving such appeal, consider and decide on the matter and, in writing, inform the governing body of the outcome of the appeal.

(2) If a dispute arises between the *Member of the Executive Council* and a governing body, the following procedure must be followed:

(a) All attempts must be made by the parties to resolve the dispute informally.

(b) If the parties are unable to resolve the dispute informally as referred to in paragraph (a), the following steps must be taken:

(i) The aggrieved party must give the other party written notice of the dispute;
and

(ii) such notice must include a description of the issues involved in the dispute and a proposed resolution thereof.

(c) If the dispute has not been resolved within 14 days after the issuing of the written notice contemplated in paragraph (b), each party must nominate a representative within seven days, and those representatives must meet within 14 days after their nomination in order to resolve the dispute.

(3) This section does not apply to matters in respect of which this Act makes provision for an appeal process."

Amendment of section 60 of Act 84 of 1996, as amended by section 14 of Act 48 of 1999, section 12 of Act 31 of 2007, and section 14 of Act 15 of 2011

40. Section 60 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused—

(a) 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; or

(b) if the provisions of section 36(2) have not been complied with."

Amendment of section 61 of Act 84 of 1996, as amended by section 5 of Act 53 of 2000 and section 9 of Act 50 of 2002

41. Section 61 of the South African Schools Act, 1996, is hereby amended—

(a) by the insertion after paragraph (a) of the following paragraphs:

"(aA) on the management of learner pregnancy;

(aB) on the admission of learners to *public schools*;

(aC) on the prohibition of the payment of unauthorised remuneration or the giving of other financial benefits, or benefits in kind to certain employees;

(aD) on the minimum norms and standards for provincial educator development institutes and district educator development centres;

(aE) on the organisation, roles and responsibilities of education districts;

(aF) on a national education information system;"; and

(b) by the addition of the following subsection, the existing section becoming subsection (1):

"(2) The regulations contemplated in subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is 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."

Amendment of the Preamble of Act 84 of 1996

42. The Preamble of the South African Schools Act, 1996, is hereby amended by the substitution for the second paragraph of the following paragraph:

"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, facilitate the education of children through the promotion and protection of the right to *basic education*, 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".

Amendment of section 1 of Act 76 of 1998, as amended by section 6 of Act 53 of 2000, section 58 of Act 16 of 2006, and section 15 of Act 15 of 2011

43. Section 1 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the deletion of the definition of "adult basic education centre";

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

" **'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[,] or departmental office [**or adult basic education centre**] and who is appointed in a post on any educator establishment under this Act;"; and

(c) by the substitution for the definition of "provincial department of education" of the following definition:

" **'provincial department of education'** means a department responsible for education in a province and includes all public schools[, **further education and training institutions,**] and departmental offices [**and basic adult education centres**] in such province;".

Amendment of section 5 of Act 76 of 1998

44. Section 5 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The educator establishment of any public school[, **further education and training institution,**] or 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,**] or office [**or centre**] by the Head of Department from the educator establishment of that department."

Amendment of section 7 of Act 76 of 1998

45. Section 7 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) In the making of any appointment, [**or**] in any promotion, and in 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—**];" and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) in a permanent capacity or in a promotion post, whether on probation or not;"

Amendment of section 8 of Act 76 of 1998, as amended by section 16 of Act 48 of 1999, section 11 of Act 50 of 2002, section 58 of Act 16 of 2006, and section 3 of Act 1 of 2004

46. Section 8 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(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."; and

(b) by the substitution for subsection (7) of the following subsection:

"(7) Despite section 6(3)(a) and subsection (2), 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 **[or an adult education and training centre]**".

Amendment of section 9 of Act 76 of 1998

47. Section 9 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) another department of education, or another department";

Amendment of section 11 of Act 76 of 1998

48. Section 11 of the Employment of Educators Act, 1998, is hereby amended by the substitution in subsection (1) for paragraphs (b) and (c) of the following paragraphs:

"(b) on account of the abolition of the educator's post or any reduction in, or reorganisation or readjustment of the post establishments of, departments, schools[, **institutions,**] or 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,**] or office **[or centre]** in which the educator is employed, or will otherwise be in the interest of the State;"

Amendment of section 17 of Act 76 of 1998, as amended by section 10 of Act 53 of 2000

49. Section 17 of the Employment of Educators Act, 1998, is hereby amended—

- (a) by the deletion in subsection (1) of the word "or" at the end of paragraph (e);
- (b) by the insertion in subsection (1) of a semi-colon and the word "or" at the end of paragraph (f); and
- (c) by the addition to subsection (1) of the following paragraph:

"(g) committing any other act which, in any other law that applies to the educator in so far as his or her employment is concerned, is classified as serious misconduct."

Amendment of section 18 of Act 76 of 1998, as amended by section 11 of Act 53 of 2000, and section 58 of Act 16 of 2006

50. Section 18 of the Employment of Educators Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) wilfully or negligently mismanages the finances of the State[,] or a school **[or an adult learning centre]**";

- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) without permission possesses or wrongfully uses the property of the State, a school, **[an adult learning centre,]** another employee or a visitor";

- (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) wilfully, intentionally or negligently damages or causes loss to the property of the State[,] or a school **[or an adult learning centre]**";

- (d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, a provincial department of education, an office of the State or a school **[or adult learning centre]**"; and

(e) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

"(g) misuses his or her position in the Department of Basic Education, a provincial department of education, or a school **[or adult learning centre]** to promote or to prejudice the interests of any person;"

Insertion of section 19 in Act 76 of 1998

51. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 18 of the following section:

"Conducting business with State

19. (1) An educator may not—

(a) conduct business with the State; or

(b) be a director of a public or private company conducting business with the State.

(2) A contravention of subsection (1)—

(a) is an offence, and any person found guilty of such offence is liable, on conviction, to a fine or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment; and

(b) constitutes serious misconduct, and the employer must terminate the employment of any person who is alleged to have contravened the subsection and who, during a disciplinary process, is found guilty of such misconduct."

Amendment of section 35 of Act 76 of 1998

52. Section 35 of the Employment of Educators Act, 1998, is hereby amended by the insertion after paragraph (c) of the following paragraph:

"(cA) norms and standards for district staffing;".

Repeal of section 38 of Act 76 of 1998

53. Section 38 of the Employment of Educators Act, 1998, is hereby repealed.

Amendment of Schedule 1 of Act 76 of 1998, as inserted by section 15 of Act 53 of 2000, and amended by section 12 of Act 50 of 2002

54. Schedule 1 of the Employment of Educators Act, 1998, is hereby amended by the substitution in item 1(2) for paragraph (a) of the following paragraph:

"(a) the extent to which the incapacity impacts on the work of the Department of Basic Education, the [or] provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];".

Amendment of Schedule 2 of Act 76 of 1998, as inserted by section 15 of Act 53 of 2000 and amended by sections 8 to 11 of Act 57 of 2001, section 13 of Act 50 of 2002, and section 6 of Act 1 of 2004

55. Schedule 2 of the Employment of Educators Act, 1998, is hereby amended—

(a) by the substitution in item 3(3) for paragraph (a) of the following paragraph:

"(a) the extent to which the misconduct impacts on the work of the Department of Basic Education, the **[or]** provincial department of education, or the public school[, **public further education and training institution or public adult learning centre**];"; and

(b) by the substitution in item 9(5) for the words preceding paragraph (a) of the following words:

"(5) The Member of the Executive Council or the Minister, as the case may be, must, within 30 days after receiving the appeal, consider the appeal, and may—".

Short title

56. This Act is called the Basic Education Laws Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.