

A Bill of Responsibilities for the youth of South Africa

Preamble

I accept the call to responsibility that comes with the many rights and freedoms that I have been privileged to inherit from the sacrifice and suffering of those who came before me. I appreciate that the rights enshrined in the Constitution of the Republic of South Africa are inseparable from my duties and responsibilities to others. Therefore I accept that with every right comes a set of responsibilities.

This Bill outlines the responsibilities that flow from each of the rights enshrined in the Constitution of the Republic of South Africa.

My responsibility in ensuring the right to equality

The right to equality places on me the responsibility to:

- * treat every person equally and fairly, and
- * not discriminate unfairly against anyone on the basis of race, gender, religion, national-, ethnic- or social origin, disability, culture, language, status or appearance.

South Africa is a diverse nation, and equality does not mean uniformity, or that we are all the same. Our country's motto: !KE E: /XARRA //KE, meaning "Diverse people unite", calls on all of us to build a common sense of belonging and national pride, celebrating the very diversity which makes us who we are. It also calls on us to extend our friendship and warmth to all nations and all the peoples of the world in our endeavour to build a better world.

My responsibility in ensuring the right to human dignity

The right to human dignity places on me the responsibility to:

- * treat people with reverence, respect and dignity
- * be kind, compassionate and sensitive to every human being, including greeting them warmly and speaking to them courteously.

My responsibility in ensuring the right to life

The right to life places on me the responsibility to:

- * protect and defend the lives of others
- * not endanger the lives of others by carrying dangerous weapons or by acting recklessly or disobeying our rules and laws.
- * live a healthy life, by exercising, eating correctly by not smoking, abusing alcohol, or taking drugs, or indulging in irresponsible behaviour that may result in my being infected or infecting others with communicable diseases such as HIV and AIDS.

My responsibility in ensuring the right to family or parental care

This right expects me to:

- * honour and respect my parents, and to help them,
- * be kind and loyal to my family, to my brothers and sisters, my grandparents and all my relatives.
- * recognise that love means long-term commitment, and the responsibility to establish strong and loving families.

My responsibility in ensuring the right to education

The right to education places on **me** the responsibility to:

- * attend school regularly, to learn, and to work hard,
- * cooperate respectfully with teachers and fellow learners and
- * adhere to the rules and the Code of Conduct of the school.

and concurrently places on my **parents and caregivers** the responsibility to:

- * ensure that I attend school and receive their support
- and places on my **teachers** the responsibility to:
- * promote and reflect the culture of learning and teaching in giving effect to this right.

My responsibility in ensuring the right to work

This right carries with it the responsibility for all **learners, parents, caregivers and teachers** to:

- * work hard and do our best in everything we do.
- * recognise that living a good and successful life involves hard work, and that anything worthwhile only comes with effort.
- * This right must never be used to expose children to child labour. (proposed alternative: prevent children being exposed to child labour).

My responsibility in ensuring the right to freedom and security of the person

The right is upheld by my taking responsibility for:

- * not hurting, bullying, or intimidating others, or allowing others to do so, and
- * solving any conflict in a peaceful manner.

My responsibility in ensuring the right to own property

The right to own property places on me the responsibility to:

- * respect the property of others,
- * take pride in and protect both private and public property, and not to take what belongs to others.
- * be honest and fair, and for those who have, to give generously to charity and good causes.

My responsibility in ensuring the right to freedom of religion, belief and opinion

The right to freedom of conscience requires me to:

- * allow others to choose and practice the religion of their choice, and to hold their own beliefs and opinions, without fear or prejudice.
- * respect the beliefs and opinions of others, and their right to express these, even when we may strongly disagree with these beliefs and opinions. That is what it means to be a free democracy.

My responsibility in ensuring the right to live in a safe environment

This right assumes the responsibility to:

- * promote sustainable development, and the conservation and preservation of the natural environment.
- * protect animal and plant-life, as well as the responsibility to prevent pollution, to not litter, and to ensure that our homes, schools, streets and other public places are kept neat and tidy.
- * In the context of climate change, we are also obliged to ensure we do not waste scarce resources like water and electricity.

My responsibility in ensuring the right to citizenship

The right to citizenship expects that each of us will be good and loyal South African citizens. This means that we are responsible for:

- * obeying the laws of our country,
- * ensuring that others do so as well, and
- * contributing in every possible way to making South Africa a great country.

My responsibility in ensuring the right to freedom of expression

The right to free expression is not unlimited, and does not allow us to:

- * express views which advocate hatred, or are based on prejudices with regard to race, ethnicity, gender or religion.
- * We must therefore take responsibility to ensure this right is not abused by ourselves or others, to not tell or spread lies, and to ensure others are not insulted or have their feelings hurt.

Conclusion

I accept the call of this Bill of Responsibilities, and commit to taking my rightful place as an active, responsible citizen of South Africa. By assuming these responsibilities I will contribute to building the kind of society, which will make me proud to be a South African.

The national school pledge

We the youth of South Africa,
recognising the injustices of our past,
honour those who suffered and sacrificed for justice and freedom.
We will respect and protect the dignity of each person,
and stand up for justice.
We sincerely declare that we shall uphold the rights and values of
our constitution
and promise to act in accordance with the duties and
responsibilities
that flow from these rights.
! KE E: / XARRA // KE
Nkosi Sikelel' iAfrika.



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RolaBall Eduscript

Project manager: Dr Patricia Watson

Writers: Julia Grey and Dr Patricia Watson

Vocabulary: Ella Kotze and Evelyn Menyoko

Photography: Sally Shorkend and GCIS

Design and Layout: Rizelle Stander-Hartmeier

Copy Editing: Phillippa yaa de Villiers

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Department of Basic Education

222 Struben Street, Pretoria

Tel: 012 357 3000

Fastline: 0800 202933

Fax: 012 323 0601

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FOREWORD BY THE MINISTER

School Governing Bodies (SGBs) and Representative Councils of Learners (RCLs) are agents of social change in our democratic schooling dispensation, guided by the principles of accountability, fairness, transparency and equity. However, social exclusion and discrimination on grounds such as race, gender, class, language, ethnicity and religion remain a challenge in most of our public schools. Discrimination is, of course, antithetical to the founding values of our Constitution that enjoins us to uphold human dignity, freedoms and the advancement of human rights.

The current education policy regime places particular emphasis on SGBs in their role as gatekeepers of the progressive intentions of our national policy framework. Similarly, the national system of basic education also looks to RCLs in its quest to develop and entrench a democratic ethos and adherence to the founding values of our new democratic dispensation. As a department, we acknowledge that, while there is clearly a strong will to make a difference, the hard reality is that many SGBs and RCLs do not have the benefit of adequate training in the sphere of values, human rights and attendant obligations that the human rights

framework imposes on them. Given these inadequacies, some SGBs still feel disempowered to effect meaningful change to their schools.

The Department of Basic Education has developed this step-by-step training manual to help SGBs and RCLs improve their governance capacity. The manual is a resource for all stakeholders committed to fostering good governance framed by human rights principles and Constitutional values. Through the training that this manual supports, SGBs and RCLs will be better equipped to work optimally in diverse schooling contexts. In essence, we see SGBs and RCLs as the epitome of grassroots democracy at work.

In most situations, SGBs act as a conduit between the parents and the school, thus underscoring the critical role they play. Accordingly, our Quality Learning and Teaching Campaign (QLTC) places the same onus on parents, together with teachers, learners, and the principal in ensuring that quality teaching and learning occurs, with all key stakeholders playing a role. The manual has therefore been written to strengthen the component of parental involvement (through the SGBs) in the education of their children. We make particular

mention of parental involvement since, as part of realising goal 22 of the Action Plan 2014: Towards the Realisation of Schooling, which promotes parental and community participation in school governance. Strong SGBs in the public education system, adequately empowered to perform their roles, are a necessary condition for parental involvement and support.

This training manual is a result of intradepartmental collaboration between the Gender Equity, Race & Values in Education and School Management and Governance Directorates. It is my pleasure to release this SGB and RCL Training Manual and I would encourage all government officials, SGBs, RCLs, and our partners to use it for the betterment of school governance. It is our contention that this SGB/RCL Training Manual will provide SGBs and RCLs with the requisite knowledge, skills and value base necessary in realising the progressive intents of our national education policy framework. We hope you find this manual useful in developing the capacity of SGBs and RCLs.

Mrs AM Motshekga, MP
MINISTER: Basic Education
2011

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INTRODUCTION

Why this training manual is important

While much of South Africa's oppressive and unjust past is well and truly behind us, there is still some distance to go before we truly achieve the democratic, equitable society envisioned in our Constitution.

School Governing Body (SGB) and Representative Councils of Learners (RCLs) are the true grassroots champions of our new democracy. They have the powers - and the responsibility - to shape the quality of education in our country through exercising accountable, transparent and equitable governance.

Schools are also the institutions primarily responsible for developing young people into active, responsible citizens in a united, caring and economically developed South Africa. With the support from our rights-based curriculum, such citizens most likely to emerge from schools which embrace a culture of human rights, and reflect this in their democratic approach to governance.

This training manual is therefore designed to equip SGBs and RCLs with the skills they need to promote human rights and constitutional values within a democratic school culture, thereby contributing to social cohesion and nation building.

Who should use this training manual

This training manual is primarily intended to support all those in the school community involved with school governance and leadership, whether they are parents or educators on the SGB, or learners who are members of RCLs.

In addition, this training manual will be of use to government officials, NGOs and other stakeholders interested in supporting good governance at schools.

The purpose of this training manual

By using this manual, SGB and RCL members will:

- Understand our country's Constitution and Bill of Rights and how they relate to school governance and leadership practices;
- Understand our country's Constitutional values and how they relate to school governance and leadership practices;
- Understand the importance of a national identity and the role that the national symbols play in strengthening that identity;
- Understand the vision of the Department of Basic Education to ensure that relevant, high-quality education is accessible to all learners, irrespective of race, class, gender, sexual orientation, religion, ability, language, culture, HIV and AIDS, etc;

- Know how to develop and strengthen a human rights culture at their school through SGB policies and practice; and
- Know how to govern their school in line with the laws of the land, and in a manner that provides all on school grounds with a safe and caring environment.

What you will find in this training manual

In Chapter 1, you will explore the values that our constitution upholds. The values are: democracy; social justice and equity; equality; non-racism and non-sexism; ubuntu and human dignity; an open society; accountability and responsibility; the rule of law; respect; and reconciliation. We discuss each of these values in the context of our schools.

In Chapter 2, you will understand SGB and RCL functions in relation to human rights. You will also reflect on your own prejudices using the "Tolerance Barometer"; and increase your awareness of how the abuse of power undermines human rights by learning to use the "Consciousness Dial".

Chapters 3 to 11 explore human rights and our Constitutional values in relation to nine themes: culture; religion; language; race; gender and sexual orientation; gender; sexual harassment and abuse;

inclusive education; HIV and AIDS; and safe schools.

Each of these nine chapters contain the following elements, designed to inform your SGB and RCL about the law and human rights, and help you to apply the principles of the law and the values they reflect in your governance and leadership practices:

- **Introduction to the chapter and a “word tapestry”**

Each chapter starts with a brief definition of the theme it is exploring and links it to core values of human rights.

The introduction also contains a “word tapestry”. The idea of a word tapestry is useful as it asks us to share our understanding of different ideas by building up a cluster of words linked to a main idea. For example,

What words can you add to this word tapestry, which expresses an understanding of the word “democracy”?

Democracy – social justice

- equity - equality – non-

racism – non-sexism – ubuntu

– human dignity – open society

– accountability – responsibility

– the rule of law – respect – vote

– reconciliation – elections

- **Spotlight on Policy**

In this section of each chapter, you will find:

Information about laws of the land related to the theme of the chapter;

A step-by-step guide to the process of formulating school policies and/or documents which are in line with the laws of the land, in a democratic manner; and

An example of school policies and/or documents that can be used as references when developing such a policy or document for your school.

- **Learning from the News**

In this section of each chapter, you will find:

Newspaper articles that present real-life case studies of the theme being explored; and

Important points illustrated in the newspaper article for SGB and RCL members to discuss so that they can better understand the relationship between the theme and human rights.

- **Values in Action**

In this section of each chapter, you will find:

Step-by-step suggestions of strategies SGBs and RCLs can use to deepen the values and culture of human rights at their school; and

National holidays and symbols related to the theme being explored that can be used as opportunities to express our shared values and pride in our national identity.

Chapter 12 provides a list of useful contacts for service providers related to the themes explored in the manual. These service providers can provide useful resources and expertise to support schools.

In addition, a list of documents (such as laws, policies and guidelines) that SGBs and RCLs should be familiar with is provided, together with information about where to find them.

OUR CONSTITUTIONAL VALUES UNITE US

In this chapter we understand the values that our constitution upholds.

South Africa's democracy is anchored* in the Constitution. Our Constitution is recognised around the world as a law that powerfully captures the spirit of human rights. All South Africans are legally bound by this supreme* law of the land. We are also inspired by the triumph* of humanity over oppression and injustice that our Constitution represents.

The Constitution guides School Governing Bodies (SGBs) and other school leadership structures, such as Representative Councils of Learners (RCLs) and School Management Teams (SMTs). It is therefore important that we take time to appreciate* the Constitution and the values that it upholds.

The Bill of Rights in the Constitution is a cornerstone* of our democracy in South Africa. It enshrines* the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.



ONE
CONSTITUTION
FOR ALL
SOUTH
AFRICANS

STEP 1

Appreciating our Constitution

SGB and RCLs are called on to lead with a deep appreciation of our country's Constitution as the highest law of the land.

- Read through the Preamble* of the Constitution.
- What feelings does this Preamble stir in you?
- What values do you think this Preamble expresses?
- How can you live up to the values this Preamble expects of us?

Preamble to the Constitution of South Africa

We, the people of South Africa,

Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

Believe that South Africa belongs to all who live in it, united in our diversity.

We therefore, through our freely elected representatives, adopt this Constitution as the supreme

law of the Republic so as to-

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seen Suid-Afrika. God bless South Africa.

Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

Constitution of the Republic of South Africa Act, ss. 1 - 3 No. 108 of 1996 ss. 1 - 3



STEP 2

Understanding our Constitutional values

- Read the list of Constitutional values below and check your understanding of each value with one another.
- Some ideas for how each value is upheld in the context of schools are provided.
- How does your own SGB or RCL uphold each of these values in your school?

Democracy

South Africa is a “sovereign*, democratic state” founded upon the value of “universal adult suffrage*, a national common voters roll, regular elections and a multi-party system of government”. This means that government is based on “the will of the people”. We are responsible for our own destinies* since, through the electoral process, we run our country and our public institutions.

Some ideas of how the value of democracy is upheld in the school context include:

- SGBs and RCLs are democratically elected by the school community;
- All school stakeholders are involved in the processes of policy formulation, implementation and review;
- The voices of the school community are heard through meetings; surveys; votes; petitions; suggestion boxes; debates; open dialogues; information-sharing sessions; circulation of minutes and newsletters and an open door policy;
- The will of the members of the school community is heard and respected by the SGB and RCL; and
- SGB and RCL members are accountable to the school community and committed to leading on a transparent way.

How does your own SGB or RCL uphold the value of democracy?

Social justice and equity

The Constitution establishes as a right our access to adequate housing, health-care services, sufficient food and water, social security, and, of course, basic education.

Children specifically, enjoy the inalienable right* “to basic nutrition, shelter, basic health-care services and social services”, and “to be protected from maltreatment, neglect, abuse or degradation”. These rights apply to everyone under the age of 18 - and that means the majority of learners in our schools. The social justice clauses in the Constitution have important implications for education because they commit the state to ensuring that all South Africans have equal access to education in adequately resourced schools – and that they have access to such schooling in their home language if they so desire.

Some ideas of how the values of social justice and equity are upheld in the school context include:

- Ensuring basic services are available and maintained. Where they are not, the SGB should seek to provide them; and
- Ensuring that learners have access to inalienable rights, such as nutrition, health-care and social services.

How does your own SGB or RCL uphold the value of social justice and equity?

Equality

The Constitution states in the "Equality Clause" that "everyone is equal before the law" and has the right to equal protection of the law. The state may not unfairly discriminate against anyone on the basis of "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth".

The Equality Clause also governs our relationships with each other. Just as the state may not discriminate against any of us, so we may not discriminate against each other.

Some ideas of how the value of equality is upheld in the school context are given in the "Equality Clause" in the South African Schools Act of 1998:

All children must obtain an equal education;

- The state must strive towards giving all students – whether they are in suburban, township or farm schools – the same access to resources and to personnel;
- All learners must have the same opportunities to realise their fullest potential; and
- No child may be denied access to education because, for example, of an inability to pay.

How does your own SGB or RCL uphold the value of equality?

Non-racism and non-sexism

The Constitution's emphasis on the value of "non-racism and non-sexism" commits us all to redressing the imbalances of the past where people were oppressed or devalued because of their race and/or their gender.

Some ideas of how the values of non-racism and non-sexism are upheld in the school context include:

- Making sure that previously disadvantaged students get equal access to education;
- Ensuring that previously disadvantaged students and teachers attain* equality with their previously advantaged peers;
- Ensuring that girls at school attain equality with boys;
- Ensuring all teachers and students are free from sexual abuse or harassment in school;
- Ensuring all teachers and students are free from racial abuse or harassment in school; and
- Ensuring everyone knows it is his or her responsibility to make our schools safe places of teaching and learning.

How does your own SGB or RCL uphold the value of non-racism?

How does your own SGB and RCL uphold the value of non-sexism?

Ubuntu – human dignity

In the Constitution, ubuntu has a particularly important place in our value system. Ubuntu is a philosophy for living that comes from African culture.

Ubuntu is interpreted in similar ways:

“I am human because you are human.”

“I am what I am because of who we all are.”

The peace activist, Leymah Gbowee, reminds us of the saying that expresses the spirit of ubuntu:

“A single straw of a broom can be broken easily, but the straws together are not easily broken.”

Out of ubuntu flows the practices of compassion, kindness, altruism*, generosity and respect for human dignity. It asks us to focus on what we have in common as human beings; it expresses the concept of mutual understanding and the active appreciation of our interconnectedness and our human differences.

Some ideas of how the value of ubuntu is upheld in the school context include:

- Knowing others, knowing yourself;
- Knowing where your own prejudices lie;
- Knowing when NOT to express your prejudices;
- Learning how to judge objectively;
- Increasing your levels of tolerance and kindness;
- Increasing your levels of generosity and compassion and
- Finding your space in a vibrant, multicultural school environment.

How does your own SGB or RCL uphold the value of ubuntu?

An open society

The Constitution lays the “foundations for a democratic and open society in which government is based on the will of the people”. In this sense, democracy and openness are closely linked. We have the right to “freedom of conscience, religion, thought, belief and opinion”. We have the right to “freedom of expression”, to “freedom of the press”, to “freedom of artistic creativity”, to “academic freedom”, and to “freedom of scientific research”. We have the right to “freedom of assembly”, and to “freedom of association”.

We have the responsibility to act and speak in ways that ensure all of us enjoy the freedoms expressed in these rights. We may not act and speak to encourage violence or war, or advocate hatred based on race, ethnic or social origin, gender, sexual orientation, disability, religion, etc.

Being a democrat in an open society means:

- Being a participant rather than an observer;
- Talking and listening and assessing all the time;
- Being empowered to read, think critically and create artistically;
- Accessing information from a range of sources; and
- Enjoying the company of those that affirm our sense of belonging.

Some ideas of how the value of an open society is upheld in the school context include:

- Creating opportunities for all to participate;
- Cherishing debate, discussion and critical thought;
- Resolving differences through talking and listening; and
- Leadership style that is appropriate* for each school; and
- Allowing each other to express our affiliations in a respectful way and
- Proactively seeking opinions on policies* and practices* from parents, educators, learners and all stakeholders so that they have a sense of participation.

How does your own SGB or RCL uphold the value of an open society?

Accountability (responsibility)

The Constitution says that public administration must be governed by the values and principles of professionalism; efficiency; equity; transparency*; representivity; and accountability.

Some ideas of how the value of accountability (responsibility) is upheld in the school context include:

- Understanding who is accountable to whom and for what;
- Formulating codes of conduct for all stakeholders, and ensuring that they are known and respected by all members of the school community;
- Understanding it's a two-way street: if you expect the school community to be accountable to the SGB and RCL, then the SGB and RCL must be accountable to the school community;
- Ensuring the SGB performs its governance functions to the best of its ability, and identifies support for areas of weakness and
- Ensuring the RCL performs its leadership functions to the best of its ability, and identifies support for areas of weakness.

How does your own SGB or RCL uphold the value of accountability?

The rule of law

We are all required to uphold the rule of law, for it holds us all accountable to a common code of appropriate behaviour. We should obey the laws, not just because we know we should, but because we understand that if we don't, we will be held to account by those who enforce* the law.

Some ideas of how the value of the rule of law is upheld in the school context include:

- Ensuring unfair discrimination does not take place in any form;
- Ensuring that codes of conduct are in place and are upheld through daily practice;
- Ensuring school budgets are used for the well-being of the school community and not for personal gain;
- Ensuring that teachers who physically or sexually abuse students are reported to the authorities;
- Ensuring that members of the school community are law-abiding, and do not carry illegal weapons, possess illegal narcotics, damage school property or intimidate others; and
- Ensuring that members of the school community who break the rules are disciplined in a fair manner.

How does your own SGB or RCL uphold the value of the rule of law?



Respect

The Constitution and the Bill of Rights calls on all of us to respect each other and do our part to ensure each others' access to our human rights.

Some ideas for how the value of respect is upheld in the school context include:

- Ensuring there is good communication, teamwork and productivity;
- Building equality between all members of the school community: school governors, educators, staff, RCL members, students and parents;
- Being polite and respectful in our greetings, in our meetings, in our consultations, and in our day-to-day operations;
- Being open to sharing points-of-view and
- Being willing to assist each other to participate in the life of the school.

How does your own SGB or RCL uphold the value of respect?

Reconciliation

The Constitution calls on us to "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights".

Some ideas of how the value of reconciliation is upheld in the school context include:

- Understanding our shared and different pasts so as to learn from one another and avoid repeating the mistakes of our predecessors;
- Acknowledging that our differences may sometimes bring us into conflict. It is our responsibility to use dialogue to see each other's points-of-view;
- Committing ourselves to uphold codes of conduct so that all of us abide by the same rules, which apply to all fairly;
- Disciplining rivaling* parties in a way that is fair and in keeping with the law of the land;
- Encouraging a process of give-and-take and mutual understanding between groups;
- Ensuring an inclusive, tolerant school community that is committed to redressing past injustices through effective SGB and RCL governance and
- Promoting a sense of unity through respect for the national symbols (the National Flag, the National and Provincial Coats of Arms, the National Anthem, the National Orders, National Heritage Symbols, National Holidays, etc).

How does your own SGB or RCL uphold the value of reconciliation?

Adapted from *Manifesto On Values, Education and Democracy*, the Department of Education, 2001

CELEBRATING OUR NATIONAL HERITAGE AND SYMBOLISM

We can create a shared sense of our Constitutional values by celebrating our national identity as South Africans.



Does your school fly the South African Flag, display the National Coat of Arms, and sing the National Anthem, with pride?

Reconciliation is expressed in South Africa's official motto on our Coat of Arms: "Ike e: /xarra //ke", which means "Unity in Diversity". This motto is pronounced as "e ke i tsarra ke".



We celebrate our democracy on Freedom Day: 27 April

On this day we celebrate the anniversary of the first democratic elections held in South Africa in 1994, in which South Africans of all races voted for the first time. We celebrate the end of apartheid and the beginning of our democracy, and we renew our commitment to uphold human rights, human dignity and equality for all people.

In this chapter we have seen that our Constitution is the beacon of our democracy. The values in the Constitution should guide all of our thoughts and actions. We have explored the Constitutional values opposite.

You have also discussed how each of these values is being upheld in the context of your school.

Your discussions should also have shown you which values need to be given more attention by the SGB and RCL in your school.

In the following chapters you will apply these values to understanding the rights of specific groups in the school community.

- DEMOCRACY;**
- SOCIAL JUSTICE AND EQUITY*;**
- EQUALITY;**
- NON-RACISM AND NON-SEXISM;**
- UBUNTUJ;**
- HUMAN DIGNITY;**
- AN OPEN SOCIETY;**
- ACCOUNTABILITY**
- RESPONSIBILITY;**
- THE RULE OF LAW;**
- RESPECT AND**
- RECONCILIATION.**

2

PUTTING VALUES INTO PRACTICE

In this chapter we understand SGB and RCL functions, examine our prejudices and awaken our consciousness to living the values expressed in our human rights.

SGBs are provided with a list of some of their key functions to help them to understand their role as school governors. RCLs are provided with a list of some of their key functions to help them to understand their role as youth leaders.

In this chapter, we also examine human rights in relation to some important governance functions.

These are: SGB and RCL elections; privacy and confidentiality; just administrative action; school finances; the relationship between school management and governance; and managing differences in a school community.

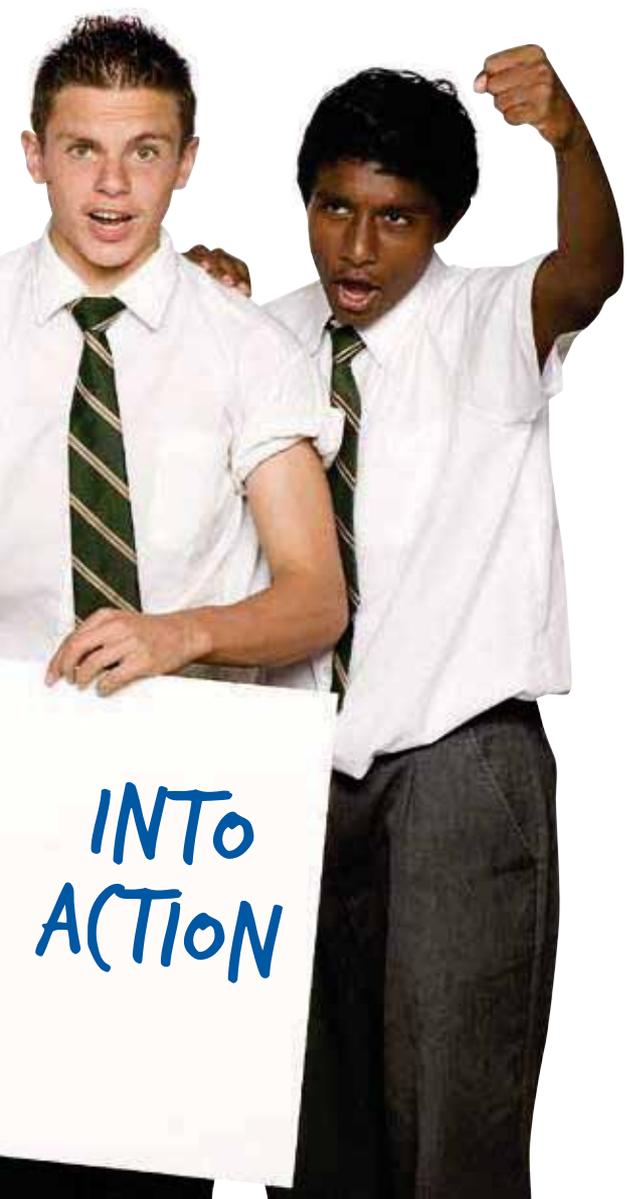
We also provide tools for you to think about your own blind spots. Using the 'Tolerance Barometer', you will be able to see where

your own prejudices lie. Using the "Consciousness Dial", you will better understand abusive forms of power.

The South African Schools Act affirms the values and commitments to human rights that are expressed in the Constitution.

It is our responsibility to ensure that these values are brought to life in our schools..





UNDERSTANDING THE FUNCTIONS OF SGBs

SGBs play a central role in the governance of a school.

Here are some of an SGB's key functions:

- To meet at least four times a year;
- To convene an Annual General Meeting (AGM), and ensure that AGMs are well attended by parents who are encouraged to actively participate;
- To determine school policies, such as a Language Policy, a Religious Policy, an Admissions Policy and an HIV and AIDS Policy;
- To formulate Statement of Commitments when appropriate, for example in relation to Racism and Gender Orientation;
- To administer and control school facilities;
- To develop the vision and mission statement of the school;
- To adopt a code of conduct for SGBs;
- To adopt a constitution for the SGB; and
- To be accountable for the school fund, table the budget at the AGM and ensure that procedures for good business practice are in place.

The steps an SGB should follow when drawing up a policy include:

1. Electing a committee to draw up the policy;
2. Gathering information and documents that will assist the formulation of the policy;
3. Consulting with the school community (parents, learners, educators and other stakeholders);
4. Preparing a draft of the policy;
5. Allowing the school community to review the draft policy and collecting their comments;
6. Making changes to the draft policy.
7. Publishing the policy so that the school community can read it;
8. Adopting and signing the policy;
9. Developing the action plan for the implementation of the policy. Who will do what, by when, how, and who will hold them accountable?;
10. Monitor the implementation of the policy. Ensure that people can easily give feedback on their experience of the policy in practice.
11. Review the policy regularly (ie every three to five years) and repeat the redrafting process where necessary.

Adapted from *Governing our Schools Series*, the Gauteng Department of Education and the Matthew Goniwe School of Leadership and Governance, 2005

When did your SGB last review your school's Policies, Codes of Conduct and Statements of Commitment? Form a committee from members of your SGB to carefully go through all of these documents and check that they have all been reviewed within the last three to five years.

18 Know the law

The SGB needs to be familiar with legislation, regulation and policy pertaining to governance. The SGB needs to consult with the school community when drawing up policy for the school. Acts that SGBs should be familiar with include:

Acts that SGBs should be familiar with include:

1. The Constitution of the Republic of South Africa
2. The National Education Policy Act
3. The South African Schools Act
4. The Employment of Educators Act
5. The Promotion of Administrative Justice Act
6. The Promotion of Equality and the Prohibition of Unfair Discrimination Act
7. The Promotion of Access to Information Act

Nominate one or more people on your SGB to be responsible for obtaining copies of these Acts. File them all together so that they are an easy-to-find reference when you need them.

RCLs play an important role in assisting SGBs to govern a school, primarily through providing the learner body with fair and effective leadership. While RCL members should have a reasonable amount of influence on affairs of the school, ultimately the final authority for decisions regarding school matters lies with the more senior SMT and SGB structures.

Here are some of the RCLs key functions:

- To meet on a regular basis (such as once a month);
- To appoint an RCL member as the leader (or chairperson) of the group. This RCL chairperson should be in one of the higher grades (Grade 11 and 12), and be a strong enough academically to be able to take on the extra responsibilities of the position. Such responsibilities include convening and chairing RCL meetings, as well as representing the school's learner body at SGB meetings. The RCL chairperson will also be responsible for reporting back on relevant matters arising at SGB meetings to the RCL. The other RCL members should then be responsible for passing on important and relevant information to the rest of the learner body;
- To be available as peer counsellors and provide counselling and advice to learners who request their help;
- To resolve disputes among learners when it is possible for them to do so;
- To refer issues that are distressing learners but which they cannot resolve themselves to the relevant school authority as soon as possible;
- To help maintain a healthy dialogue between the learner body and the school authorities;
- To act as role-models for their peers, particularly in being committed to upholding the learner's code of conduct;
- To assist the SMT and SGB in ensuring that all members of the learner body uphold the rules in the code of conduct; and
- To initiate and run learner events, and other activities such as outreach programmes, group dialogues, or fundraising activities.

Are the members of your RCL disciplined about attending RCL meetings?

If not, discuss the problem with teachers and other senior members of your school community to identify the problem. Perhaps the meetings are being held at inconvenient times in the school day.

Perhaps the problem is that the meetings are badly run, and the chairperson should be given the correct skills to run meetings effectively.

Identify the problems and then work as a group towards finding solutions.

HUMAN RIGHTS IN ACTION

SGBs and RCLs are responsible for implementing human rights practices in relation to a number of important governance and leadership activities. Read the activities described below to understand the relationship between these governance and leadership functions and human rights.

1. Human rights and SGB and RCL elections

The SGB is elected every three years. Members of an SGB includes parents in the majority, educators, non-educators and learners in the eighth grade and higher. SGB members are nominated and duly elected.

The RCL is elected every year by the learners. In some schools learners who can stand for election are nominated by the teaching staff and principal of the school. In many schools, each grade elects an RCL representative. Those representatives in higher grades are regarded as being more senior RCL members.

The freedom to vote for SGB and RCL members should be used wisely to ensure that responsible and able people who will act in the best interests of the school are given leadership powers.

2. Right to privacy and confidentiality

SGB members have access to confidential information about learners, teachers and parents. Each member must take special care to prevent this information from being misused or known to any unauthorised* person.

Similarly, RCL members also have a responsibility to respect confidential information, especially if they are responsible for counselling learners on private matters.

Confidential information includes sensitive personal information about members of the school community, such as: whether a person is a bursary recipient or non-fee paying student; a person's HIV and Aids status; if a person has been sexually harassed or raped; if a person has committed a crime; if a learner failed a subject; etc.

3. The right to be heard (just administrative action)

The SGB has the responsibility to mediate in cases brought to its attention. Examples would include a teacher sexually harassing a learner; a learner accused of drug dealing; teachers concerned about the right to strike; an RCL concerned about racist behaviour at school; or a parent who is dissatisfied because of an educator's repeated absenteeism.

The SGB needs to follow due process in a fair and reasonable manner, especially in the case of disciplinary hearings involving learners. Care must be taken to comply with the prerequisites of the South African School Act when conducting such hearings.

The RCL needs to support learners in accessing their right to be heard where and when this is appropriate.

4. Human rights and school finances

SGBs are responsible for managing the school fund. The way a school spends its money reflects its values and commitment to human rights practices. For example, how much is budgeted for sports for both girls and boys? For books and feeding schemes for poorer members of the school community? For learner activities such as school outreach programmes or supporting those in need in the local community?

RCL members have a responsibility to gather learners' views on how their school can be improved. They also have a role to play in assisting learners who are unable to afford fees, uniforms, transport etc. RCL members can support learners in need by directing them to the SMT or SGB where assistance can best be provided.



OVERCOMING OUR PREJUDICES

SGBs and RCLs have the responsibility to respect and protect everyone's human rights as set out in the Constitution, regardless of their own personal beliefs.

For example, you may be sexist and not believe in gender equality. You may not believe that everyone is free to decide on his or her own sexual orientation. You may be racist and not believe in the equality of all people. But as members of school governance and leadership structures, it is the responsibility of SGB and RCL members to know and challenge their blind-spots. This self-knowledge can help SGB and RCL members to overcome their prejudices and make them better leaders.

STEP 1

Understanding your prejudices

Our Constitution protects all of our human rights. For example, we cannot discriminate against another person on the grounds of his or her race, gender, pregnancy status, ethnic or social origin, sexual orientation, HIV status, disability, religion, culture, or language.

Do you know your own blindspots? Complete the "Tolerance Barometer" below.

TOLERANCE BAROMETER

- Ask yourself - Where do I stand?
- TICK how you feel towards others in each category of difference in the boxes provided.
- CIRCLE the term you do not understand.

For example: TICK the box that best describes how you feel. How do you feel towards people from a different race - Do you feel hatred? Do you feel intolerant? Do you feel accepting? Do you feel appreciative? Do you feel like celebrating racial diversity?

If you do NOT understand the term "race", then circle that word.

STEP 2

Interpreting the tolerance barometer

After completing the "Tolerance Barometer" in Step 1 above, you will know where you stand and can interpret your own tolerance barometer.

Ask yourself:

- Why do I feel open-minded towards certain rights?
- Why do I feel closed-minded towards other groups of rights?
- If I am closed-minded, what actions can I take to become more accepting of these other groups of rights?
- If I don't understand what one of these terms means, what actions can I take to start to understand it?

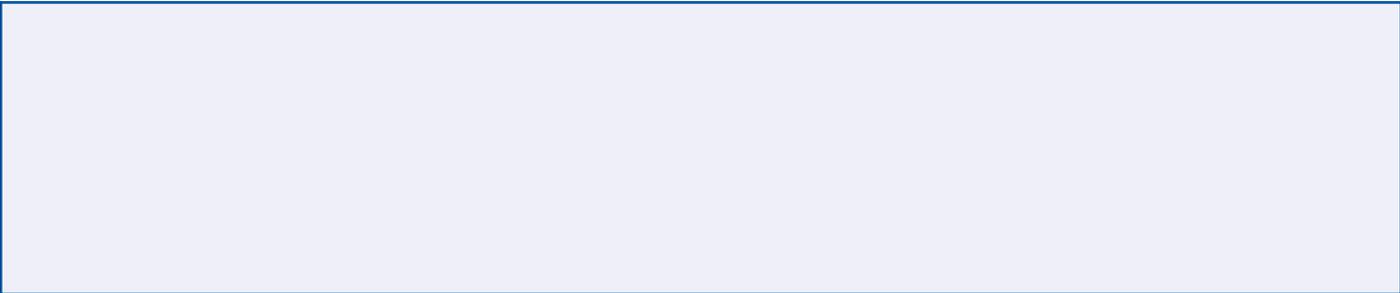
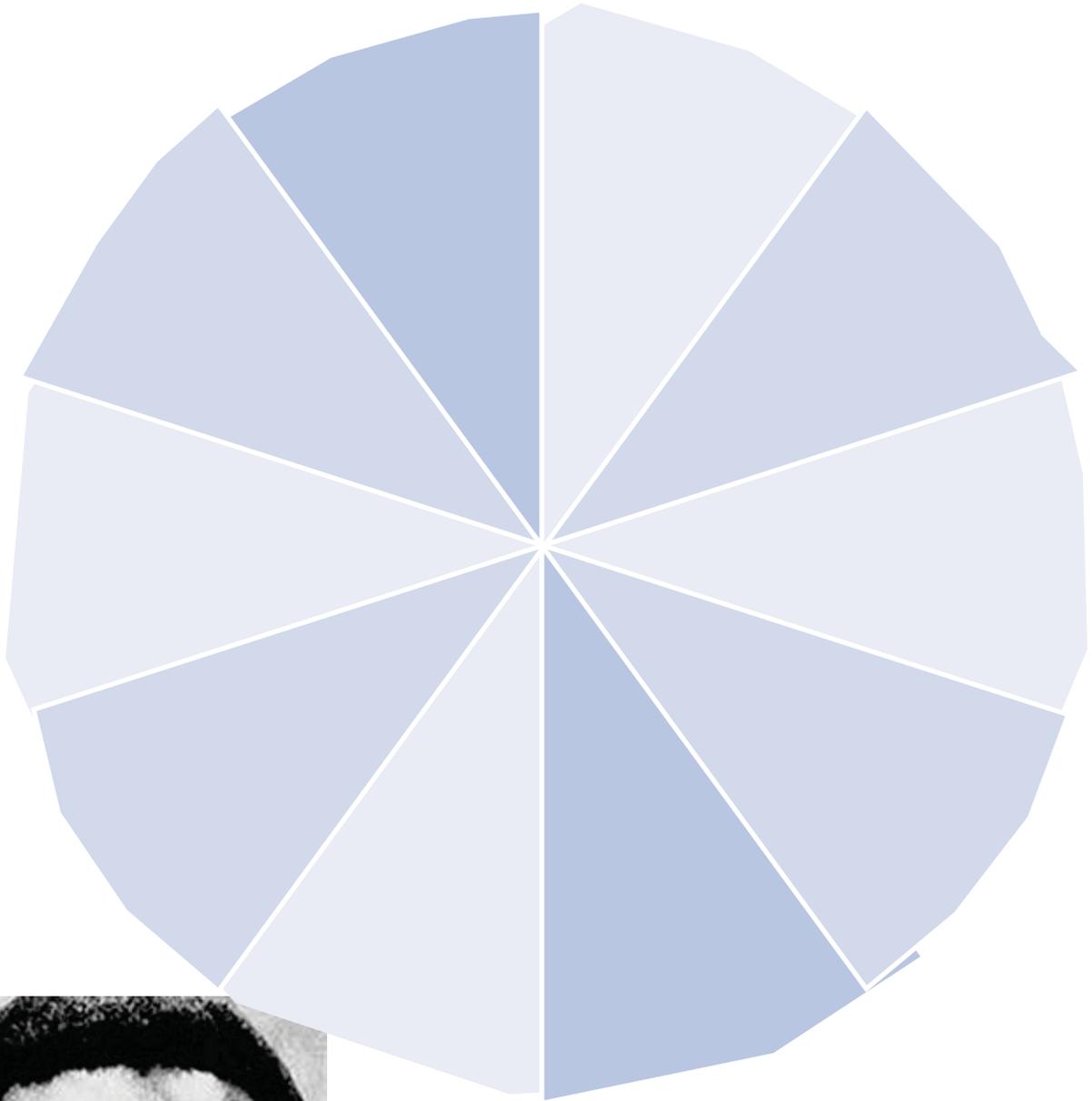
STEP 3

Arm yourself with consciousness

Steve Biko inspires us to "Arm ourselves with consciousness" so that we are able to recognise when power is being abused. An important step is being able to recognise intolerance - in ourselves and in others.

As SGB and RCL members, it is very important that you reflect on your own values as these influence the decisions that you make, and how you use your powers.

The South African Human Rights Commission provides us with some examples of behaviour that express intolerance. This is presented below in a dial. Read each segment in the dial and give examples from your experience for one or more of the segments.



3 CULTURE

In this chapter we explore the policies and human rights practices in schools in relation to culture.

South Africa is often described as a "rainbow nation" because it is a melting pot of cultures from all over the world.

However, cultural differences can sometimes lead to conflict, especially when a chauvinist* approach is adopted. Examples of cultural chauvinism are found when an aggressive, superior stance one culture presents towards another. We saw cultural chauvinism during colonialism and apartheid and today we see it when xenophobic attacks take

place in communities.

Cultural chauvinism is seen in schools that have set beliefs and practices that discriminate and treat diversity in the student body as a "problem" rather than as a "resource". In such cases a dominant cultural norm* tries to exclude other cultural norms; and it creates "us" and "them" distinctions*. The "us" refers to the members of the dominant culture and the "them" refers to all non-members. Non-members are forced to join into the dominant culture at

the expense of their own cultures.

In our democracy, cultural differences are seen as part of our national wealth. This is because cultural differences allow for a wide variety of life experiences and world views, creating a rich national tapestry*.

This means that the dominant cultural norm of South African schools is one that accommodates difference.

This chapter will SGB and RCLs to embrace cultural diversity as a valuable resource.





SPOTLIGHT ON POLICY

The Constitution states that no one can be unfairly discriminated against on the basis of their culture. This means that all cultures are equally valued.

The South African Schools Act is also very clear that culture cannot be a reason to exclude any learner from a school. This does not only apply to the different cultures of South Africa. It also applies to those who are from other countries.

Your school can make a commitment to promoting multiculturalism* in its Mission Statement.

STEP 1

Formulating a Mission Statement for your school

Every school must have a Mission Statement that expresses a school's core values. These core values must reflect our country's Constitutional values. It's the responsibility of the SGB to formulate the school's Mission Statement.

STEP 2

Share the Mission Statement

A school community needs to understand the Mission Statement. In order to do this the SGB should consult with parents, learners and school staff. The RCL can play a role in communicating the contents of the Mission Statement to the student body and gather their views and questions. For example, the RCL members can give each class a copy of the Mission Statement to display in the classroom. The RCL could also hold dialogues* on the value of multiculturalism in our communities today.

STEP 3

Mission Statement review

A school must review its Mission Statement every three to five years. This is to ensure that its contents are up-to-date with the latest legislation; and reflect the identities in the current school community.

A school community needs to understand the Mission Statement and participate in its review from time to time.

STEP 4

Read and compare

An example of a school's Mission Statement is given opposite. Compare your school's Mission Statement with the example. What are the similarities? What are the differences?

Rights of refugees and asylum seekers are legally protected

- Refugees and their children are entitled to the same basic education as South African citizens.
- Children of undocumented migrants must provide proof that they have applied to the Department of Home Affairs to legalise their stay in the country. If this documentation is not available, the child must still be admitted to the school. The principal must help the parents to get the necessary documentation.
- All parents of learners attending a school are eligible for election to the SGB.

A SCHOOL'S MISSION STATEMENT: An example

Our school is committed to the vision of a non-racial, democratic and peace-loving community. It is committed to principles of social justice, equality and equity. It affirms the right of all learners, educators and parents to live free from discrimination and prejudice*. It aims to contribute to the development of a peaceful and economically developed society via the education of all its learners. It will equip learners to live in harmony and understanding with learners of other racial, language, cultural and religious background. It will remove discrimination and encourage respect for diversity and equality of opportunity within the school in the following ways.

ACCESS

Our school will provide access to all learners living within the feeder community*, irrespective* of learners' language, race or religion, and learners' ability to pay fees or buy a uniform.

LEADERSHIP AND EMPLOYMENT PROFILE

Our school will aim to build a student, staff and leadership profile which reflects all the communities from which the learners of the school are drawn. Diversity of students and staff encourages learners to learn to live with individuals from diverse backgrounds when they leave the school. Therefore our school will seek to diversify its profile*.

COMMUNICATION

Our school will ensure that channels of communication are open, and that learners and educators experiencing problems with integration or discrimination will have access to the SMT, SGB and RCL to express their needs and suggestions. Our school will take active steps to ensure that the school presents a positive message, and not wait for problems to arise. It will also aim to understand the attitudes that learners bring with them to school, and deal positively with these attitudes.

PARTNERSHIPS

Our school recognises that in encouraging school integration it will benefit from partnership with the community, NGOs, progressive business, government structures and departments, etc.

STAFF DEVELOPMENT AND TRAINING

Educators at our school will be encouraged to attend in-service or post-graduate training courses that deal with integration. Our school will develop a programme for educator development.

COUNSELLING

Our school will ensure an appropriate counselling service and will ensure that all complaints are dealt with sensitively and speedily.

DEALING WITH INFRINGEMENTS

All infringements* by educators or learners will be dealt with (and not covered up), using dialogue and appropriate internal disciplinary structures. In the case of serious infringements, these cases will be reported to the relevant outside bodies. Confidentiality will be respected and parties will have the right to be heard in full.

DISCIPLINE

Our school will ensure that the disciplinary Code of Conduct will be even-handed and not adopt forms of discipline unacceptable to certain groups. The curriculum and school circulars will teach learners that consequences follow unacceptable and hurtful behaviours.

UNIFORMS

Our school will not discriminate against learners who cannot afford uniforms, and will do its best to find second-hand uniforms or raise money to help such learners. In the absence of assistance from the school, sensitivity will be exercised in cases where learners wear civilian* clothes to school.

Sensitivity will also be exercised in cases where learners adopt cultural or religious dress codes.

Cruel or inhumane* practices that remove or punish the wearing of such items will not be tolerated.



LANGUAGE

Our school acknowledges the home languages of all its learners and encourages respect for all the official languages of South Africa and those from beyond its borders. It will provide for learners to learn their home and additional languages and encourage learners to communicate with speakers of other languages at the school. Our school will provide additional support for learners whose home language is not the same as the language of learning and teaching, without separating these learners from the mainstream of teaching and learning activities.

CURRICULUM

Our school will integrate the teaching of respect for diversity and human rights into all learning programmes. Our school will not discourage learners from choosing certain subjects due to assumptions about their backgrounds, but will provide support for all learners to excel*.

RESOURCES

Our school will not disadvantage those students who cannot pay for enrichment activities that occur during school hours (for example, school outings). It will ensure that resources required for homework (for example, computer facilities) are available in the resource centre for those who do not have access to these facilities at home.

SCHOOL ETHOS, OBSERVANCES AND RITUALS

Our school will ensure that the ethos of the school reflects the aspirations* of all its learners. The observances and rituals at our school will celebrate and encourage respect for the different cultures and religions of learners and educators.

REVIEWING OUR MISSION STATEMENT

Our school will review this policy every three to five years to ensure that it remains relevant and a useful guiding document. Our school will annually monitor its success in ensuring integration within the school, and in providing learners with the necessary skills to participate in an integrated society.

Adapted from Educating for Our Common Future: Building Schools for an Integrated Society, A Guide Book for Principals and Teachers, the Department of Education, 2001.

VOCABULARY

- Aspirations:** A strong desire to have something or to do something.
- Chauvinist:** An person displaying extreme or unreasonable support for their own country, culture, cause, group or sex.
- Civilian:** Not the standard uniform; everyday clothes.
- Dialogues:** Conversations or discussions.
- Distinctions:** Clear differences between people.
- Diversify its profile:** To include a wider range of people in a group so that more differences exist in that group.
- Dominant cultural norm:** The way of life of the group of people with the most power in a society.
- Excel:** To do extremely well.
- Feeder community:** A community from which most children go to a certain school.
- Irrespective:** Ignoring or paying no attention to something.
- Infringements:** Breaking the rules.
- Inhumane:** Not caring about the suffering of other people or animals.
- Multiculturalism:** To include people of different races, religions, languages and traditions.
- Prejudice:** An unfair dislike of someone based on (for example) his or her race, religion, gender or language.
- Tapestry:** A mat made of different colours.



LEARNING FROM THE NEWS

Read the newspaper article “Culture shock” and discuss the issues it raises.



DISCUSS THE NEWS ARTICLE

1. In a few words say what this article is about.

The article tells of a principal who is intolerant of a student's cultural mourning practices. The learner is required by his culture to wear a string of red and white beads around his neck until they fall off as part of the process of mourning the death of his mother. The principal refuses to accept this practice as he sees it as outside of his own understanding of cultural norms.

2. What action and words suggest that the principal is culturally intolerant? Use the Arm Yourself with Consciousness Dial on page 23 to specify the type of discrimination used.

ACTIONS: The principal is reported to have "cut the beads off with a pair of scissors, and then instructed the learner to fetch a broom and sweep them up." These actions are an example of desecration and defacement.

WORDS: The principal is also reported to have said, "We do not care for your culture here. I don't know what your culture is, I have no idea. We don't cater for that, it's not allowed." These words show the cultural chauvinism of the principal. The message to the boy is join into the school's culture or expect to be ridiculed*, ostracised and even pushed out.

3. What impact does the principal's cultural chauvinism have on the school boy and his family?

The impact of cultural chauvinism is very significant for the school boy and his family. The loss of the beads means he must get a new set and visit his mother's grave to explain to her the loss of the original set. The family would need to perform the

ukuphahla* ritual again. The loss of the beads therefore has serious financial, cultural, health and spiritual consequences for the boy and his family.

4. What other stakeholders were involved in this dispute?

The "improper" wearing of beads is acted against first by school prefects, then reported to the principal. The SMT or SGB structures appear not to have been involved, nor were district or other education authorities consulted. Neither law enforcement agencies nor the justice system were involved in the dispute. The "experts" quoted in the article came from a university, a traditional healer museum, and the Freedom of Expression Institute. *The Sunday Times* got the story from the family who tape-recorded their conversation with the principal.

5. Explain why the school's public statement on its approach to difference on the website is contradictory.

The public statement of the school's approach to difference made on the school's website is contradictory when it says: "Whilst there will be tolerance and understanding of any persuasion, no special arrangements will be made to accommodate the different religions. No discrimination or intolerance of any religious denomination will be permitted or allowed". It's interesting that culture is merged with religion.

6. What do you think an SGB should do in response to such a dispute?

Give your own point of view. Make a list of all of the ideas.

VOCABULARY

Accommodate: Accept and welcome.

An anthropologist: A person who studies the history of the human race and the differences between cultures.

Ridiculed: Made fun of in an unkind way.

Suffer the consequences: To live with the negative results of your actions.

Ukuphahla: A traditional practice of respecting one's ancestors.

Violation: To break the rules or the law.

VALUES IN ACTION

It is important that SGB and RCL members are able to embrace different cultures and handle cultural disputes*. This can be done through developing a school community profile, and a better understanding of communication.

STEP 1

Know the profile of your school community

The school community gives the SGB its powers of governance. It is therefore important that the SGB knows the make-up of the school community so that it can:

- 1) Respond to the community's needs in its policies and rules; and
- 2) Ensure the community's participation in school life.

For example, an SGB should know:

- The gender breakdown (number of boys and girls, male and female staff);
- The home languages spoken by each person;
- Where people live and modes of transport;
- The religions practised and each one's holy days; and
- Etc.

STEP 2

Think about how different cultures express disagreement

In cross-cultural disputes, we need to understand how each person's culture informs how they express disagreement.

- What is your personal way of expressing your dissatisfaction with the way someone is treating you?
- How is your approach to negotiating disagreement different from other members in your SGB or RCL?
- In what ways can your SGB or RCL accommodate different approaches to negotiating disagreement?

STEP 3

Is there cultural chauvinism in your school?

Read the the information in the boxes below. Then think about your own school.

- In what ways is you school culturally chauvinist? Give at least three examples.
- In what ways is you school culturally accommodating? Give at least three examples.

STEP 4

Understanding your school's cultural norms

Dominant norms inevitably discriminate against and exclude those who are not members of the dominant culture. Schools need to revisit their cultural norms and to assess how these may be excluding specific groups. Here are a few questions to assist you:

- How is culture reflected in your school's Mission Statement?
- What is NOT said in the school's Mission Statement about culture?
- Has the culture in your school adopted a multicultural norm or a monocultural norm?
- Is the dominant culture open to accommodating other cultures in your school?

STEP 5

Have your say – your views count

Use the school suggestion box to ask the school community to share their concerns (experiences of cultural intolerance); and their suggestions for supporting multiculturalism in the school.

STEP 6

Celebrating cultural differences

Select some ideas from the suggestion box and put these into practice. For example, you could host a dialogue in which people share their different cultural experiences and stories. You could also include multicultural practices in school events, assemblies and meetings, as well as in the classroom and curriculum. Some of these activities could be used to commemorate Heritage Day.

Heritage Day: 24 September

On this day we are asked to remember what makes us uniquely South African and celebrate our rich cultural traditions and customs. This is a day on which we celebrate our national achievements and our efforts to redress past inequalities. Through cultural diversity, we stretch our understanding of our society and empathise with those whose experiences are different from our own.

THE MACE

The Mace was designed to reflect the history, traditions, cultures and languages of South Africa.

The Mace is the symbol of the authority of the speaker of the National Assembly. The new Mace was installed on the 14 September 2004, celebrating 10 years of democracy. Parliament dedicated the new Mace to all the people of South Africa.

The top of the Mace is in the shape of an African drum. The golden book on top of the drum represents the Constitution of South Africa. As the supreme law of the country, the Constitution has pride of place at the very top of the Mace. Written on the golden pages of the book is the first line of the Preamble to the Constitution. Each line is written in one of the 11 official languages of South Africa, plus one of the almost-extinct Khoisan languages. The use of an extinct Khoisan language is a reminder that the destruction of a people results not only in the loss of languages, but of cultures as well.

4 RELIGION

In this chapter we explore the policy and human rights practices in schools in relation to religion.

In our democracy, schools are not religious institutions. We live in a secular* country that guarantees the rights of all religions.

Schools must accommodate diverse religious practices

and beliefs in a tolerant, compassionate and equitable manner.

The primary function of schools is secular. This means that all religions are taught in the Life

Orientation learning area as part of the curriculum and in a way that gives learners an understanding of the many different religions in the world today.





SPOTLIGHT ON POLICY

The Constitution states that no one can be unfairly discriminated against on the basis of their religion.

In the South African School Act, it states that: "... religious observances* may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis* and attendance at them by learners and members of staff is free and voluntary*."

STEP 1

Formulate a Religious Policy for your school

Every school must have a Religious Policy that is in line with the laws of the land. It's the responsibility of the SGB to formulate the Religious Policy.

STEP 2

Share the policy

A school community needs to understand the Religious Policy. In order to do this the SGB should consult with parents, learners and school staff.

The RCL can play a role in communicating the contents of the Religious Policy to the student body in assemblies and class time, and gather their views and questions. For example, the RCL members can organise an event where different religions share what they do on holy days.

STEP 3

Religious Policy review

A school must review its Religious Policy every three to five years. This is to ensure that its contents are up-to-date with the latest legislation; and reflect the identities in the current school community. A school community needs to understand the Religious Policy and participate in its review.

STEP 4

Read and compare

An example of a school's Religious Policy is given opposite.

Compare it to your school's Religious Policy.

- What are the similarities?
- What are the differences?

A SCHOOL'S RELIGIOUS POLICY: An example

- It is important that at all times each person's right to freedom of religion* is recognised.
- No religious instruction lessons will be offered.
- No person can be excluded from the school because of his or her religious beliefs.
- No educator may attempt to convert* any learner, either in lessons or in counselling.
- Where religion forms the basis of literature, the educator must be fully prepared (will have researched the religion and be prepared to deal with issues arising in a sensitive way).
- Those who take off special religious days must send a letter stating this to the principal.
- Educators must be aware of times of fasting and the implications of this on the learner's performance and participation in some activities.
- A room for religious observances such as prayers will be set aside for those who request such a place.
- Individual learners must communicate with educators affected if they will be late for class because of religious observances.
- Special toilets and jugs should be set aside for those of the Muslim faith.
- Special school occasions, such as honours night or memorial assemblies, must take into account the variety of religions present. The choir should sing non-religious songs.
- Traditional religious dress may be worn, provided this form of dress is worn both in and out of school.
- **Assemblies:** These are the only times when religion becomes formally important in the school day:
 - A moral issue should be used as a theme related to readings from the Koran, Bible, Vedas, Torah, etc.
 - Prayers can be made out loud to God or through quiet individual prayers or through uplifting thoughts for the day.
 - When special festivals occur, they should be the main theme of an assembly at that time. Songs may relate to that festival. Learners may be excused from such an assembly with written consent. Educators may also be exempt.
 - Learners from the religion being celebrated may, with supervision, present information about it at the school assembly. This should be done so as to teach the school about that religion.
 - It is recognised that Christianity is the dominant religion of the school population and, as such, more Christian themes will be presented at assembly. This will be the case until such time as there is a change in the majority of the school population's religious beliefs.
- These regulations on religion will be reviewed every two years in consultation with the whole school community.

Adapted from Parktown High School for *Girls Policy and Procedure for Religion*

VOCABULARY

Agnostic: People who are not sure if any gods exist.

Atheists: People who believe that no gods exist.

Convert: To change from one religion to another.

Dogma: The beliefs of a certain religious group that are accepted by members of that group without being questioned.

Equitable basis: In a way that is fair to everyone.

Moral standards: Rules about what is right and wrong.

Religious observances: Religious laws and customs; carrying out religious traditions.

Right to freedom of religion: The Constitutional right to choose what you want to believe.

Secular: Not connected to any religion or spiritual matters.

Voluntary: To do something out of your own will, without being forced to by someone else.

LEARNING FROM THE NEWS

Read the newspaper article "Muslim dad takes on teacher" and discuss the issues it raises.



DISCUSS THE NEWS ARTICLE

1. In a few words, say what this article is about.

The article is about the alleged insensitivity of a teacher towards a Muslim student. When punishing the learner for talking, the teacher did not take into account that the student was fasting (not eating) for religious reasons. The teacher forced the student to "run around a school yard" causing the boy to "feel exhausted, humiliated and very disturbed", and making him so sick he had to break his compulsory fast. The parent accused the teacher of being racist and discriminating against Muslim learners.

2. What action and words suggest that the teacher had discriminated against the Muslim boy? Use the **Arm Yourself with Consciousness Dial** on page 23 to specify the type of discrimination used.

ACTION: The father "claimed that, on several occasions, the teacher had taken Muslim boys' skullcaps and thrown them away, saying they were not part of the school uniform". This is an act of bullying and is disrespectful.

WORDS: The father also claimed that the teacher referred to Muslim pupils as "bloody Muslims". This is an act of name-calling that is hurtful and humiliating.

3. What was the teacher's response to the parent's complaint?

The teacher defends himself on the grounds that he does not "attack children on the basis of their race or religion", but was simply carrying out his duty as a teacher by punishing the learner for misbehaving.

4. What was the response of the SGB to the parent's complaint?

The SGB failed to take the parent's complaint seriously. This resulted in the parent turning to structures outside of the school to seek justice – through the Equality Court, the police and the Department of Education.

5. How should this SGB have dealt with this parent's complaint?

Give your own point of view. Make a list of all the ideas.

VOCABULARY

Affidavit: A written statement that you swear is true, that can be used as evidence in a court case.

Allegedly: Saying something is true, without having proved it.

Disturbed: Unhappy because of a bad experience.

Exhausted: Very tired.

Humiliated: Made to feel ashamed or stupid.



VALUES IN ACTION

It is important that SGB and RCL members are able to handle complaints related to religion.

SGB and RCL members will have different ways of handling complaints. It is useful to know where you stand, as this will give you an indication of how you are likely to react when faced by a dispute* at school.

STEP 1

Know where you stand

Read the information in the boxes opposite. Then decide which box best describes your approach to conflict.

When you have a fight with a superior or a subordinate is your approach:

- controlling,
- accommodating,
- problem solving,
- avoiding, or
- a combination of one or more of the above?

STEP 2

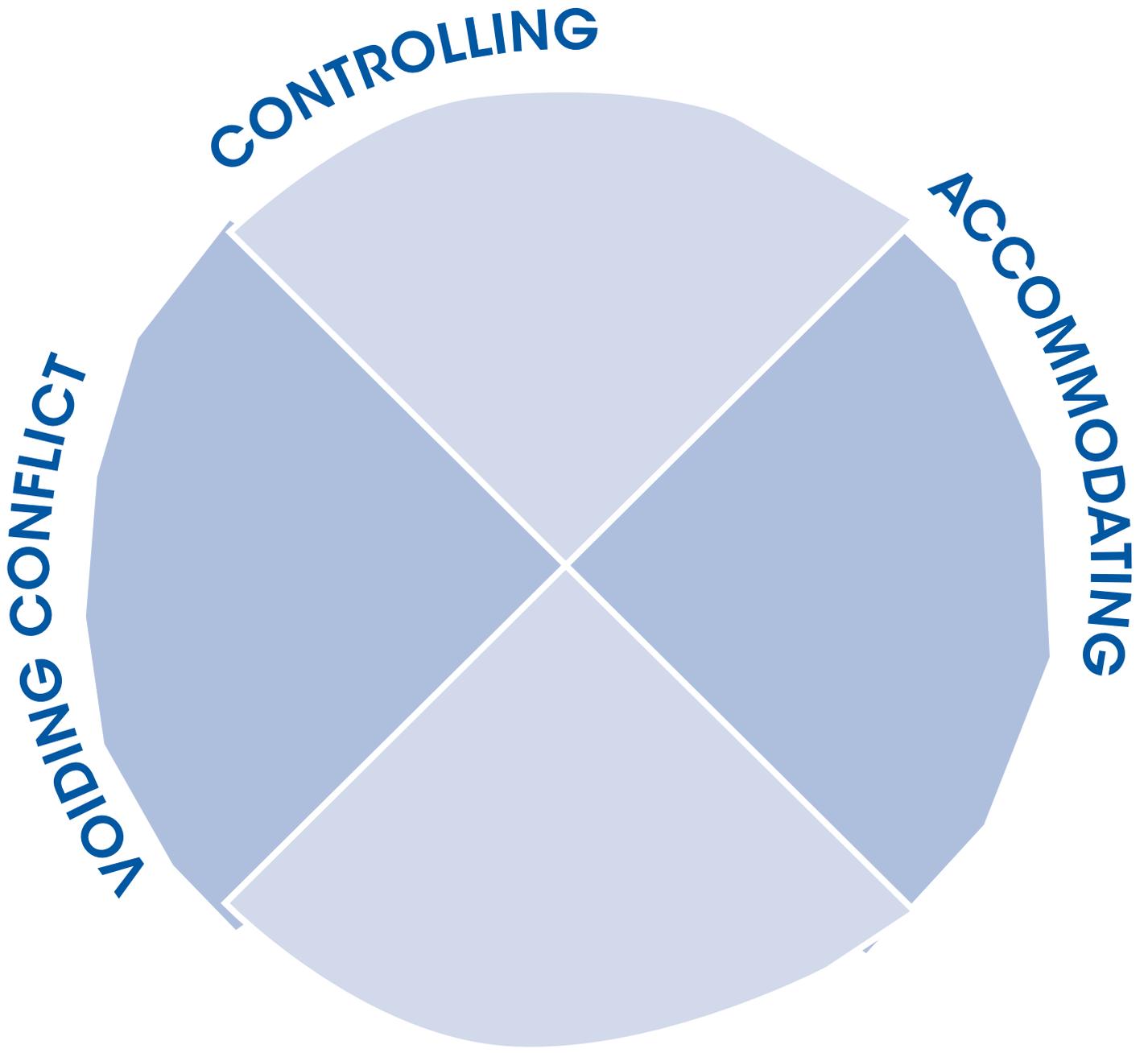
Have your say – your views count

Use the school suggestion box to ask the school community for their ideas on how we can better understand each other's religions.

STEP 3

Celebrating religious difference

Select some ideas from the suggestion box and put these into practice. For example, you could host a dialogue in which people from different religions share the principles of their beliefs, and find ways of accommodating religious practices in the school rules.



5 LANGUAGE

In this chapter we explore the policy and human rights practices in schools in relation to language.

Language is core* to our identities. Under apartheid, language was used to divide people.

In our democracy, languages are used to celebrate our diversity as a multilingual* nation.

Part of this commitment has involved allowing each school community to determine the language policy that best fits its needs. This means that school communities must decide on the language of learning and teaching, and the languages that can be taught as subjects.

We call discrimination based on language "linguicism" (language prejudice).

Linguicism involves an individual

making judgements about another person's language or use of language, which devalues and humiliates that person. We will recognise linguicism when we stereotype people based on:

- Their ability to use one language instead of another;
- Their accents (how they sound when they speak a language);
- Their vocabulary (the words they know and use in a language); and
- Their unfamiliarity with the cultural norms of a language.

A dominant language is a language that is widely spoken and can be used to access education, politics and the economy.

Linguicism is seen when speakers

of dominant languages falsely claim superiority based on the following:

- That their language is better than other varieties of the same language;
- That the use of their language is getting worse through the inclusion of speakers from other languages;
- That only mother-tongue speakers can speak the language correctly; and
- That only their language has grammatical rules.

In our democracy we try to overcome linguicism through the promotion of language rights and multilingualism (many languages).





SPOTLIGHT ON POLICY

The Constitution states that no one can be unfairly discriminated against on the basis of the language they use to communicate.

The Constitution gives official status* to 12 South African languages, including South African Sign Language*. The Constitution provides for redress and equality in the use and development of South African languages.

Some of the laws guiding languages and their use and status at schools include:

- The governing body may determine the language policy of the school subject to the Constitution and other relevant laws.
- No form of racial discrimination may be practiced when implementing* a school's language policy.
- Home language/s* must be maintained, while opportunities to learn additional language/s* are offered.
- Sign Language has the status of an official language for purposes of learning at a school.
- The learning and teaching of all other languages required by learners must be supported.
- Languages other than South Africa's official languages can be offered as school subjects.

Adapted from the South African Schools Act, the Norms and Standards for Language in Public Schools, and the Language in Education policy.

STEP 1

Formulating a Language Policy for your school

Every school must have a Language Policy that is in line with the laws of the land. It's the responsibility of the SGB to formulate the Language Policy.

STEP 2

Share the policy

A school community needs to understand the Language Policy. In order to do this the SGB should consult with parents, learners and school staff. The RCL can play a role in communicating the contents of the Language Policy to the student body and gather their views and questions. For example, the RCL could present the Language Policy to the whole school in assembly; and the RCL could also run a poster campaign promoting multilingualism in our schools, families and communities.

STEP 3

Language Policy review

A school must review its Language Policy every three to five years. This is to ensure that its contents are up-to-date with the latest legislation; and reflect the identities in the current school community. A school community needs to understand the Language Policy and participate in its review.

STEP 4

Read and compare

An example of a school's Language Policy is given opposite. Compare it to your school's Language Policy. What are the similarities? What are the differences?

A SCHOOL'S LANGUAGE POLICY: An example

- Our school promotes the protection, fulfilment and extension of every learner's individual language rights and means of communication in education.
- We promote the facilitation of national and international communication through the promotion of multilingualism through cost-effective and efficient mechanisms.
- We aim to redress the neglect of historically disadvantaged languages in education.
- Our aim is to promote the full participation of our graduates in society and the economy through their ability to meaningfully communicate.
- The official language of teaching and learning is English. This decision was taken through the democratic vote of the majority of our parents.
- SeSotho and isiXhosa were chosen in the same parent vote as the additional languages to be offered at the school.
- Interest in offering other languages such as French, German and isiZulu was also expressed by parents in this vote.
- Parents will once again be consulted and this language policy reviewed as the educator capacity and budgetary implications to teach another language becomes practically possible.
- Where learner's proficiency* in English needs support, this support will be provided by an Accelerated English Learning programme offered as an extra mural.

Adapted from *Observatory Girls' School Language Policy*

VOCABULARY

Additional language: An extra language that a person has learned to speak, in addition to his or her home language.

Core: Central to

Home language: The first language a person learns.

Implementing: To carry out an official rule or law.

Multilingual: A group in which more than one language is spoken.

Official status: A legal status that means a language is used in a country's courts and by government.

Proficiency: Ability to speak a language well.

South African Sign Language: The language used by members of the deaf community in South Africa.



LEARNING FROM THE NEWS

Read the newspaper article "Schoolgirl language row hots up" and discuss the issues it raises.

4. Do you think the school should have called the police to deal with this case?

The article says the school “called the police” because the school girl and her sister “were breaking school rules by insisting on their right to speak isiXhosa”. It is difficult to understand why this action was taken by the school: it is not up to the police to enforce school rules such as these, it is up to the SMT/SGB. Further, speaking one’s home language is in no way breaking any law. In fact, laws exist to protect one’s right to speak one’s home language.

5. What structures does the parent turn to to protect his daughter’s language rights?

The father is angry with the school and unhappy with the response of the SMT/SGB. He turns to structures external from the school – PanSALB*, the SA Human Rights Commission, the provincial education MEC, and the police – to intervene to protect his daughter’s rights.

6. How should this SGB/SMT have dealt with this parent’s complaint?

Give your own point of view. Make a list of all of the ideas.

VOCABULARY

Contravene: To break the law.

Intimidated: Being scared by someone.

Isolation: To be alone and separated from other people.

PanSALB: The Pan South African Language Board is an organisation that helps to develop multilingualism (the speaking of more than one language).



VALUES IN ACTION

It is important that SGB and RCL members are able to embrace multilingualism and handle complaints related to language.

SGB and RCL members need to understand South Africa's oppressive past if they are to handle complaints sensitively. By recalling our history we are able to learn what NOT to do. In other words, we can avoid repeating the mistakes of our forefathers.

STEP 1

Know where you stand

Read the information on 16 June 1976 opposite. What should we avoid doing again if we are to prevent conflict related to language and race from occurring in our schools?

STEP 2

Have your say – your views count

Use the school suggestion box to ask the school community for their ideas on how we can celebrate everybody's languages.

STEP 3

Celebrating all our languages

Select some ideas from the suggestion box and put these into practice. For example, we could celebrate our multilingual identity through events, performances, activities, greetings and putting up multilingual signs in the school.

16 JUNE 1976

Why is 16 June important?

On Wednesday 16 June 1976, a protest march was organised in Soweto. Many children participated. They were angry because:

- The government wanted to force them to be taught half of their subjects in Afrikaans.
- Their schools were overcrowded.
- They did not have enough teachers, books and other equipment.
- They lived with their families in poor conditions.
- Their parents were afraid of the police and the white government.

The police responded to the protest march by shooting many unarmed children, causing protests and unrest through out the country. Before South Africa became a democracy, learners, political activists and ordinary people would commemorate 16 June every year. During this time the apartheid government, led by the National Party, was still in power.

Police would often attack and arrest people at 16 June commemoration rallies. Sometimes the government would announce that these rallies were banned. This meant that if these rallies went ahead, the organisers and others would be charged with a crime.

After our first democratic election in 1994, 18 years after the Soweto uprising, 16 June was declared a public holiday. It was named Youth Day.

THIS TABLE PRESENTS ALL OF THE CHAPTERS IN THIS BOOK IN OUR ELEVEN OFFICIAL LANGUAGES

ENGLISH	SESO THO SA LEBOA	SETSWANA	SISWATI
Our Constitution is our Beacon	Molaotheo wa rena ke Tlhahli ya rena	Molaotheo wa rona ke kaedi ya rona	Umtsetfosisekelo wethu usiKhonkhwane sefhu
School Governance and Human Rights	Taolo ya Sekolo le Ditokelo tša Botho	Taolo ya Sekolo le Ditshwanelo tsa Botho	Kwenganyelwa Kwetikolo Nemalungelo Eluntfu
Culture	Setšo	Setšo	Lisiko
Inclusive Education	Thuto ye e akaretšago	Thuto ya Kakaretso	Imfundvo Lehlanganisa konkhe
Sexual Orientation	Maikutlo a Bong	Tsa Bong	Temacansi
Race	Morafe	Lotso	Buve
Gender	Bong	Bong	Bulili
Language	Polelo	Puo	Lulwimi
HIV and AIDS	HIV le AIDS	HIV le AIDS	I-HIV ne-AIDS
Religion	Bodumedi	Bodumedi	Inkholo
Law-abiding Schools	Dikolo tše di Obamelago Molao	Dikolo tse di Obamelang Molao	Tikolo Letitfobela Umtsetfo
TSHIVENDA	XITSONGA	AFRIKAANS	ISINDEBELE
Ndayotewa yashu ndi Tsumbandilla yashu	Vumbiwa bya hina i Swakudya swa hina	Ons Grondwet is ons Baken	UmThethosisekelo wethu usisekelo sethu
Ndaulo ya Tshikolo na Pfanelo dza Vhathu	Mafambiselo ya Xikolo na Timfanelo ta Ximunhu	Skoolbestuur en Menseregte	UkuPhathwa kweenKolo namaLungelo woBuntu
Mvelele	Ndhavuko	Kultuur	Isiko
Pfunzo yo Katelaho	Dyondzo yo Angarhela	Inklusiewe Onderwys	Ifundo ebandakanywako
Ndivhiso nga ha zwa Mbeu	Nhlavutelo wa swa Masangu	Seksuele Georiënteerdheid	Ukuthandana kobululi obufanako
Lushaka	Rixaka	Ras	Ubuhlanga
Mbeu	Rimbewu	Geslag	Ubulili
Luambo	Ririmi	Taal	Ilimi
HIV na AIDS	HIV na AIDS	MIV en Vigs	I=HIV ne-AIDS
Vhurereli	Vukhonger	Godsdiens	Ikolo
Zwikolo zwine zwa Tevhedza Mulayo	Swikolo swo Landzelela Nawu	Wetsgehoorsame Skole	linkolo ezilandela umthetho
ISIXHOSA	ISIZULU	SESO THO	
UMgaqo-siseko wethu sisiKhokelo	UMthethosisekelo Wethu Uyisisekelo Sethu	Molao wa rona wa Motheo ke mosupatsela	
ULawulo lweSikolo namaLungelo oluNtu	UUKuphathwa Kwesikole Kanye Namalungelo EsiNtu	Taolo ya Sekolo le Ditokelo tsa Botho	
Inkcubeko	Isiko	Setho	
Imfundo eQukayo	Imfundo embandakanyayo	Thuto e Kenyeletsang	
INdlela oKhetha ukuPhila ngayo ngokwezeSondo	Ukufunda ngezocansi	Tsebiso ka Bong	
Uhlanga	Ubuzwe	Morabe	
Isini	Ubulili	Bong	
Ulwimi	Ulimi	Puo	
Intsholongwane kaGawulayo noGawulayo (i-HIV ne-AIDS)	Isondulela Ngculazi	HIV le AIDS (Phamokate)	
Inkolo	Inkolo	Bodumedi	
IziKolo eziThobela umThetho	Izikole Ezilandela Umthetho	Dikolo tse lkokobeletsang Molao	



6

RACE

In this chapter we explore the policies and human rights practices in schools in relation to race.

Hundreds of years of South African history have been marked by discrimination on the basis of race. This history is still felt in the hearts and minds of many citizens. The dawn of democracy calls on each one of us to remember our country's past, and to take responsibility for developing our communities. We

need to teach our children how to live in a non-racial society.

"Reconciliation does not mean forgetting or trying to bury the pain of conflict. Reconciliation means working together to correct the legacy* of past injustice. It means making a success of our plans for reconstruction and development;

explained former president Nelson Mandela on 16 December 1995.

In 2008, South Africans were shocked by outbreaks of violence against foreigners (xenophobia*). These events reminded us all of the importance of protecting our non-racial society by deepening our commitment to human rights.

WE ARE ALL PART OF THE



HUMAN RACE



SPOTLIGHT ON POLICY

The Constitution states that no one can be unfairly discriminated against on the basis of their race.

The South African Schools Act is also very clear that race cannot be a reason to exclude any learner from the school. This does not only apply to the different races of South Africa. It also applies to those from other countries.

Make a commitment to non-racism

A statement that clearly expresses each individual's commitment to rejecting racism and standing by the values of our country's Constitution can be a useful tool for schools experiencing divisions and tension because of racial prejudice*.

STEP 1

Formulate a Statement of Commitment to combat racism in your school

Every school should have a Statement of Commitment to promote non-racism, so as to give expression to our Constitutional values. It's the responsibility of the SGB to formulate such a statement with school stakeholders. Specific responsibilities should be identified for teachers and school staff, learners and parents.

STEP 2

Share the Statement of Commitment

A school community needs to understand the contents of the Statement of Commitment to combat racism. In order to do this the SGB should consult with parents, learners and school staff. The RCL can play a role in communicating the contents to the learner body in class or assembly. They can also gather their views and questions.

STEP 3

Review the Statement of Commitment

A school must review its Statement of Commitment to combat racism every three to five years. This is to ensure that its contents are up-to-date with the latest legislation and reflect the identities in the current school community. A school community needs to participate in its review from time to time.

STEP 4

Read and compare

Compare your school's Statement of Commitment to combat racism with the example opposite. What are the similarities? What are the differences?

A STATEMENT OF COMMITMENT TO COMBAT RACISM: An example

The responsibilities to combat racism for teachers, students and parents are listed below.

AS A TEACHER AT THIS SCHOOL, I COMMIT TO:

- Teaching students what racist behaviour is and setting clear expectations of non-racist behaviour.
- Teaching students about their rights and responsibilities in relation to racial discrimination.
- Encouraging students to report racist behaviour.
- Challenging* racist behaviour when I see it, immediately.
- Establishing classroom practices that reflect and value the different cultures, languages and perspectives present.
- Learning to pronounce all students' names correctly.
- Seeking language support for students who need it.
- Being a positive role model for my students by being inclusive*, positive and non-racist at all times.
- Evaluating my own teaching practices and materials for bias* and insensitivity.
- Identifying my own training needs in relation to education to counter racism, cultural understanding and inclusive teaching practices.

AS A STUDENT AT THIS SCHOOL, I COMMIT TO:

- Challenging racist opinions or behaviour by my peers, and reporting them to a teacher if I

need support in solving any conflict that may result.

- Being aware of my own racial prejudice or intolerance, and undertaking to understand and change it.
- Learning about, and celebrating, other cultures and languages.
- Being proud of my own culture and home language.
- Including students from different backgrounds and races in classroom and playground activities.
- Being a critical thinker so that I recognise and challenge unfair stereotypes* in the media or in learning materials.
- Being an independent thinker so that I'm not influenced by prejudices of those around me and stand up for tolerance and value differences.

AS A PARENT/CAREGIVER, I COMMIT TO:

- Reflecting on my own attitudes and behaviour towards people from different races.
- Taking a firm stand against racism.
- Being a role model by being open to other people's beliefs and practices.
- Ensuring my child knows his or her rights and responsibilities in relation to racist behaviour.
- Encouraging my child to be proud of his or her background and heritage, and to value that of others.

Adapted from *Educating for Our Common Future: Building Schools for an Integrated Society, A Guide Book for Principals and Teachers*, the Department of Education, 2001

VOCABULARY

Bias: A strong feeling in favour of or against a group of people, often based on unfair judgements.

Challenging: To question someone's behaviour.

Compassion: Caring for someone in need.

Inclusive: Including a wide range of people, things and ideas.

Legacy: A situation that exists now because of

events or actions that took place in the past.

Racial prejudice: Unfair dislike of someone because of their race.

Stereotypes: An idea many people have about a person or group of people, which is often untrue.

Xenophobia: A fear or dislike of people from other countries.

LEARNING FROM THE NEWS

Read the newspaper article “Race war’ breaks out at school” and discuss the issues it raises.



DISCUSS THE NEWS ARTICLE

1. In a few words, say what this article is about.

The article reports that “a fight between two learners at a Free State high school) that was immediately ascribed to serious racial tension, took a surprising turn when it was transformed into a verbal battle between white liberals and far right-wingers over racial hatred.” Schools are part of society and therefore reflect the tensions, divisions and problems that exist beyond the school gates. In this case, the point of conflict was allegedly race – a very sore point for many because of the country’s racist past. However, the school downplays this dispute, claiming it was “normal”.

2. How did outsiders use the incident at the school for their own ends?

The article shows that schools are vulnerable to being used by outsiders for negative purposes. In this case, the “far right” Afrikaner Volksparty used the incident to claim that “there is no such thing as peaceful racial integration” and that there “is truly reason for concern about the safety of ‘white learners’ at all racially integrated schools.

3. Which school stakeholders were contacted for their point-of-view on this incident?

Both the principal and the SGB chairperson were interviewed by the journalist and they are quoted as seeing the incident as a “normal” school fight, which just happened to involve a white and a black learner. While this may be true, the racist history of South Africa means that greater sensitivity needs to be shown where conflict between historically divided races is involved.

4. How are the “guilty parties” in this incident being dealt with?

All “guilty parties” will face a disciplinary hearing, indicating that no party is being unfairly excused* or favoured*, and that the proper processes set out in the school’s Code of Conduct are being followed.

5. What steps should the SGB/SMT take to ensure that the comments made by the Afrikaner Volksparty don’t stir up more conflict and division within the school community in the future?

Give your own point of view. Make a list of all of the ideas.

VOCABULARY

Allegations: Statements that have not yet been proven to be true.

Announced: Told people officially.

Ascribed: To explain that one thing was caused by another.

Climax: The highest point reached in the conflict.

Cyberspace: The internet.

Disciplinary hearing: A meeting where it is decided if someone has broken the rules.

Excused: To make behaviour seem less offensive by finding reasons for it.

Favoured: To treat one group better than another.

Finger pointing: Blaming.

Outburst: A sudden rage.

Taken out of context: Misunderstanding something because it is not seen in relation to the situation in which it happens.

Threats of bodily harm: Threats of physically hurting someone.

Unparalleled: Worse than anything else like it.

VALUES IN ACTION

It is important that SGB and RCL members embrace racial reconciliation and are able to handle complaints related to race and racism.

SGB and RCL members need to understand what it means for divided communities to reconcile their shared, yet different, pasts. To do this we need to examine reconciliation in relation to truth, mercy and justice.

STEP 1

Understanding reconciliation

Read the the information in the diagram opposite and explain in your own words how truth, mercy and justice contribute to positive peace.

STEP 2

Lessons from the Truth and Reconciliation Commission

Read and discuss some of the lessons from the TRC.

STEP 3

Have your say – your views count

Use the school suggestion box to ask the school community for their ideas on how to ensure that racial or other tensions between learners are lessened.

STEP 4

Promoting racial tolerance

Select some ideas from the suggestion box and put these into practice. For example, you could create playground activities or social events which encourage groups of learners to enjoy social time together across the colour bar. You could also host a dialogue in which people from different race groups share their experiences of race and racism. This dialogue could take place to commemorate* The Day of Reconciliation.

WHAT WAS THE TRUTH AND RECONCILIATION COMMISSION?

South Africa's history of imprisonment, torture, and murder of protesters left the country with a great deal of unresolved anger. In response, at the end of apartheid, South African leaders formed the Truth and Reconciliation Commission (TRC). Chaired by Arch Bishop Desmond Tutu, the commission held trials of those accused of violent, political crimes that took place during the struggle. The commission could recommend amnesty for those who came forward and completely confessed to their crimes, but only if the crimes were committed for political reasons and not for criminal or personal gain.

Extract from: Mamphela Ramphele: Challenging Apartheid in South Africa by Judith Harlan, Women Changing the World Series, The Feminist Press and the City University of New York, 2000

WAYS TO RECONCILE:

16 December is a public holiday which used to be called Dingaan's Day (1910), and later Day of the Covenant (1956). Since 1994 it is called the Day of Reconciliation. On this day we are asked to heal the wounds of the past. The new democratic government also instituted the Truth and Reconciliation Commission to hear the testimony of South Africans who had endured gross violations of human rights and/or who had committed crimes in the name of politics.

7 GENDER AND SEXUAL ORIENTATION

In this chapter we explore the policies and human rights practices in schools in relation to gender and sexual orientation.

Under the Equality clause of the South African Constitution, we may not discriminate directly or indirectly against anyone because of their gender or sexual orientation.

Sexual orientation refers to emotional, romantic or sexual attraction to men; women; both genders; neither gender; or another gender.

Some people are attracted to the opposite sex. We refer to these people as heterosexuals or straight.

Some people do not experience sexual attraction to another person. We refer to these people as asexual.



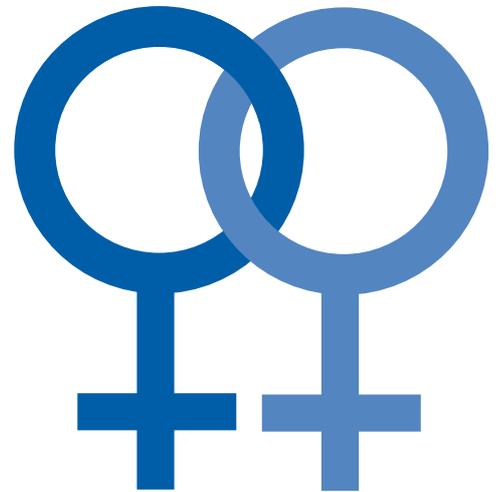
Some people are attracted to the same sex. We refer to these people as homosexuals. Men who are attracted to men are called gay. Women who are attracted to women are called lesbians.

Some people are attracted to both sexes. We refer to these people as bisexuals.

Sexual orientation includes gender identity. Some people have a heterosexual gender identity (male-female). Some people identify with the gender of the opposite sex. That is, a man – with a male anatomy – feels more like a woman; or a woman – a female anatomy – who feels more like a man. We refer to these

people as having a transgender identity.

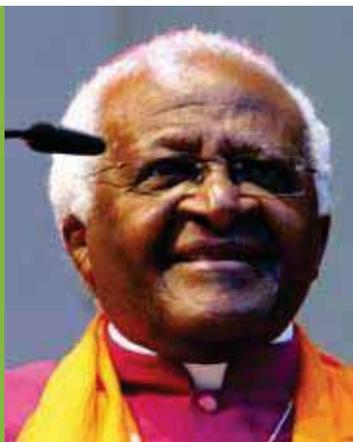
Some people choose to change their sex anatomy by having a sex-change operation and hormone treatment*. We refer to these people as transsexuals.





SPOTLIGHT ON POLICY

In an open letter on 8 November 2010 titled, "Hate has no place in the Church", former Archbishop Desmond Tutu makes a plea to citizens across the world for acceptance of LGBTI people, and an end to violence against them:



"Today I pray for people in Africa and throughout the world who long for freedom because they are lesbian, gay, bisexual or transgender... Boldly, I urge all faith leaders and politicians to stop persecuting people based on their sexual orientation or gender identity. Every day people live in fear because of who they love. We are talking about our family members, our flesh and blood, our humanity. Lesbian, Gay, Bisexual, Transsexual, Intersex (LGBTI) people are in our villages, towns, cities, countries — and our whole world... In South African churches we have sung, 'Oh freedom! Freedom is coming, oh yes, I know.' We sang this chorus at the lowest points of our journey toward freedom against the racist and colonialist system of apartheid, and we still sing it to this day. Freedom is coming — and those of us who have freedom must speak out for those whose freedom is under attack. We can and must make a difference."*

Archbishop Desmond Tutu, 8 November 2010,
<http://www.glaad.org>

STEP 1

Formulate a Statement of Commitment

Schools should have a Statement of Commitment to promote the acceptance of all gender and sexual orientations so as to give expression to our Constitutional values. Specific responsibilities should be identified for teachers and school staff, learners and parents.

STEP 2

Share the Statement of Commitment

The school community needs to understand the contents of the Statement of Commitment on gender and sexual orientation. In order to do this the SGB should consult with parents, learners and school staff. The RCL can play a role in communicating the contents of the Statement of Commitment to the learner body, and gather their views and questions. For example, the RCL could hold a meeting with the whole learner body after assembly and explain how the Constitution protects the rights of everyone, regardless of gender or sexual orientation, and why it is therefore important that the school upholds this right.

STEP 3

Review the Statement of Commitment

A school must review its Statement of Commitment every three to five years. This is to ensure that its contents are up-to-date with the latest legislation; and reflect the identities in the current school community. The school community should participate in this process of review.

STEP 4

Read and compare

An example of a school's Statement of Commitment that promotes acceptance of gender and sexual orientation is presented opposite. Compare it to your school's Statement of Commitment. What are the similarities? What are the differences?

A SCHOOL'S STATEMENT OF COMMITMENT: An example

AS A TEACHER AT THIS SCHOOL, I COMMIT TO:

- Teaching students about their rights and responsibilities in relation to accepting everyone's gender and sexual orientation.
- Encouraging students to report behaviour that is prejudiced or intolerant of a gender or sexual orientation.
- Challenging biased and intolerant behaviour when I see it, immediately.
- Establishing classroom practices that reflect and value the gender or sexual orientation of all those present.
- Being a positive role model for my students by being inclusive, positive and non-discriminatory towards people of all gender and sexual orientations at all times.
- Being proud of my own choice.
- Evaluating my own teaching practices and materials for bias and insensitivity.
- Identifying my own training needs in relation to education to counter discrimination on the basis of gender or sexual orientation, and to improve inclusive teaching practices.

AS A STUDENT AT THIS SCHOOL, I COMMIT TO:

- Challenging opinions or behaviour by my peers that express intolerance of anyone's gender and sexual orientation, and reporting them to a teacher if I need support in solving any conflict that may result.
- Being aware of my own prejudice or intolerance, and undertaking to understand

and change it.

- Learning about, and celebrating, other gender and sexual orientations.
- Being proud of my own choice.
- Including students with different gender and sexual orientations in classroom and playground activities.
- Being a critical thinker so that I recognise and challenge unfair stereotypes in the media or in learning materials.
- Being an independent thinker so that I'm not influenced by prejudices of those around me and stand up for tolerance and value differences.

AS A PARENT/CAREGIVER, I COMMIT TO:

- Reflecting on my own attitudes and behaviour towards people with different gender and sexual orientations.
- Taking a firm stand against prejudice against anyone on the basis of their gender or sexual orientation.
- Being a role model by being open to other people's beliefs and choices.
- Being proud of my own choice.
- Ensuring my child knows his or her rights and responsibilities in relation to discriminatory behaviour.
- Encouraging my child to be proud of his or her gender and sexual orientation, and to value that of others.

Adapted from Educating for Our Common Future: Building Schools for an Integrated Society, A Guide Book for Principals and Teachers, the Department of Education, 2001

VOCABULARY

Hormone treatment: Replacing the hormones that are in someone's body with the hormones that are in the bodies of the opposite sex.

Persecuting: To treat somebody in a cruel and unfair way, because (for example) of their race or sexual orientation.



4. What was the result of the illegal actions of the SGB and SMT?

External structures had to intervene to support the learners and condemn the actions of the SGB and SMT. These structures were the Commission for Gender Equality, the provincial education department and the South African Democratic Teachers' Union. The girls were allowed back into school, despite their sexual orientations.



VALUES IN ACTION

It is important that SGB and RCL members are able to embrace gender and sexual diversity, and handle complaints related to gender and sexual diversity.

STEP 1

Learning acceptance

Acceptance often involves a journey from feeling disturbed and intolerant to understanding and tolerance. Read the points below, and give examples from your own experience. Acceptance comes with the realisation that:

- One size does not fit all.
- Your own way of living is not the only way.
- You can accept it without agreeing with it.
- You agree not to impose your way of living on another person.

STEP 2

Being informed

Prejudices are often broken down when people are given information that opens their view of the world. A pioneer in this kind of work in our country is Simon Nkoli. Read the information below and say in what ways his story overcame prejudice.

STEP 3

Have your say - your view counts

Use the school suggestion box to ask the school community for their ideas on how to build a culture of acceptance that celebrates all gender and sexual orientations.

STEP 4

Take action

Select some ideas from the suggestion box and put these into practice. For example, organisations working in the LGBTI sector could be invited to share information with the students. Learners could be involved in making posters that show many different kinds of families (single parent, mixed race, same sex, etc). The RCL could promote the acceptability of same-sex partners at matric dances and other social school events. The school should be sensitive when arranging accommodation for school camps.

Simon Tseko Nkoli was born in 1957 in Soweto. He got involved in the 1976 students' uprising, and was detained by the police again and again between 1976 and 1981, often for months at a time.

While on trial, Simon came out to his comrades and his gayness was hotly debated. His co-accused in the Delmas Treason Trial eventually accepted his argument that discrimination on the basis of sexual orientation was as unacceptable as racism.

At Simon's memorial service in 1998, one of his comrades said: "Simon's coming out has helped me to understand that gay rights are part of human rights, and that our society must recognise the humanity of all its people".

Till the Time of Trial: The Prison Letters of Simon Nkoli, GALA, circa 2007

STEP 5

Celebrate diversity

There are many national and international days that celebrate gender and sexual diversity. For example:

IDAHO: 17 May

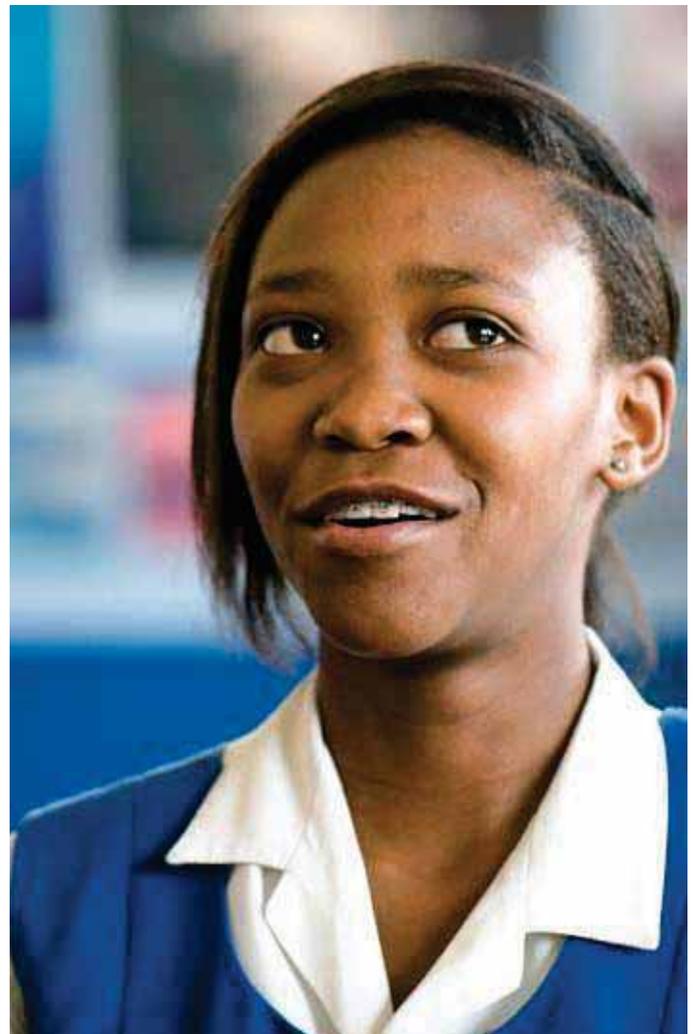
International Day Against Homophobia and Transphobia (IDAHO) aims to promote respect for lesbians and gays worldwide. Unlike LGBTI Pride Day, which emphasises pride of one's sexuality and one's refusal to be ashamed of it, IDAHO highlights "... in reality it is homophobia* that is shameful ... and must be fought against openly".

http://en.wikipedia.org/wiki/International_Day_Against_Homophobia_and_Transphobia

Africa Day: 25 May

Africa Freedom Day dates back to the conference of African heads of state in Addis Ababa in May 1963, where they met to strengthen African unity. This day commemorates* the hard-fought achievements of African countries' freedom from European colonial powers.

On this day, we celebrate the formation of the African Union and commit ourselves to better understanding and communicating with other countries, communities and individuals on the African continent, to strengthen existing ties and to forge real partnerships. Africa Day includes celebrating tolerance of sexual diversity, and commemorates victims and survivors of hate crimes that result from prejudice, violence and the oppression of minority groups.



8

GENDER AND SEXUAL VIOLENCE AND HARASSMENT

In this chapter we explore the policies and human rights practices in schools in relation to gender, with a particular focus on managing sexual violence and harassment.

Gender is core to a human being's identity. People are born female or male, but we are taught behaviour, attitudes, roles and activities that society tells us are appropriate for girls and boys, women and men. This learned behaviour is what makes up gender identity.

In cultures where men are seen as the head of the family (ie as patriarchs), women's interests are not given equal status, resources or opportunity. Patriarchy produces sexism, and sexism produces oppression.

Sexism is similar to racism. With sexism, men oppress women

because they are seen as lesser than men. With racism, people of one race oppress people of a different race because they are seen as lesser.

In our democracy, with our values of equality and mutual respect, neither sexism nor racism is acceptable.





SPOTLIGHT ON POLICY

The Constitution states that no one can be unfairly discriminated against on the basis of their gender.

The Constitution and the South African Schools Act are very clear that all policies and practices at schools must support equity and equality between genders.

Important issues linked to human rights and gender that schools must be aware of, and adopt policies for, include:

- Sexual harassment;
- Gender-based violence; and
- Learner pregnancies.

POLICY ON LEARNER PREGNANCY

The Department of Basic Education's *Measures for the Prevention of Learner Pregnancy in Schools* states the following:

- Learners should not engage in sexual relations until they have completed their studies.
- No pregnant learner may be expelled from school.
- Each case of a pregnant learner is unique, and the educators and parents/guardians of the affected learner need to agree on a plan that suits the needs of the particular learner. The intention should be to keep the learner at school for as long as is medically possible.
- Once the learner needs to leave the school for medical reasons, the learner must still be provided with academic support by the school.
- After the learner has given birth, the learner should be encouraged to return to school as soon as they can.

GUIDELINES FOR MANAGING SEXUAL VIOLENCE OR HARASSMENT AT SCHOOL

This step-by-step guide sets out how schools should manage incidents of sexual harassment*, whether it is between learners, or a learner and an educator. It also sets out the steps to take to report sexual offenses to the police.

STEPS TO TAKE IF A LEARNER IS SEXUALLY HARASSED OR ABUSED BY ANOTHER LEARNER:

- Learners are advised to report any sexual abuse or harassment to a trusted teacher or adult.
- This teacher or adult must keep this information confidential, only informing the principal or a designated* official.
- The designated official may be an adult member of the School Management Team (SMT) or the SGB.
- This designated official should contact the parents/caregivers of the victim. If the alleged perpetrator* is a learner at the school, the official should also contact the parents/caregivers of this learner.
- Two individuals (but not learners) nominated* by the SMT or the SGB should investigate the complaint without delay, and as confidentially as possible.
- This investigating team should provide feedback to both the victim and the alleged perpetrator about the investigation within seven days of the incident being reported.
- The victim should be offered counselling.
- Should the perpetrator be found guilty, he or she should be punished according to the level of seriousness of the offence as set out in the school's Code of Conduct.
- Sexual harassment and abuse are criminal acts and a charge must be laid with the police for such behaviour.
- A report of the incident must be written and put in the learners' files.

STEPS TO TAKE IF A LEARNER IS SEXUALLY HARASSED OR ABUSED BY AN EDUCATOR:

- The teacher or adult who the learner tells about the sexual abuse must immediately inform the principal.
- The principal must report the abuse to the provincial education department.
- The abuse must also be reported to the South African Council of Educators (SACE). Contact SACE on 012 663 9517 or 012 679 9728.
- This can be done anonymously, but the full details of the school; the alleged perpetrator; and the victim must be provided.
- The provincial department, district office and SACE will visit the school to investigate the charge.
- Besides informing those who must know, the matter must be treated confidentially by everyone involved.

STEPS TO TAKE TO REPORT SEXUAL OFFENCES TO THE POLICE:

- As soon as a member of the SGB or SMT is aware that any member of their school community has been the victims of sexual violence, the police should immediately be informed.
- No attempt should be made to investigate the case by the SGB or SMT. This is a criminal matter and must be handled by the police.
- The victim will have to go through a number of processes and may require support or assistance from trusted adults at the school to do so. For example, in the case of rape, the victim will need to have a medical examination*. The victim will also need to formally report the rape to the police.
- Should the alleged rapist or abuser be charged, the victim will need to give evidence in court. Trusted adults at the school should also provide support during this difficult process.
- Social workers should be asked to provide support to the victim. Counselling should also be offered to the victim.
- Besides informing those who must know, the matter must be treated confidentially by everyone involved.

LEGAL DUTIES OF EDUCATORS

The law states that:

- While at school, it is the duty of educators to make sure all learners are safe, and are treated with dignity and respect.
- Educators must inform the police or a social worker if they think that a child may be being abused.
- Educators have the duty to investigate all learners' complaints of sexual harassment and/or sexual violence.
- Educators must help all learners to report sexual abuse and to receive counselling.

IT'S AGAINST THE LAW

Sexual relations between any educator and any learner are totally forbidden*.

It is illegal, even if the learner is over 16 years of age, consents to having sex, and attends a different school to the educator.

If a teacher is having sex with a learner, that teacher must be reported and will be fired.

The guilty teacher's name will be added to a national blacklist of sex offenders kept by the South African Council of Educators (SACE), and will not be permitted to ever work as a teacher again.

Before appointing a teacher, it is very important that SGBs check the status of the teacher. This can be done online at www.sace.org.za, or phone 012 663 9517 or 012 679 9728. All you require is the teacher's ID number.

VOCABULARY

Crisis: A very difficult time.

Designated: Chosen to do a specific job.

Forbidden: Not allowed.

Harassment: To worry someone by putting pressure on them; saying or doing unpleasant things to someone

Medical examination: Being closely looked at by a doctor to see if anything is wrong.

Nominated: Chosen.

Perpetrator: A person who has done a crime.

Traumatic: Very bad and upsetting.

Adapted from *Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools*, the Department of Education 2008; and *Speak Out: Youth Report Sexual Abuse*. The Department of Basic Education, 2010.



DISCUSS THE NEWS ARTICLE

1. In a few words say what this article is about.

The article describes a school where teachers are accused of having sexual relations with learners; the SGB and SMT have failed to manage the situation, teaching and learning have come to a stop and the parent body has lost all confidence in the SGB and SMT. The crisis has finally come to a head and departmental authorities are trying to help resolve the issue.

2. What actions suggest that the accused teachers violated the legal and human rights of the learners involved in the "sex scandal"? Use the Arm Yourself with Consciousness Dial on page 23 to specify the type of damaging behaviour being shown by the teachers.

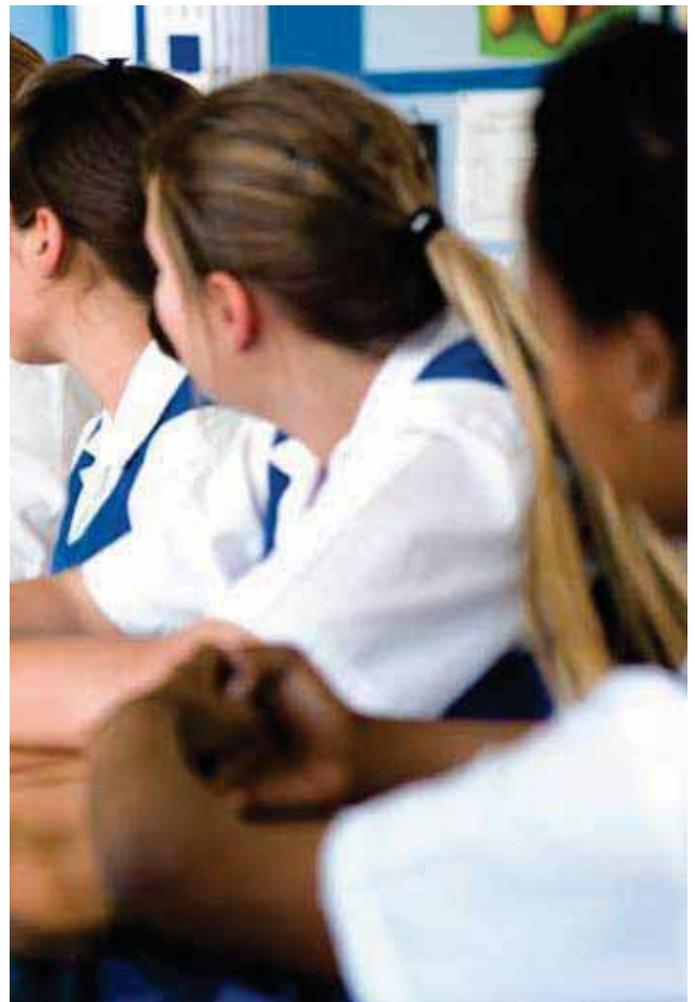
ACTIONS: The article states that, "The teachers are accused of having had sex with pupils on many occasions in the school lab in exchange for alcohol and money." This is a case of sexual harassment.

3. Why is the parent body upset about the way the SGBs handled the "sex scandal"?

The parent body expresses no confidence in the school's SGB because it believes that at least some members of the school community must have been aware of the sexual abuse by teachers against students and yet took no action to prevent or report it as they are legally and morally meant to do. Even once the "scandal surfaced", the SGB failed to handle the matter for a number of months. The SGB therefore appears to have failed to meet its responsibilities.

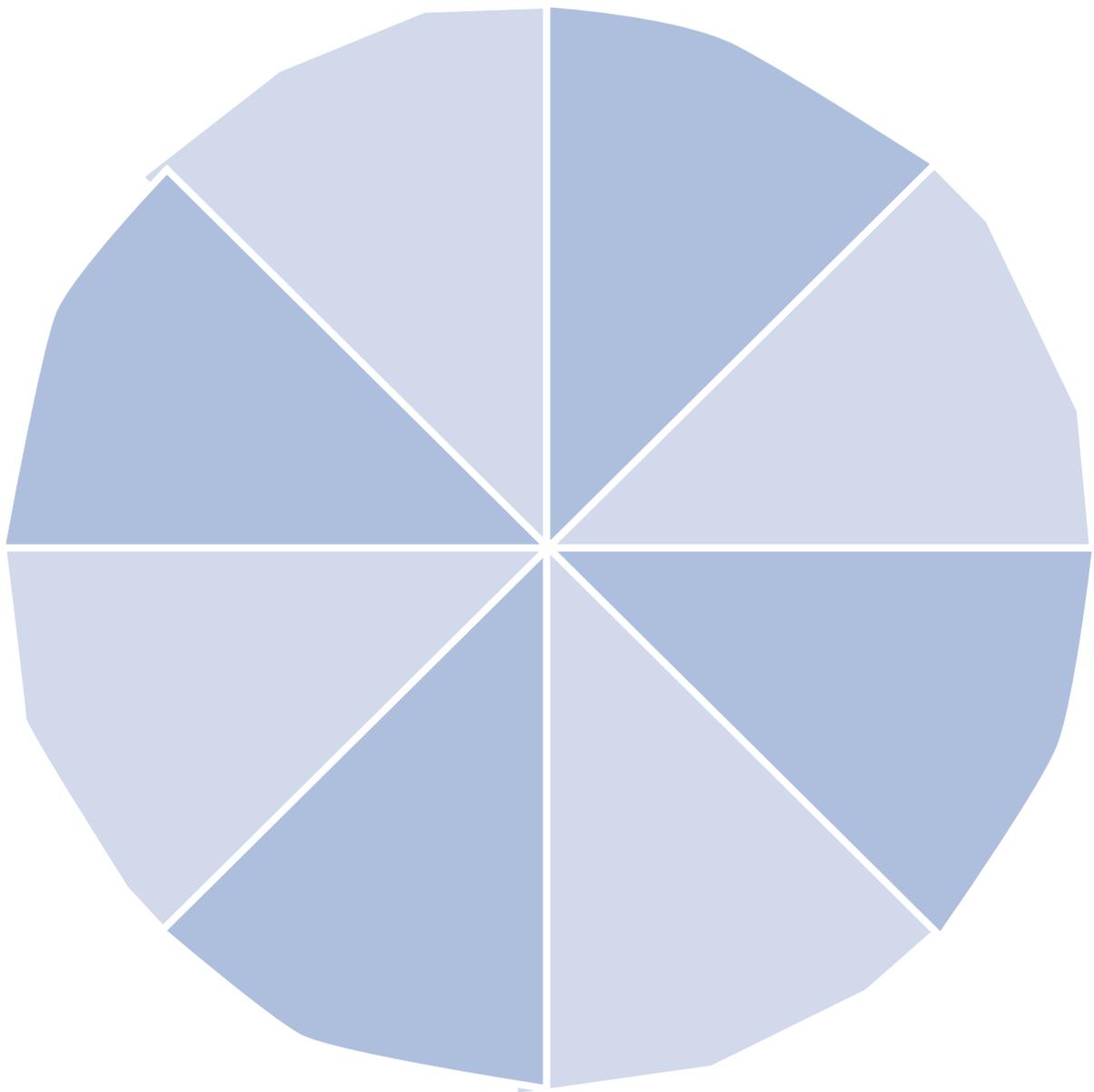
4. How should the SGB and SMT have dealt with the reports of sexual relations taking place between teachers and learners?

Give your own point of view. Make a list of all of the ideas.



VALUES IN ACTION

It is important that SGB and RCL members are able to embrace gender equality and handle complaints related to sexism, sexual harassment and violence. We need to know how to recognise the abuse of power, and how to tackle a serious crisis.



STEP 2

Know how to tackle a serious crisis

Often when we are faced with a crisis, we do not think clearly. The guide below will support SGB and RCL members to think through a serious crisis.

1. Who is involved?

- Who are the main parties in this conflict?
- What other parties are involved or connected to the conflict?
- Which marginalised* groups are connected to the conflict?
- Which parties outside of the school are connected to the conflict?

2. What are the relationships between all these parties?

- Where are there strong relationships (close contacts)?
- Where are there broken relationships?
- Are there any key issues between the parties that should be brought into the open?

3. Where do you stand?

- What is your view about the conflict?
- What is your relationship to the parties?
- How neutral are you able to be in mediating* the conflict?
- Should you excuse yourself from the mediation, given your personal bias?
- How have you taken care to keep the matter confidential*?

4. Who can help?

- Do you know anyone who can assist in resolving this conflict situation?
- Who in the education department could assist?
- What other government departments or NGOs should be contacted for assistance?

STEP 3

Have your say - your view counts

Use the school suggestion box to ask the school community for their ideas on how to build a culture of gender equality among all members of the school community.

STEP 4

Take action

Select some ideas from the suggestion box and put these into action. For example, how much of the school budget is spent on sports for boys? How much is spent on sports for girls? Is the money spent in an equitable way? When the members of the SGB meet to discuss how to spend the school budget, ensure that decisions are made that are sensitive to the needs and interests of both genders.

STEP 5

Celebrate women on Women's Day: 9 August

National Women's Day is commemorated on 9 August each year to remember the important role that women play in society. It also recognises what women have achieved in spite of the difficulties they face.

Women's Day is celebrated on the day on which 20 000 women protested against the extension of the pass laws to black women. On 9 August 1956, South African women of all races marched to the Union Buildings in Pretoria to handover 1 000s of petitions to the former Prime Minister Strydom and chanted, "Wathinta Abafazi, Wathint' Imbokodo, Uzakufa" ("You strike the women, you strike the rock").

On this day, we are asked to remember the role of women in the struggle for freedom and democracy in South Africa. We also take time to honour and appreciate the role that women play in our society today as mothers, sisters, friends and leaders.

Use Women's Day as an opportunity to build a culture of gender equality at your school. Some ideas of how you can do this are:

- Invite women leaders in your community to attend a school assembly where they can be recognised for their achievements and inspire others by telling their own story.
- Organise an interschool debate on a related topic, such as "We have already achieved gender equality in our democratic country".
- Ask learners from an appropriate grade to research the history behind Women's Day and present what they have discovered at a school assembly.

9

INCLUSIVE EDUCATION

In this chapter we explore the policy and human rights practices in schools in relation to inclusive education, focusing in particular on school admissions.

Inclusion is about recognising and respecting the differences among all learners and building on their similarities. Inclusion focuses on overcoming barriers in the system that prevent it from meeting the full range of learning and teaching needs of all learners.

Some of the barriers to learning and teaching include:

- Negative attitudes to and stereotyping of differences;
- An inflexible* curriculum;
- An inappropriate* language of

teaching and learning;

- Inappropriate communication;
- Inaccessible* and unsafe buildings;
- Inappropriate and inadequate support services;
- Inadequate policies and legislation;
- Non-recognition and non-involvement of parents; and
- Inadequately and inappropriately trained managers and educators.

In our democracy, inclusion is

one of the ways of overcoming some of the dysfunctional* parts of, and inequalities in, the system. It is very important that school communities engage creatively with the challenges that the barriers to teaching and learning present.

The inclusion of learners with "special education needs" or "learning barriers" into mainstream classes is a universal human right*. Therefore, all countries have to create equal opportunities for all learners to learn and succeed.





SPOTLIGHT ON POLICY

The principle of inclusion is one of the fundamental pillars on which our education system is built.

In the Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System (2001), inclusive education is about:

- Acknowledging that all children and youth can learn and that all children and youth need support.
 - Accepting and respecting that all learners are different in some way and have different learning needs which are equally valued and an ordinary part of our human experience.
 - Enabling education structures, systems and learning methodologies to meet the needs of all learners.
 - Acknowledging and respecting differences in learners whether due to age, gender, ethnicity, language, class, disability or HIV status.
- Changing attitudes, behaviour, teaching methods, curricula and the environment to meet the needs of all learners.
 - Maximising* the participation of all learners in the culture and the curricula of educational institutions and uncovering and minimising* barriers to learning.
 - Empowering learners by developing their individual strengths and enabling them to participate critically in the process of learning.
 - Acknowledging that learning also occurs in the home and community, and within formal and informal modes* and structures.

STEP 1

Formulate an Admission Policy for your school

Every school must have an Admission Policy that is in line with the laws of the land. It's the responsibility of the SGB to formulate an inclusive Admissions Policy.

STEP 2

Share the policy

A school community needs to understand the Admission Policy. In order to do this the SGB should consult with parents, learners and school staff. The principal or members of the SMT should assist very poor parents to complete the application for fee exception. The RCL can communicate the contents of the Admission Policy to the student body and gather its views and questions.

STEP 3

Admission Policy review

A school must review its Admission Policy every three to five years. This is to ensure that its contents are up-to-date with the latest legislation; and reflect the identities in the current school community. A school community needs to participate in the review of the Admission Policy from time to time.

STEP 4

Read and compare

Compare your school's Admission Policy with the example opposite. What are the similarities? What are the differences?



ADMISSIONS POLICY: Principles to guide you

The South African Schools Act sets out legal guidelines that SGBs must follow in developing inclusion principles in the formulation of their schools' Admission Policy:

- No admissions test may be administered* relating to the admission of a learner.
- Learners must be admitted and their educational needs met without unfairly discriminating in any way. Refusal of admission cannot be based on reasons such as religion, language, sexual orientation or disability.
- Learners may not be refused admission if his or

her parents/caregivers are unable to pay, or have not paid, school fees.

- The school has a legal duty to inform parents applying to the school about fee exemptions, and to assist them with their application for an exemption*, if this is needed.
- The testing of learners for HIV in order to be admitted to the school is not allowed.
- The preference order of admission to schools is:
 - Learners whose parents live in the feeder area;
 - Learners whose parents' work address is in the feeder area; and
 - Other learners on a first come, first served basis.

A SCHOOL'S ADMISSION POLICY: An example

1. A learner must have met the requirements for promotion into the grade for which application is made. A foreign learner may be given credits for studies completed in a foreign country.
2. The age of a learner may not be three years greater or lesser than the average age of the grade for which application is made.
3. There may be no unfair discrimination against any applicant.
4. Non-citizens and exchange students may be accommodated provided they are in possession of valid* temporary or permanent residence permits, official refugee status documents or study permits.
5. No admission tests are administered.
6. If a false or incorrect statement is made in the application, whether intended to deceive or not, the application will be rejected.
7. Preference for admission will be given to:
 - 7.1 Learners whose parents/legal guardians live in the feeder area of the school;
 - 7.2 Learners whose parents/legal guardians work in the vicinity* of the school;
 - 7.3 Learners from the school's nearby feeder schools; and
 - 7.4 Learners with siblings who are currently enrolled, or who are graduates from the school;
8. All other applications will be placed on the "B" application list. Placement will depend on availability of places in the grade applied for and will be done on a "first come, first served"* basis.

Adapted from Parktown High School for Girls Admission Policy

VOCABULARY

Administered: Given.

Dysfunctional: Not working well.

Exemption: Not having to pay what you normally have to pay.

First come, first served: The first people to arrive will be the first people who are helped.

Inaccessible: Difficult to use.

Inappropriate: Does not suit the occasion.

Inflexible: Cannot be changed.

Maximising: Making more.

Minimising: Making less.

Modes: A way of doing something.

Universal human rights: A set of rights that belong to all people across the world.

Valid: Legal.

Vicinity: Area.

LEARNING FROM THE NEWS

Read the newspaper article "How to make the grade"
and discuss the issues it raises.



VALUES IN ACTION

It is important that SGB and RCL members are able to respond positively to inclusion in the broadest sense. A positive response to inclusion treats learners with dignity, confidentiality and practical measures, like building social support networks.

STEP 1

Know how to handle inclusion with sensitivity

There have been reports of SGBs acting unfairly towards parents and their children who cannot pay fees. In some cases SGBs disregard the law that states that they must inform such parents about their right to apply for an exemption, and to assist them to fill in the application should they need it. In other cases, parents or their children are treated in a humiliating manner, such as having their status as non-paying members of the school revealed to everyone. This kind of treatment is dehumanising and unacceptable.

No single action or strategy will achieve inclusion with dignity. It is through collective responsibility and a combination of actions that a real difference will be made.

Here are some ideas your SGB and RCL can consider:

- Embrace inclusion – don't resist it.
- List the groups that make up the school community.
- What are the stereotypes, prejudices and perceptions used to describe the groups? How do these produce divisions and conflicts?
- It is important to have good relationships with all the groups so they understand your actions better and fear changes less.
- If your strategy attempts to address the needs and interests of all groups, it is more likely your efforts will be supported.
- How can you include all party's interests, needs and fears in your school plans without compromising the goal of delivering quality education?
- Your strategy should include networks beyond the school fence so as to mobilise* local resources to support your school. This improves social cohesion*.
- It is important to assess and review the strategy and goals regularly.

STEP 2

Keeping it confidential

Answer the questions below to understand why keeping people's information confidential is important.

- **What do we mean when we say 'Keep it confidential'?**
Do not share the information with anyone outside of the group entrusted to take care of the matter.
- **What kinds of information are sensitive?**
Examples may include a medical report; a special needs learning assessment; a person's HIV status; a person's abuse or rape case; whether a person needs financial assistance; bursary recipients; etc.
- **What is the point of keeping sensitive information confidential?**
Some reasons include respecting the person's privacy; avoiding unnecessary gossip; avoiding stigmas; etc.
- **How does your SGB ensure that sensitive information about specific individuals or groups is treated sensitively and with confidentiality?**
Give your own point of view. Make a list of all the ideas.

STEP 3

Have your say – your views count

Use the school suggestion box to ask the school community for their ideas on how you can go about forming school partnerships. Can you suggest organisations, businesses or individuals to approach for support and/or expertise. Consider all views. Choose the ones to respond to. Take action.

STEP 4

Building a supportive network

Form a committee within your SGB to identify local organisations, businesses, further or higher education campuses, NGOs or CSOs that could work with your school. Communicate with them and plan how to build the relationship for the greater good of the school. RCL members can form a committee to identify

groups outside of the school that would appreciate their assistance, such as orphanages, a soup kitchen, a gardening project, etc. It is when learners are seen helping their community that the community is encouraged to support the school in many different ways. Non-fee paying parents can offer to assist the school by, for example, patrolling the school grounds, covering library books, improving the school premises, or helping to organise school functions and events.

The efforts of the school and its community network can be celebrated to commemorate Freedom Day.

Freedom Day: 27 April

On this day we celebrate the anniversary of the first democratic elections held in South Africa in 1994 in which South Africans of all races voted for the first time. It is a day on which we celebrate the end of apartheid and the beginning of our democracy. We renew our commitment to uphold human rights, human dignity and equality for all people. In standing together we can assure future generations that they can look forward to enjoying a co-operative* future.

DO YOU KNOW?

In 2008, there were about 88 000 learners in approximately 400 special schools.

This amounts to about 0.64% of the learner population. Some estimate that as many as 4% of learners are in need of special support. Schools with greater numbers of learners with disabilities require more educator posts. Funding for inclusive education has improved considerably over recent years, from R1.8-billion in 2004/05 to R2.2-billion in 2007/08. It is important that we continue to be responsive to the needs of all learners.

VOCABULARY

Co-operative: Working together.

Mobilise: To use resources with a goal in mind.

Social cohesion: The way people in the same community care for each other.



10 HIV AND AIDS

In this chapter we explore the policies and human rights practices in schools in relation to HIV and AIDS.

Schools are directly affected* by HIV and AIDS because members of the school community may be infected*.

Schools may not discriminate against anyone infected or affected by HIV. Rather, they need to formulate a policy to guide their response to this virus that ensures that the dignity of all is respected.

Schools have a responsibility to educate young people about HIV and AIDS, especially since young people are at a high risk of becoming infected through irresponsible sexual behaviour*. Schools play a major role in shaping the attitudes, opinions and behaviours of people, and so are the ideal places to teach the social and biological realities of

HIV and AIDS.

Schools can also partner with organisations and the government to reduce the impact of HIV on school communities through:

- The prevention of new infections over time;
- Support for Orphans and Vulnerable Children; and
- Support for infected children and adults.





SPOTLIGHT ON POLICY

Both the Constitution and the South African Schools Act state that everyone has the right to an education, and cannot be excluded through unfair discrimination – as well as exclusion on the basis of one’s HIV status.

The National Policy on HIV and AIDS for public schools and FET institutions states:

- Learners living with HIV and AIDS should lead as full a life as possible and should not be denied the opportunity to receive an education to the maximum of their ability.
- Learners have the right to attend the school or FET college of their choice, and may not be denied admission because of their HIV or AIDS status. The school or SGB cannot force a learner to take an HIV test.
- Learners living with HIV and AIDS are expected to attend classes, and their needs must, as far as possible, be accommodated by the school/FET institution.
- Learners and school staff with HIV and AIDS should be treated in a just, humane and life-affirming* way.
- Only a suitably qualified person (such as a medical doctor) can decide whether a learner or school staff member presents a significant health risk to others. If such a decision is made, then appropriate steps must be taken to ensure that such persons do not put others at risk.

STEP 1

Formulate an HIV and AIDS Policy

Every school should have an HIV and AIDS Policy that is in line with the laws of the land. It’s the responsibility of the SBG to formulate this policy, in consultation with school staff, students and parents. The school’s non-discriminatory approach to those infected by HIV and AIDS should also be reflected in other school policies, such as its Admissions Policy and Code of Conduct.

STEP 2

Share the policy

The SGB should ensure that its school community understands the contents of its HIV and AIDS Policy. The RCL can play a role in communicating the contents of the policy to the student body, as well as to gather their views and questions. The SGB should be responsible for communicating about the HIV and AIDS Policy with school staff and the parent body by holding meetings and workshops, and distributing school newsletters.

STEP 3

Policy review

A school must review its HIV and AIDS Policy every three to five years. This is to ensure that its contents are up-to-date with the latest legislation and health developments, and reflect the identities in the current school community. The school community needs to participate in its review.

STEP 4

Read and compare

An example of a school’s HIV and AIDS Policy is presented opposite. Compare it with your school’s HIV and AIDS Policy. What are the similarities? What are the differences?



A SCHOOL'S HIV AND AIDS POLICY: An example

We acknowledge that HIV and AIDS is a serious pandemic*.

We are committed to taking active steps to prevent the spread of HIV and AIDS and to effectively manage staff and students living with HIV and AIDS.

We aim to create an environment of tolerance, understanding and compassion*. We promise to be supportive of infected and affected staff and learners.

PRINCIPLES

- 1. Non-discrimination:** No schools may discriminate against learners or educators with HIV or AIDS. No one may refuse to work or study with, or be taught by, a colleague or learner based on his or her actual, or perceived, HIV status.
- 2. HIV testing:** No staff member or learner may be denied admission to a school on account of his or her HIV and AIDS status. No compulsory testing may be carried out. Counselling regarding the benefits and risks of testing should be offered.
- 3. Confidentiality:** No one will be made to disclose his or her HIV status. Voluntary* disclosure* is welcomed. Disclosure by anyone of another's status without their consent is illegal. A learner or staff member's HIV status will be treated with total confidentiality.
- 4. A safe school environment:** All learners and educators will be given appropriate education and training on HIV transmission.
- 5. Universal precautions:** All blood spills in the school should be handled using the universal precautions. Training will be given and all necessary equipment must be available. Necessary equipment includes gloves, gowns, protective eyewear and aprons.
- 6. Education:** Ongoing and age-appropriate HIV and sex education will form part of the curriculum for learners.
- 7. A management plan:** Staff training will focus on the prevention of the spread of HIV and AIDS, and on the management of staff living with HIV and AIDS.
- 8. Evaluation:** The policy and school programme will be evaluated every three to five years.

Adapted from *Governing our Schools Series*, the Gauteng Department of Education and the Matthew Goniwe School of Leadership and Governance, 2005

VOCABULARY

Affected: To be influenced or changed by something.

Compassion: Caring about someone who is sick.

Empathy: Understanding how another person feels.

Infected: To be the carrier of a virus or illness.

Irresponsible sexual behaviour: Having unsafe sex, for example, having many sexual partners and not using a condom.

Life-affirming: Focusing on the good side of life.

Multiple concurrent partners: Having more than one sexual relationship at the same time.

Pandemic: An illness that spreads across a whole country or even around the world.

Voluntary disclosure: Telling someone about your HIV-status because you want to tell them and not because you are forced to tell them.

LEARNING FROM THE NEWS

Read the newspaper article "Pupils take to streets in AIDS campaign" and discuss the issues it raises.



DISCUSS THE NEWS ARTICLE

1. In a few words, say what this article is about.

With over 150 learners having been orphaned by HIV and AIDS, the school is directly and significantly affected by the pandemic. It has responded to this in very proactive* ways. For example, it has formed partnerships with appropriate organisations (Family Health International and Unicef) and is motivating its community by campaigning for voluntary* testing*. It is leading by example, with the principal and some learners with parents' permission being voluntarily tested for HIV.

The school is also acting as a centre where the broader community can access HIV- and AIDS-related services.

2. What actions and words show how the school is actively tackling issues related to HIV and AIDS?

ACTIONS: The school launched "a voluntary counselling and training campaign to raise awareness [about HIV and AIDS]".

Its campaign also aims "to promote AIDS testing in the community".

WORDS: The school's principal states: "There is a need to rid society of the stigma attached to the pandemic. With the correct knowledge and healthy living, people with the virus can live for many years."

3. What are the advantages and disadvantages of providing HIV and AIDS counselling at your school?

Give your own point of view. Make a list of all of the ideas.

4. The school's principal says, "There is a need to rid society of the stigma" attached to HIV and AIDS. What reasons would you give to support this statement?

Some reasons for getting rid of the stigma are so that people with HIV will:

- Get treatment;
- Tell their sexual partner/s;
- Take responsibility for preventing transmission;
- Take responsibility for procreating*; and
- Get support from the community.



VALUES IN ACTION

It is important that SGB and RCL members are open to supporting the school community to deal with HIV and AIDS. This can be done by understanding ways of overcoming the stigmas attached to HIV and AIDS.



11

SAFE SCHOOLS

In this chapter we explore the policies and human rights practices in schools in relation to violence, substance abuse and bullying.

For quality teaching and learning to take place, the school community must take responsibility for the well-being of learners and school staff. An important part of this involves managing behaviour, and ensuring that all forms of unacceptable behaviour are dealt with in accordance with the

school's Code of Conduct and the laws of the land.

Many schools struggle to maintain discipline among their students, while others experience incidents of violence or drug abuse on the school grounds. One of the reasons for this is that schools are microcosms*

of the society in which they exist, which means that the problems experienced in South African society are experienced at schools too. This can make the work of school authorities to make sure schools are safe places where quality education takes place that much harder.





SPOTLIGHT ON POLICY

The South African Schools Act states that: “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”.

All members of the school community should be clear about the kinds of behaviour the school considers acceptable, and unacceptable.

Compare your school's Code of Conduct with the example below. What are the similarities? What are the differences?

STEP 1

Formulate a Code of Conduct for learners at your school

Does your school's Codes of Conduct give detailed information about what the school expects? The content should state the values, moral standards, rules and responsibilities, punctuality; school uniforms; general behaviour; respect for the school and its RCL, staff and the SGB. as well as punitive measures*

STEP 2

Share the Code of Conduct

Every learner should sign the school's Code of Conduct each year to show their agreement with the content, and their commitment to uphold the school's rules.

The RCL must communicate the Code of Conduct and promote its values. For example, the RCL can run a poster-making campaign, where all learners are given the opportunity to create posters that capture an aspect of the Code of Conduct. Should the school be experiencing one particular breakdown in discipline among students (for example, late-coming or drug-taking), the RCL can take time at the end of assembly to remind the student body of relevant sections in the Code of Conduct.

SGBs should ensure that parents are familiar with the Code of Conduct.

STEP 3

Review the Code of Conduct

A school must review its Code of Conduct for learners every three to five years. This ensures its contents are up-to-date with the latest legislation. Members of the school community should be invited to make their suggestions during this review period.

STEP 4

Read and compare

An example of a school's Code of Conduct is provided. The example presents the introduction to a Code of Conduct, and focuses particularly on policies relating to bullying and drugs.



STAY ON THE
RIGHT SIDE OF
THE LAW

OUR SCHOOL'S CODE OF CONDUCT example continued

BULLYING POLICY:

Our school seeks to provide a safe, secure learning environment for all and does not tolerate bullying. All members of the school community are expected to base their behaviour on respect for others, regardless of differences in age, status, race, gender, culture, language, religion, sex, sexual orientation or disability.

DEFINITION OF BULLYING

Bullying is a deliberate attempt to hurt, ridicule, torment*, threaten, frighten or intimidate* someone. Bullying is the misuse of power by an individual or a group. Bullying can be mental, physical, verbal and/or psychological in nature.

- The contents of this policy are covered in the Grade 8 Life Orientation programme. Learners joining the school in any other grade are expected to familiarise themselves with the contents of this policy and ask their Life Orientation teacher, should they have any questions.
- All forms of bullying should be reported. A learner may report a case of bullying to any educator, RCL member, peer helper or senior leader. A learner may also place a note in the suggestion box, but it must contain the name of writer. All information will be treated confidentially.
- All reports of bullying will be investigated, at the very least, by a grade head.
- Peer helpers, counselling and educator staff will be available to help both the victim and the perpetrator.
- Records of any bullying will be kept by the school.
- Action to be taken against a perpetrator is listed in the school's Code of Conduct.

EXAMPLES OF TYPICAL BULLYING BEHAVIOUR:

A. Physical bullying

- Minor assault – prodding, poking, tripping.
- Offensive physical gestures.
- Deliberate damage to property of others.
- Major assault – hitting, kicking, tearing hair, scratching, punching, using a weapon of any nature; acting either alone or in a group against an individual or a group.

B. Verbal and written bullying

- Name-calling, ridiculing, humiliating or belittling someone, including making remarks that are offensive to race, disability, gender, language, culture, sexual orientation, age, sex, status, appearance or religion.
- Teasing in a way that causes humiliation or embarrassment.
- Spreading malicious* rumours and false information and rumours which are designed to mock, humiliate, ridicule and belittle others.
- Circulating material which humiliates or embarrasses another via any electronic media, cellphones, posters, photographs, graffiti or any other means.
- Behaving in a threatening way towards others.

C. Psychological (silent) bullying

- Isolating or ostracising* a learner in any way; rejection by a group of a learner; refusal to work with any learner/s in a group activity.
- Intentionally placing a learner in an uncomfortable position.
- Being a bystander* who, in any way, encourages or supports the actions of the bully, and does not attempt to stop the bullying.
- Intimidating or threatening another learner in any way to use or borrow their possessions.

OUR SCHOOL'S CODE OF CONDUCT example continued

DRUG POLICY

We know that drugs are readily available in the communities from which most of our learners are drawn.

We wholeheartedly condemn the abuse of drugs and alcohol as being a danger to the individual's physical, mental and emotional wellbeing; a danger to the individual's ability to lead a productive life; a danger to family cohesion*; and a potential danger to other innocent people.

We undertake to educate our learners about the dangers of drug and alcohol abuse in the belief that knowledge will give them the power to make informed and sensible decisions.

We encourage our learners also to look after the best interests of a friend who might have a drug or alcohol problem by asking a responsible adult for help.

Our teachers are committed to helping any learner who has become involved in drugs to stop the abuse. If a learner has a drug or alcohol problem and seeks help, he or she will be helped, usually by referral* to a professional.

Where a learner's behaviour at school shows some of the typical signs of drug use, the school will contact the parent(s) to arrange for the learner to be tested at the parent's expense so that appropriate remedial measures* may be taken in the interests of the learner and others. In all confirmed cases, however, the learner will be placed under a strong obligation* to stop the abuse in order to avoid punitive measures.

Our greatest concern is safeguarding the welfare of the overwhelming majority of learners who are not involved with drugs. Therefore,

anyone found in possession of drugs at school or dealing (or attempting to deal) in drugs anywhere will be very seriously dealt with in accordance with the Code of Conduct. SGBs are empowered by the South African Schools Act to take strong action, including suspension and/or expulsion, against any learner who commits a serious offence against school discipline, and the SGB will firmly carry out this duty.

Procedural principles* that will be adhered to when assistance is being given or investigations are being undertaken:

- **Confidentiality:** The teacher approached for help by a learner will have to contact the learner's parents and a senior staff member involved in counselling. However, no other staff, learners or parents will be informed. If it is considered to be in the learner's interest that any other person(s) be informed, this will only be done in consultation with the learner.
- **Testing:** Where a test needs to be carried out, this will be done with due regard both to necessary clinical procedures and to personal rights relating to privacy, dignity and bodily integrity*.
- **Searches:** Where there is a reasonable suspicion that a learner is in possession of an illegal substance, a search will be carried out by an educator of the same gender in the presence of the learner concerned; a person of their choice to support them; and a second adult witness of the same gender.

Adapted from *Bergvliet High School Code of Conduct*
<http://www.bhs.org.za/academic/prospectus/code-of-conduct>

VOCABULARY

Appeal procedures: A request to change a decision, usually about a punishment, following certain steps.

Bodily integrity: Respect for another person's body.

Bystander: Someone who sees a problem but does nothing about it.

Consultation: Discussion.

Ethic: Moral rules that guide a person's behaviour.

Exemplary: Setting a good example.

Family cohesion: The way family members care for each other.

Intimidate: To scare someone.

Malicious: Showing hatred and a desire to hurt someone.

Microcosms: A small group that has all the qualities of a larger group.

Obligation: Duty.

Ostracising: Not accepting someone in a social group.

Procedural principles: Official steps to follow to do something correctly.

Punitive measures: Actions to discipline and punish members of a group.

Random drug testing: Unexpected tests for drug use.

Rectifying: Fixing a mistake.

Referral: Putting someone in touch with an expert to help solve a problem.

Remedial measures: Steps taken to solve a problem.

Torment: To make someone suffer.





DISCUSS THE NEWS ARTICLE

1. In a few words say what this article is about.

The article describes how “one of the most dangerous schools in the Eastern Cape” took action to stamp out violence and drug abuse on the school grounds. The school management made use of the recently passed education law dealing with search and seizures on school property in order to protect members of its community from certain violent, lawless students. This involved rewriting the school’s Code of Conduct so it included information about random body searches, as well as disciplinary measures linked to unacceptable behaviour. Further measures taken included introducing a system to identify and monitor “problem children”.

2. Why did the school need to rewrite the Code of Conduct?

Law breakers also have rights: to dignity, privacy, confidentiality, and to have the processes of law enforcement and the justice system followed correctly.

Rules and procedures of the school and the laws of the land must therefore be followed carefully when dealing with students who break the rules and the law through violence, theft, drug abuse, etc. The Code of Conduct should be in line with the laws of the land and be clear on how search and seizures will be carried out. For example, random searches can be carried out only “if reasonable suspicion has been established”.

3. Why do you think young people at school behave violently and lawlessly?

Give your own point of view. Make a list of all of the ideas.



VOCABULARY

Behavioural problems: Not behaving as one is expected to behave.

Gazette: A published law or official decision.

Instituted: Started.

Non-invasive: Respecting privacy.

Paralysed: Being unable to move or do something.

Physiological: To do with the body.

Proportional: A certain amount or size that is a part of the whole group.

Render: Cause.

VALUES IN ACTION

It is very important that SGB and RCL members take a firm stand to keep their schools safe and free of substance abuse*. In order to do this, it is useful to understand the causes of behavioural problems and find co-operative ways of ensuring the safety of learners at school.

STEP 1

Understanding causes of behavioural problems

Behavioural problems that lead to breaking the law need to be understood within the context of the families and communities that learners come from.

STEP 2

Have your say - your view counts

Use the school suggestion box to ask the school community for their ideas on how you can ensure that incidents of bullying, violence and drug and alcohol abuse do not occur on the school premises.

STEP 3

Promoting safe schools

Select some ideas from the suggestion box and put these into practice. For example:

- You could identify places on the school grounds that are high risk areas for bullying and intimidation, and ensure these areas are patrolled and kept free of abusive activities.
- You could consider putting a stop to aggressive activities like school initiations, or discourage unhealthy competition* between individuals, clubs or grades.
- You could also host a dialogue with the school community to find ways to work in partnership to make the school safer.

STEP 4

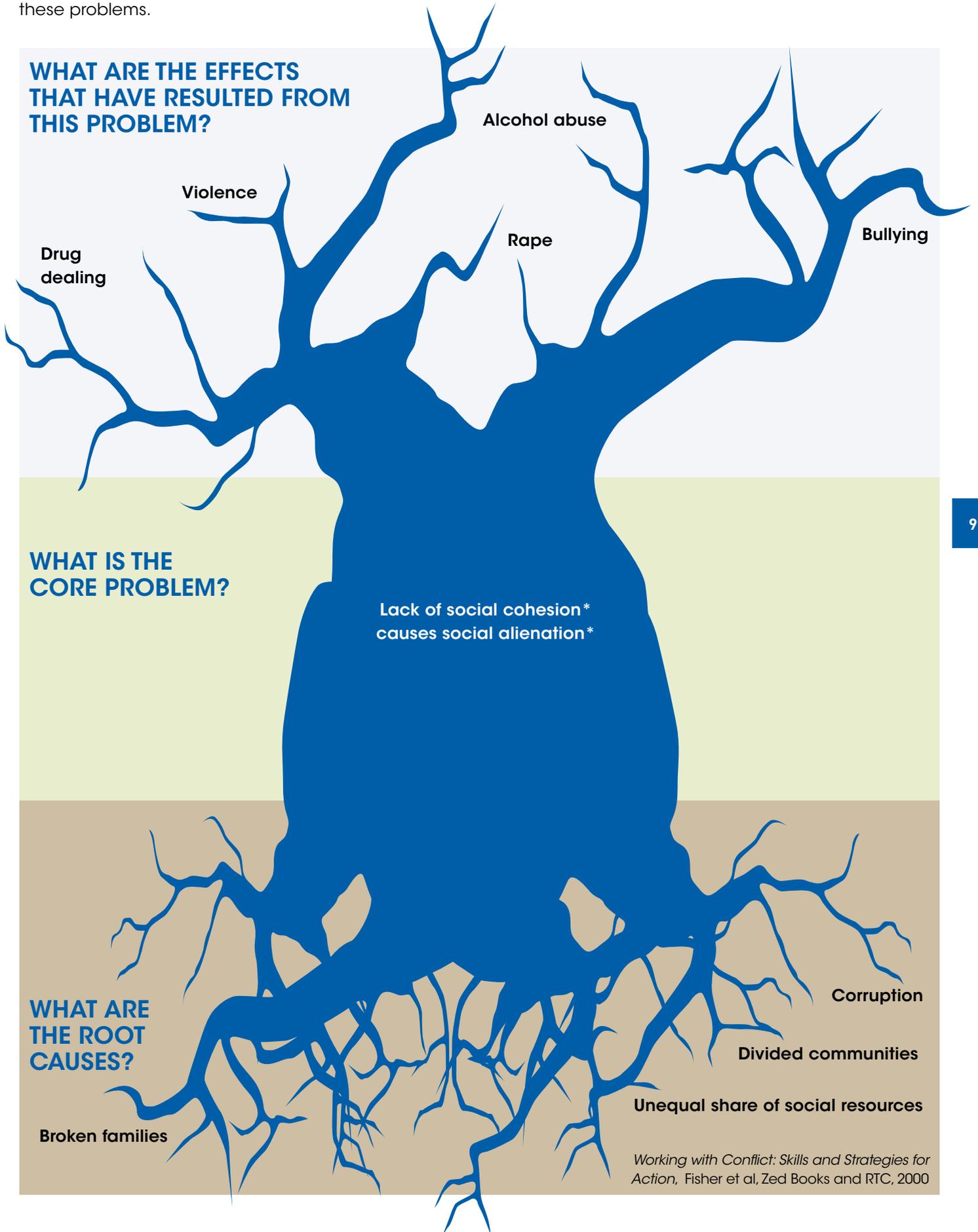
Policies and record-keeping

Does your school's Code of Conduct need to be revised to include search and seizure processes? Do you have a system of record-keeping to monitor problem students?

Take the necessary steps to revise you Code of Conduct and implement a record-keeping system.

CONFLICT TREE

A Conflict Tree is a tool that groups can use to identify the issues that are important for them to address. Use the Conflict Tree to help you to identify the causes of the problem, the core problem and the effects of these problems.



11

USEFUL CONTACTS

GOVERNANCE

Department of Basic Education - School Management and Governance

Tel: 012 357 4163
Email: ndlebe.j@dbe.gov.za
Website: www.education.gov.za

Federation of Association of Governing Bodies

Tel: 051 522 6903
Email: admin@fedsas.org.za

Governing Body Foundation

Tel: 031 564 7048
Email: gammie@iafrica.com

Governor's Alliance

Tel: 011 453 3784
Email: govall@mweb.co.za
Website: www.governorsalliance.co.za

National Association of School Governing Bodies

Tel: 011 830 2200
Email: nasgb.gs@gmail.com/
702@24.com

National Congress of School Governing Bodies

Tel: 074 666 2700
Email: andym@potch.co.za
tgmoleme@hotmail.com

HUMAN RIGHTS

Department of Basic Education

Tel: 012 357 3712
Email: leukes.c@dbe.gov.za
Website: www.education.gov.za

Foundation for Human Rights

Tel: 011 339 5560/1/2/3/4/5
Email: info@fhr.org.za
Website: www.fhr.org.za

Human Rights Institute of South Africa

Tel: 011 492 0568
Email: info@hurisa.org.za
Website: www.hurisa.org.za

Lawyers for Human Rights

Tel: 011 339 1960
Website: www.lhr.org.za

Legal Resources Centre

Tel: 011 836 9831
Email: contact@lrc.org.za
Website: www.lrc.org.za

South African Human Rights Commission

Tel: 011 484 8300
Email: sahrinfo@sahrc.org.za
Website: www.sahrc.org.za

CULTURE

Department of Arts and Culture

Tel: 011 712 8403
Email: info@act.org.za
Website: www.act.org.za

Department of Basic Education

Tel: 012 357 3712
Email: leukes.c@dbe.gov.za
Website: www.education.gov.za

National Arts Council of South Africa

Tel: 011 838 1383
Email: Funding@nac.org.za
Website: www.nac.org.za

National Heritage Council

Tel: 012 348 1663/8233
Email: nhc@nhc.org.za
Website: www.nhc.org.za

South African Heritage Resources Agency

Tel: 021 462 4502
Email: svandamme@sahra.org.za
Website: www.sahra.org.za

RELIGION

Commission for the Rights of Cultural, Religious and Linguistic Communities

Tel: 011 537 7600
Email: Chairperson@crlcommission.org.za
Website: www.crlcommission.org.za

Department of Basic Education

Tel: 012 312 5420
Website: www.education.gov.za

Muslim Judicial Council

Tel: 021 684 4600
Email: idarah@mjc.org.za
Website: www.mjc.org.za

South African Board of Jewish Education

Tel: 011 480 4700
Email: sabje@sabje.co.za
Website: www.sabje.co.za

South African Council of Churches

Tel: 011 241 7800
Email: tmm@sacc.org.za
Website: www.sacc.org.za

South African Hindu Maha Sabha

Tel: 031 309 1951
Email: sahms@worldonline.co.za

LANGUAGE

DEAFSA

Tel: 021 683 4665
Email: deafsa@iafrica.co.za
Website: www.deafsa.co.za

Department of Basic Education

Tel: 012 357 3712
Email: leukes.c@dbe.gov.za
Website: www.education.gov.za

Pan South African Language Board

Tel: 012 341 9638/ 012 341 9651
Email: communication@pansalb.org.za
Website: www.pansalb.org.za

Project for the Study of Alternative Education in Southern Africa

Tel: 021 650 4013
Email: praesa@humanities.uct.ac.za
Website: www.uct.ac.za/depts/praesa

South African National Deaf Association

Tel: 011 331 6390

Email: info@sanda.org.za

Website: www.sanda.org.za

RACE

Department of Basic Education - Race and Values in Education

Tel: 012 357 3368

Email: mannah.s@dbe.gov.za

Website: www.education.gov.za

Centre for the Advancement of Non-Racialism and Democracy

Tel: 082 881 8015

Email: allan.zinn@nmmu.ac.za

The Children's Movement

Tel: 021 686 6898

Email: crcchild@telkomsa.net

Website: www.childrensmovement.org.za

South African Institute of Race Relations

Tel: 011 482 7221

Email: prisca@sairr.org.za

Website: www.sairr.org.za

Umtapo Centre

Tel: 031 309 3350

Email: info@umtapocentre.org.za

Website: www.umtapocentre.org.za

GENDER AND SEXUAL ORIENTATION

Department of Basic Education

Tel: 012 357 3712

Email: leukes.c@dbe.gov.za

Website: www.education.gov.za

Behind the Mask - The Voice of Africa's LGBTI Community

Tel: 011 403 5566

Email: info@mask.org.za

Website: www.mask.org.za

GALA: Gay and Lesbian Memory in Action

Tel: 011 717 4239

Email: info@gala.co.za

Website: www.gala.co.za

Intersex South Africa

Tel: 021 447 6290

Email: coordinator@intersex.org.za

The Lesbian and Gay Equality Project

Tel: 011 487 3810/1

Email: info@equality.org.za

Website: www.equality.org.za

GENDER

Commission for Gender Equality

Tel: 011 403 7182

Website: www.cge.org.za

Department of Basic Education - Gender Equity in Education

Tel: 012 357 3374

Email: aphone.m@dbe.gov.za

Website: www.education.gov.za

Family and Marriage Society of South Africa

Tel: 011 975 7106/7

Email: national@famsa.org.za

Website: www.famsa.org.za

Gender Links

Tel: 011 622 2877

Email: progassistant@genderlinks.org.za

Website: www.genderlinks.org.za

Girls and Boys Education Movement Clubs

Tel: 012 357 3373

People Opposed to Women Abuse

Tel: 011 642 4345/6

Email: info@powa.co.za

Website: www.powa.co.za

INCLUSIVE EDUCATION

Alliance for Children's Entitlement to Social Security

Tel: 021 761 0117

Admissions Hotline: 0800 005 175

Email: admin@acess.org.za

Centre for Education Rights and Transformation

Tel: 011 559 1148

Email: esekgobela@uj.ac.za

Website: www.uj.ac.za/EN/faculties/edu/Centresandinstitutes/CERT

Department of Basic Education - Inclusive Education

Tel: 012 357 4082

Email: Simelane.M@dbe.gov.za

Website: www.education.gov.za

HIV AND AIDS

AIDS Helpline

Tel: 08000 123 22

Department of Basic Education

Tel: 012 357 3712

Email: leukes.c@dbe.gov.za

Website: www.education.gov.za

National Association of People Living with HIV/AIDS

Tel: 011 873 7158

Email: napnat@sn.apc.org

Website: www.napwa.org.za

South African National AIDS Council

Email: info@sanac.org.za

Website: www.sanac.org.za

The AIDS Consortium

Tel: 011 403 0265

Email: info@aidsconsortium.org.za

Website: www.aidsconsortium.org.za

Treatment Action Campaign

Tel: 021 788 3507

Email: info@tac.org.za

Website: www.tac.org.za

SAFE SCHOOLS

Child Line

Tel: 0800 05 55 55/ 031 207 9108

Email: admin@childlinesa.org.za

Website: www.childlinesa.org.za

Department of Basic Education

Tel: 0800 202 933

Website: www.education.gov.za

National Institute for Crime Prevention and Re-integration of Offenders

Tel: 021 462 0017

South African Police Services Crime Stop

Tel: 086 0010 111

Email: childprotect@saps.org.za

Website: www.saps.gov.za

South African Police Services Emergency number

Tel: 10111

South African Council of Educators

Tel: 086 1007 223

Email: pr@sace.org.za

Website: www.sace.org.za

USEFUL RESOURCES

Documents to be familiar with:

- The Constitution of South Africa, Act 108 of 1996
- The Bill of Responsibilities
- National Guidelines on School Uniforms (Government Notice 28538)
- Religion in Education Policy, August 2003
- Language in Education Policy, 14 July 1997
- Norms and Standards for School Funding (School fee policy)
- Measures for the prevention and management of learner pregnancy, 2008
- Develop an HIV and AIDS plan for your school - A guide for school governing bodies and management teams
- Guidelines for the Prevention and Management of Sexual Violence & Harassment in Public Schools, 2008
- Teachers guidelines for building humanity and accountability in schools
- Education White Paper 6 - Building An Inclusive Education And Training System
- Guidelines on the development of a code of conduct for schools
- Strategy for Integration and Non-Discrimination, December 2005
- A Guide Book for Principals and Teachers, Educating for Our Common Future
- Implementation Guidelines for Safe, Caring and Child-Friendly Schools, 2009
- SASA No fee schools – Norms and standards for school funding Regulations for exemption of learners of parents from payment of fees.
- SACE code of conduct for Educators.
- Childrens Act.



basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN SCHOOLS ACT
NO. 84 OF 1996**

[\[View Regulation\]](#)

[ASSENTED TO 6 NOVEMBER, 1996]
[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to <i>Government Gazette</i> 34620 dated 19 September, 2011.
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as amended by

Education Laws Amendment Act, [No. 100 of 1997](#)

Education Laws Amendment Act, [No. 48 of 1999](#)

Education Laws Amendment Act, [No. 53 of 2000](#)

Education Laws Amendment Act, [No. 57 of 2001](#)

Education Laws Amendment Act, [No. 50 of 2002](#)

Education Laws Amendment Act, [No. 1 of 2004](#)

Education Laws Amendment Act, [No. 24 of 2005](#)

Education Laws Amendment Act, [No. 31 of 2007](#)

Basic Education Laws Amendment Act, [No. 15 of 2011](#)

ACT

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

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

WHEREAS this country requires a new national system for *schools* which will redress past injustices in educational provision, provide an education of progressively high quality for all *learners* and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all *learners, parents* and *educators*, and promote their acceptance of responsibility for the organisation, governance and funding of *schools* in partnership with the State; and

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

1. Definitions
2. Application of Act

CHAPTER 2

LEARNERS

3. Compulsory attendance
4. Exemption from compulsory attendance
5. Admission to public schools
- 5A. Norms and standards for basic infrastructure and capacity in public schools
6. Language policy of public schools
- 6A. Curriculum and assessment
- 6B. Non-discrimination in respect of official languages
7. Freedom of conscience and religion at public schools
8. Code of conduct
- 8A. Random search and seizure and drug testing at schools
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CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT

1. Definitions.—(1) In *this Act*, unless the context indicates otherwise—

"Constitution" means [the Constitution](#) of the Republic of South Africa, 1996 ([Act No. 108 of 1996](#));

[Definition of "[Constitution](#)" substituted by [s. 1 \(b\)](#) of [Act No. 100 of 1997](#).]

[Wording of Sections](#)

"Council of Education Ministers" means the *Council of Education Ministers* established by the National Education Policy Act, 1996 ([Act No. 27 of 1996](#));

"dangerous object" means—

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that the *Minister* may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;

[Definition of "[dangerous object](#)" inserted by [s. 4 \(a\)](#) of [Act No. 31 of 2007](#).]

"education department" means the department established by [section 7 \(2\)](#) of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), which is responsible for education in a *province*;

"educator" means any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a *school*;

[Definition of "[educator](#)" substituted by [s. 6 \(a\)](#) of [Act No. 48 of 1999](#).]

[Wording of Sections](#)

"governing body" means a *governing body* contemplated in [section 16 \(1\)](#);

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

"Head of Department" means the head of an *education department*;

"illegal drug" means—

- (a) any unlawful substance that has a psychological or physiological effect; or
- (b) any substance having such effect that is possessed unlawfully;

[Definition of "[illegal drug](#)" inserted by [s. 4 \(b\)](#) of [Act No. 31 of 2007](#).]

"independent school" means a *school* registered or deemed to be registered in terms of [section 46](#);

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

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

[Definition of "[loan](#)" inserted by [s. 4 \(a\)](#) of [Act No. 15 of 2011](#).]

"member of staff" means a person employed at a *school*;

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

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

[Definition of "[Minister](#)" substituted by [s. 4 \(b\)](#) of [Act No. 15 of 2011](#).]

[Wording of Sections](#)

"no fee threshold" means the level of funding per *learner* contemplated in the *norms and standards* for *school* funding applicable to a *public school* which enables the *Minister* to declare a *school* a no fee *school* in terms of *this Act*;

[Definition of "[no fee threshold](#)" inserted by [s. 1 \(a\)](#) of [Act No. 24 of 2005](#).]

"norms and standards for school funding" means the national norms and standards for the funding of *schools* determined by the *Minister* in terms of [section 35](#);

[Definition of "[norms and standards for school funding](#)" inserted by [s. 1 \(a\)](#) of [Act No. 24 of 2005](#).]

"officer" means an employee of an *education department* appointed in terms of the *Educators Employment Act, 1994* ([Proclamation No. 138 of 1994](#)), or the *Public Service Act, 1994* ([Proclamation No. 103 of 1994](#));

"parent" means—

(a)

the biological or adoptive *parent* or legal guardian of a *learner*;

[[Para. \(a\)](#) substituted by [s. 4 \(c\)](#) of [Act No. 15 of 2011](#).]

[Wording of Sections](#)

(b)

the person legally entitled to custody of a *learner*; or

(c)

the person who undertakes to fulfil the obligations of a person referred to in [paragraphs \(a\)](#) and [\(b\)](#) towards the *learner's* education at *school*;

"principal" means an *educator* appointed or acting as the head of a *school*;

"province" means a *province* established by [section 124](#) of [the Constitution](#);

"provincial legislature" means a *provincial legislature* contemplated in [section 125](#) of [the Constitution](#);

"public school" means a *school* contemplated in [Chapter 3](#);

"Registrar of deeds" means the *registrar of deeds* referred to in [section 2](#) of the *Deeds Registries Act, 1937* ([Act No. 47 of 1937](#));

[Definition of "Registrar of deeds" inserted by [s. 1 \(a\)](#) of [Act No. 100 of 1997](#).]

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

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

Wording of Sections

"school activity" means any official educational, cultural, recreational or social activity of the *school* within or outside the *school* premises;

[Definition of "[school activity](#)" inserted by [s. 4 \(c\)](#) of [Act No. 31 of 2007](#).]

"school fees" means *school fees* contemplated in [section 39](#) and includes any form of contribution of a monetary nature made or paid by a person or body in relation to the attendance or participation by a *learner* in any programme of a *public school*;

[Definition of "[school fees](#)" inserted by [s. 1 \(b\)](#) of [Act No. 24 of 2005](#).]

"this Act" means *this Act* and all regulations promulgated under *this Act*.

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

Wording of Sections

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

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

Wording of Sections	X
def: Constitution of Act 84 of 1996 prior to amendment by Act 100 of 1997	
Wording of Sections	X
def: educator of Act 84 of 1996 prior to amendment by Act 48 of 1999	
Wording of Sections	X
def: Minister of Act 84 of 1996 prior to amendment by Act 15 of 2011	
Repealed Act	X
P 138 of 1994 has been repealed by s 137(1) of Act 76 of 1998	
Wording of Sections	X
def: parent par(a) of Act 84 of 1996 prior to amendment by Act 15 of 2011	
Wording of Sections	X
def: school of Act 84 of 1996 prior to amendment by Act 100 of 1997 def: school of Act 84 of 1996 prior to amendment by Act 48 of 1999	
Wording of Sections	X
s 1(1), s 1 of Act 84 of 1996 prior to amendment by Act 50 of 2002	

2. Application of Act.—(1) *This Act* applies to *school* education in the Republic of South Africa.

(2) A *Member of the Executive Council* and a *Head of Department* must exercise any power conferred upon them by or under *this Act*, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 ([Act No. 27 of 1996](#)).

(3) Nothing in *this Act* prevents a *provincial legislature* from enacting legislation for *school* education in a *province* in accordance with [the Constitution](#) and *this Act*.

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

Wording of Sections

CHAPTER 2
LEARNERS

Wording of Sections



s 2(3) of Act 84 of 1996 prior to amendment by [Act 100 of 1997](#)

3. Compulsory attendance.—(1) Subject to *this Act* and any applicable provincial law, every *parent* must cause every *learner* for whom he or she is responsible to attend a *school* from the first *school* day of the year in which such *learner* reaches the age of seven years until the last *school* day of the year in which such *learner* reaches the age of fifteen years or the ninth *grade*, whichever occurs first.

(2) The *Minister* must, by notice in the Government Gazette, determine the ages of compulsory attendance at *school* for *learners* with special education needs.

(3) Every *Member of the Executive Council* must ensure that there are enough *school* places so that every child who lives in his or her *province* can attend *school* as required by [subsections \(1\)](#) and [\(2\)](#).

(4) If a *Member of the Executive Council* cannot comply with [subsection \(3\)](#) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the *Minister* on the progress achieved in doing so.

(5) If a *learner* who is subject to compulsory attendance in terms of [subsection \(1\)](#) is not enrolled at or fails to attend a *school*, the *Head of Department* may—

- (a) investigate the circumstances of the *learner's* absence from *school*;
 - (b) take appropriate measures to remedy the situation; and
 - (c) failing such a remedy, issue a written notice to the *parent* of the *learner* requiring compliance with [subsection \(1\)](#).
- (6) Subject to *this Act* and any other applicable law—
- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with [subsection \(1\)](#), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or
 - (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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

(2) Every *Head of Department* must maintain a register of all *learners* exempted from compulsory *school* attendance.

5. Admission to public schools.—(1) A *public school* must admit *learners* and serve their educational requirements without unfairly discriminating in any way.

(2) The *governing body* of a *public school* may not administer any test related to the admission of a *learner* to a *public school*, or direct or authorise the *principal* of the *school* or any other person to administer such test.

(3) No *learner* may be refused admission to a *public school* on the grounds that his or her *parent*—

- (a) is unable to pay or has not paid the *school* fees determined by the *governing body* under [section 39](#);
- (b) does not subscribe to the mission statement of the *school*; or
- (c) has refused to enter into a contract in terms of which the *parent* waives any claim for damages arising out of the education of the *learner*.

(4) (a) The admission age of a *learner* to a *public school* to—

- (i) *grade R* is age four turning five by 30 June in the year of admission;
- (ii) *grade 1* is age five turning six by 30 June in the year of admission.

(b) Subject to the availability of suitable *school* places and other educational resources, the *Head of Department* may admit a *learner* who—

- (i) is under the age contemplated in [paragraph \(a\)](#) if good cause is shown; and
- (ii) complies with the criteria contemplated in paragraph (c).

(c) The *Minister* may, by regulation, prescribe—

- (i) criteria for the admission to a *public school*, at an age lower than the admission age, of an underage *learner* who complies with the criteria¹;
- (ii) age requirements for different *grades* at a public school.

(d) For the purpose of [paragraph \(b\) \(i\)](#), good cause shown means that—

- (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in his or her best interest; and
- (ii) the refusal to admit that *learner* would be severely detrimental to his or her development.

[[Sub-s. \(4\)](#) substituted by [s. 2](#) of [Act No. 50 of 2002](#) with effect from 1 January, 2004.]

Wording of Sections

(5) Subject to *this Act* and any applicable provincial law, the admission policy of a *public school* is determined by the *governing body* of such *school*.

(6) In determining the placement of a *learner* with special education needs, the *Head of Department* and *principal* must take into account the rights and wishes of the *parents* of such *learner*.

(7) An application for the admission of a *learner* to a *public school* must be made to the *education department* in a manner determined by the *Head of Department*.

(8) If an application in terms of [subsection \(7\)](#) is refused, the *Head of Department* must inform the *parent* in writing of such refusal and the reason therefor.

(9) Any *learner* or *parent* of a *learner* who has been refused admission to a *public school* may appeal against the decision to the *Member of the Executive Council*.

Footnotes

1

It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

Footnote

✕

1

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- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

Wording of Sections

✕

[s 5\(4\)](#) of Act 84 of 1996 prior to amendment by [Act 50 of 2002](#)

5A. Norms and standards for basic infrastructure and capacity in public schools.—

(1) The *Minister* may, after consultation with the Minister of Finance and the *Council of Education Ministers*, by regulation prescribe minimum uniform norms and standards for—

- (a) *school* infrastructure;
- (b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and
- (c) the provision of learning and teaching support material.

[Sub-s. (1) amended by [s. 5](#) of [Act No. 15 of 2011](#).]

Wording of Sections

(2) The norms and standards contemplated in [subsection \(1\)](#) must provide for, but not be limited to, the following:

(a)

In respect of *school* infrastructure, the availability of—

- classrooms; (i)
- electricity; (ii)
- water; (iii)
- sanitation; (iv)
- a library; (v)
- laboratories for science, technology, mathematics and life sciences; (vi)
- sport and recreational facilities; (vii)
- electronic connectivity at a *school*; and (viii)
- perimeter security; (ix)

(b)

in respect of the capacity of a *school*—

- the number of teachers and the class size; (i)
- quality of performance of a school; (ii)
- curriculum and extra-curricular choices; (iii)
- classroom size; and (iv)
- utilisation of available classrooms of a school; (v)

(c)

in respect of provision of learning and teaching support material, the availability of—

- stationery and supplies; (i)
- learning material; (ii)
- teaching material and equipment; (iii)

- science, technology, mathematics and life sciences apparatus; (iv)
- electronic equipment; and (v)
- school furniture and other school equipment. (vi)

(3) When determining policy in terms of [sections 5 \(5\)](#) and [6 \(2\)](#) a *governing body* must comply with the norms and standards contemplated in [subsection \(1\)](#).

(4) A *governing body* must, within a period of 12 months after the *Minister* has prescribed the norms and standards contemplated in [subsection \(1\)](#), review any policy that it has determined in terms of [sections 5 \(5\)](#) and [6 \(2\)](#) to ensure that such policy complies with the norms and standards.

[[S. 5A](#) inserted by [s. 5](#) of [Act No. 31 of 2007](#).]

Wording of Sections	✕
s 5A(1) of Act 84 of 1996 prior to amendment by Act 15 of 2011	

6. Language policy of public schools.—(1) Subject to [the Constitution](#) and *this Act*, the *Minister* may, by notice in the Government Gazette, after consultation with the *Council of Education Ministers*, determine norms and standards for language policy in *public schools*.

(2) The *governing body* of a *public school* may determine the language policy of the *school* subject to [the Constitution](#), *this Act* and any applicable provincial law.

(3) No form of racial discrimination may be practised in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a *public school*.

6A. Curriculum and assessment.—(1) The *Minister* must, by notice in the Government Gazette, determine—

- (a) a national curriculum statement indicating the minimum outcomes or standards; and
- (b) a national process and procedures for the assessment of *learner* achievement.

(2) The curriculum and the process for the assessment of *learner* achievement contemplated in [subsection \(1\)](#) must be applicable to *public* and *independent schools*.

[[S. 6A](#) inserted by [s. 3](#) of [Act No. 50 of 2002](#).]

6B. Non-discrimination in respect of official languages.—The *governing body* of a *public school* must ensure that—

- (a) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in [section 21 \(1\) \(b\)](#); and
- (b)

the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level.

[S. 6B inserted by s. 6 of Act No. 15 of 2011.]

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

8. Code of conduct.—(1) Subject to any applicable provincial law, a *governing body* of a *public school* must adopt a code of conduct for the *learners* after consultation with the *learners*, *parents* and *educators* of the *school*.

(2) A code of conduct referred to in *subsection (1)* must be aimed at establishing a disciplined and purposeful *school* environment, dedicated to the improvement and maintenance of the quality of the learning process.

(3) The *Minister* may, after consultation with the *Council of Education Ministers*, determine guidelines for the consideration of *governing bodies* in adopting a code of conduct for *learners*.

(4) Nothing contained in *this Act* exempts a *learner* from the obligation to comply with the code of conduct of the *school* attended by such *learner*.

(5) (a) A code of conduct must contain provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counselling a *learner* involved in disciplinary proceedings.

[Sub-s. (5) substituted by s. 6 of Act No. 31 of 2007.]

Wording of Sections

(6) A *learner* must be accompanied by his or her *parent* or a person designated by the *parent* at disciplinary proceedings, unless good cause is shown by the *governing body* for the continuation of the proceedings in the absence of the *parent* or the person designated by the *parent*.

[Sub-s. (6) added by s. 4 of Act No. 50 of 2002.]

(7) Whenever disciplinary proceedings are pending before any *governing body*, and it appears to such *governing body* that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the *governing body* may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

[Sub-s. (7) added by s. 4 of Act No. 50 of 2002.]

(8) (a) An examination, cross-examination or re-examination of a witness in respect of whom a *governing body* has appointed an intermediary under *subsection (7)*, except examination by the *governing body*, must not take place in any manner other than through that intermediary.

(b) Such intermediary may, unless the *governing body* directs otherwise, convey the general purport of any question to the relevant witness.

[Sub-s. (8) added by s. 4 of Act No. 50 of 2002.]

(9) If a *governing body* appoints an intermediary under *subsection (7)*, the *governing body* may direct that the relevant witness must give his or her evidence at any place which—

- (a) is informally arranged to put that witness at ease;
- (b)

is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

- (c) enables the *governing body* and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-s. (9) added by s. 4 of Act No. 50 of 2002.]

Wording of Sections

x

s 8(5) of Act 84 of 1996 prior to amendment by Act 31 of 2007

8A. Random search and seizure and drug testing at schools.—(1) Unless authorised by the *principal* for legitimate educational purposes, no person may bring a *dangerous object* or *illegal drug* onto *school* premises or have such object or drug in his or her possession on *school* premises or during any *school activity*.

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

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

- (b) that one or more *learners* on *school* premises or during a *school activity* are in possession of *dangerous objects* or *illegal drugs*.

(3) (a) A search contemplated in [subsection \(2\)](#) may only be conducted after taking into account all relevant factors, including—

- (i) the best interest of the *learners* in question or of any other *learner* at the *school*;
- (ii) the safety and health of the *learners* in question or of any other *learner* at the *school*;
- (iii) reasonable evidence of illegal activity; and
- (iv) all relevant evidence received.

(b) When conducting a search contemplated in [subsection \(2\)](#), the *principal* or his or her delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.

(4) Where a search contemplated in [subsection \(2\)](#) entails a body search of the *learners* in question, such search may only—

- (a) be conducted by—
- (i) the *principal*, if he or she is of the same gender as the *learner*; or
- (ii) by the *principal's* delegate, who must be of the same gender as the *learner*;

- (b) be done in a private area, and not in view of another *learner*;
 - (c) be done if one adult witness, of the same gender as the learner, is present; and
 - (d) be done if it does not extend to a search of a body cavity of the learner.
- (5) Any *dangerous object* or *illegal drug* that has been seized must be—
- (a) clearly and correctly labelled with full particulars, including—
 - (i) the name of *learner* in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of person who searched the *learner*;
 - (v) the name of the witness; and
 - (vi) any other details that may be necessary to identify the item and incident;
 - (b) recorded in the school record book; and
 - (c) handed over to the police immediately to dispose of it in terms of [section 31](#) of the Criminal Procedure Act, 1977 ([Act No. 51 of 1977](#)).
- (6) If the police cannot collect the *dangerous object* or *illegal drug* from the *school* immediately, the *principal* or his or her delegate must—
- (a) take the *dangerous object* or *illegal drug* to the nearest police station; and
 - (b) hand the *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](#)).
- (7) The police officer who receives the *dangerous object* or *illegal drug* must issue an official receipt for it to the *principal* or to his or her delegate.
- (8) The *principal* or his or her delegate may at *random* administer a urine or other non-invasive test to any group of learners that is on fair and reasonable grounds suspected of using *illegal drugs*, after taking into account all relevant factors contemplated in [subsection \(3\)](#).
- (9) A *learner* contemplated in [subsection \(8\)](#) may be subjected to a urine or other non-invasive test for *illegal drugs* only if—
- (a) the test is conducted by a person of the same gender;
 - (b) it is done in a private area and not in view of another *learner*;

- (c) one adult witness, of the same gender as the *learner*, is present;
 - (d) the sample is clearly and correctly labelled with full particulars as contemplated in [subsection \(5\)](#), with the necessary changes; and
 - (e) a device contemplated in [subsection \(11\)](#) is used.
- (10) The *principal* or his or her delegate must—
- (a) within one working day, if practicable, inform the *parent* that a random test or search and seizure was done in respect of his or her child; and
 - (b) inform the *learner* and his or her *parent* of the result of the test immediately after it becomes available.
- (11) The *Minister* must—
- (a) identify the device with which the test contemplated in [subsection \(8\)](#) is to be done and the procedure to be followed; and
 - (b) publish the name of this device, and any other relevant information about it, in the *Gazette*.
- (12) A *learner* may be subjected to disciplinary proceedings if—
- (a) a *dangerous object* or *illegal drug* is found in his or her possession; or
 - (b) his or her sample tested positive for an *illegal drug*.
- (13) Any disciplinary proceedings in respect of a *learner* must be conducted in terms of the code of conduct contemplated in [section 8](#).
- (14) No criminal proceedings may be instituted by the *school* against a *learner* in respect of whom—
- (a) a search contemplated in [subsection \(2\)](#) was conducted and a *dangerous object* or *illegal drug* was found; or
 - (b) a test contemplated in [subsection \(8\)](#) was conducted, which proved to be positive.
- [\[S. 8A inserted by s. 7 of Act No. 31 of 2007.\]](#)

9. Suspension and expulsion from public school.—(1) 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 after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension.

[\[Sub-s. \(1\) amended by s. 7 of Act No. 48 of 1999 and substituted by s. 2 \(a\) of Act No. 24 of 2005.\]](#)

Wording of Sections

(1A) A *governing body* must conduct disciplinary proceedings in the manner contemplated in [section 8](#) against a *learner* within seven *school* days after the suspension of such *learner*.

[Sub-s. (1A) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1B) If disciplinary proceedings are not conducted within seven *school* days after the suspension of a *learner*, the *governing body* must obtain the approval of the *Head of Department* for the continuation of the suspension of such *learner*.

[Sub-s. (1B) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1C) A *governing body* may, if a *learner* is found guilty of serious misconduct during the disciplinary proceedings contemplated in [section 8](#)—

- (a) impose the suspension of such *learner* for a period not longer than seven *school* days or any other sanction contemplated in the code of conduct of the *public school*; or
- (b) make a recommendation to the *Head of Department* to expel such *learner* from the *public school*.

[Sub-s. (1C) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1D) A *Head of Department* must consider the recommendation by the *governing body* referred to in [subsection \(1C\) \(b\)](#) and must decide whether or not to expel a *learner* within 14 days of receiving such recommendation.

[Sub-s. (1D) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1E) A *governing body* may suspend or extend the suspension of a *learner* for a period not longer than 14 days pending the decision by the *Head of Department* whether or not to expel such *learner* from the *public school*.

[Sub-s. (1E) inserted by s. 2 (a) of Act No. 24 of 2005.]

(2) A *learner* at a *public school* may be expelled only—

- (a) by the *Head of Department*; and
- (b) if found guilty of serious misconduct after disciplinary proceedings contemplated in [section 8](#) were conducted.

[Sub-s. 2 substituted by s. 2 (b) of Act No. 24 of 2005.]

(3) The *Member of the Executive Council* must determine by notice in the Provincial Gazette—

- (a) the behaviour by a *learner* at a *public school* which may constitute serious misconduct;
- (b) disciplinary proceedings to be followed in such cases;
- (c) provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(4) A *learner* or the *parent* of a *learner* who has been expelled from a *public school* may appeal against the decision of the *Head of Department* to the *Member of the Executive Council* within 14 days of receiving the notice of expulsion.

[Sub-s. 4 substituted by s. 2 (c) of Act No. 24 of 2005.]

(5) If a *learner* who is subject to compulsory attendance in terms of [section 3 \(1\)](#) is expelled from a *public school*, the *Head of Department* must make an alternative arrangement for his or her placement at a *public school*.

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

[Sub-s. 6 added by s. 2 (d) of Act No. 24 of 2005.]

(7) The *Head of Department*, in determining the manner of attendance contemplated in [subsection \(6\)](#)—

- (a) must take reasonable measures to protect the rights of other *learners* at the *public school*; and
- (b) may consider an alternative method of providing education to the *learner* contemplated in [subsection \(6\)](#).

[Sub-s. 7 added by [s. 2 \(d\)](#) of [Act No. 24 of 2005](#).]

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

[Sub-s. 8 added by [s. 2 \(d\)](#) of [Act No. 24 of 2005](#).]

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

[Sub-s. 9 added by [s. 2 \(d\)](#) of [Act No. 24 of 2005](#).]

(10) The *governing body* must implement the sanction contemplated in [subsection \(8\)](#).

[Sub-s. 10 added by [s. 2 \(d\)](#) of [Act No. 24 of 2005](#).]

(11) (a) If an appeal in terms of [subsection \(4\)](#) by a *learner* who has been expelled from a *public school* is upheld by the *Member of the Executive Council*, the *Member of the Executive Council* must ensure that a suitable sanction is then imposed on the *learner* within 14 days of the date on which the appeal was upheld.

(b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of [subsections \(8\)](#) and [\(9\)](#) apply with the changes required by the context.

[Sub-s. (11) added by [s. 7](#) of [Act No. 15 of 2011](#).]

Wording of Sections

✕

[s 9\(1\)](#) of Act 84 of 1996 prior to amendment by [Act 48 of 1999](#)

[s 9\(1\)](#) of Act 84 of 1996 prior to amendment by [Act 24 of 2005](#)

10. Prohibition of corporal punishment.—(1) No person may administer corporal punishment at a *school* to a *learner*.

(2) Any person who contravenes [subsection \(1\)](#) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

10A. Prohibition of initiation practices.—(1) A person may not conduct or participate in any initiation practices against a *learner* at a *school* or in a hostel accommodating *learners* of a *school*.

(2) (a) Any person who contravenes [subsection \(1\)](#) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in [sections 8](#) and [18A](#) of *this Act* and [Schedule 2](#) to the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)).

(b) In addition to [paragraph \(a\)](#), a *learner* may institute civil action against a person or a group who manipulated and forced that *learner* to conduct or participate in any initiation practices.

(3) For the purposes of *this Act*, “**initiation practices**” means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a *school*, a group, intramural or extramural activities, interschools sports team, or organisation—

- (a) endangers the mental or physical health or safety of a person;
- (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
- (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
- (d) undermines the fundamental rights and values that underpin [the Constitution](#);
- (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or
- (f) destroys public or private property.

(4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of [subsection \(3\)](#), the relevant disciplinary authority referred to in [subsection \(2\) \(a\)](#) must take into account the right of the *learner* not to be subjected to such practices.

[[S. 10A](#) inserted by [s. 5](#) of [Act No. 50 of 2002](#).]

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

[[Sub-s. \(1\)](#) substituted by [s. 3](#) of [Act No. 100 of 1997](#) and by [s. 1 \(a\)](#) of [Act No. 57 of 2001](#).]

Wording of Sections

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

[[Sub-s. \(2\)](#) substituted by [s. 1 \(b\)](#) of [Act No. 57 of 2001](#).]

Wording of Sections

(3) The *Member of the Executive Council* may, by notice in the Provincial Gazette, exempt a *public school* for *learners* with special education needs from complying with [subsection \(1\)](#) if it is not practically possible for a representative council of *learners* to be established at the *school*.

CHAPTER 3
PUBLIC SCHOOLS

Wording of Sections	✘
s 11(1) of Act 84 of 1996 prior to amendment by Act 100 of 1997 s 11(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001	
Wording of Sections	✘
s 11(2) of Act 84 of 1996 prior to amendment by Act 57 of 2001	

12. Provision of public schools.—(1) The *Member of the Executive Council* must provide *public schools* for the education of *learners* out of funds appropriated for this purpose by the *provincial legislature*.

(2) The provision of *public schools* referred to in [subsection \(1\)](#) may include the provision of hostels for the residential accommodation of *learners*.

(3) (a) A *public school* may be—

(i)
an ordinary *public school*;

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

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

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

[[Sub-s. \(3\)](#) substituted by [s. 8](#) of [Act No. 15 of 2011](#).]

[Wording of Sections](#)

(4) The *Member of the Executive Council* must, where reasonably practicable, provide education for *learners* with special education needs at ordinary *public schools* and provide relevant educational support services for such *learners*.

(5) The *Member of the Executive Council* must take all reasonable measures to ensure that the physical facilities at *public schools* are accessible to disabled persons.

(6) Nothing in this Act prohibits the provision of gender-specific *public schools*.

Wording of Sections

X

[s 12\(3\)](#) of Act 84 of 1996 prior to amendment by [Act 15 of 2011](#)

12A. Merger of public schools.—(1) Subject to [subsection \(2\)](#), the *Member of the Executive Council* may, by notice in the *Provincial Gazette*, merge two or more *public schools* into a single *school*.

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

(a)
give written notice to the *schools* in question of the intention to merge them;

(b)
publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;

(c)
give the *governing bodies* of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in [paragraph \(b\)](#);

(d)
consider such representations; and

(e)

be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.

(3) If one or more of the *schools* that are to be merged in terms of [subsection \(1\)](#) are *public schools* on private property, the *Member of the Executive Council* must also—

- (a) notify the owner of the private property of his or her intention to merge the *schools* in question;
- (b) consider his or her contractual obligations in terms of the agreement contemplated in [section 14](#);
- (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of [section 14](#) if the single *school* contemplated in [subsection \(1\)](#) is to be situated on private property.

(4) The single *school* contemplated in [subsection \(1\)](#) must be regarded as a *public school*.

(5) All assets, liabilities, rights and obligations of the *schools* that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in [section 37 \(4\)](#), vest in the single *school*.

(6) (a) The *governing bodies* of the *schools* that are merged must have a meeting before the merger to constitute a single interim *governing body* comprising of all the members of the *governing bodies* concerned.

(b) The interim *governing body* must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new *governing body* is constituted in terms of [sections 23](#) and [28](#).

(7) The *governing body* of a *public school* to be merged, may appeal to the *Minister* against the decision as contemplated in [subsection \(1\)](#).

[S. 12A inserted by s. 8 of [Act No. 48 of 1999](#).]

13. Public schools on State property.—(1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(2) Subject to [section 20 \(1\) \(k\)](#), a *public school* which occupies immovable property owned by the State has the right, for the duration of the *school's* existence, to occupy and use the immovable property for the benefit of the *school* for educational purposes at or in connection with the *school*.

(3) The right referred to in [subsection \(2\)](#) may only be restricted—

- (a) by the *Member of the Executive Council*; and
- (b) if the immovable property is not utilised by the *school* in the interests of education.

(4) The *Member of the Executive Council* may not act under [subsection \(3\)](#) unless he or she has—

- (a) informed the *governing body* of the *school* of his or her intention so to act and the reasons therefor;
- (b)

granted the *governing body* of the *school* a reasonable opportunity to make representations to him or her in relation to such action;

- (c) duly considered any such representations received.

(5) The right contemplated in [subsection \(2\)](#) is enforceable against any successor in title to the owner of the immovable property in question.

(6) No immovable property owned by the State and occupied by a *public school* may be alienated unless an agreement contemplated in [section 14](#) has been concluded between the *Member of the Executive Council* and the prospective owner of the immovable property.

(7) The *Registrar of deeds* may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the *Registrar of deeds* with proof of the agreement contemplated in [subsection \(6\)](#).

[[Sub-s. \(7\)](#) substituted by [s. 4 \(a\)](#) of [Act No. 100 of 1997](#).]

[Wording of Sections](#)

(8) The provisions of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)), do not apply to the right contemplated in [subsection \(2\)](#).

(9) On application by the owner and on production of the owner's copy of the title deed, the *Registrar of deeds* must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.

[[Sub-s. \(9\)](#) added by [s. 4 \(c\)](#) of [Act No. 100 of 1997](#).]

Wording of Sections



[s 13\(7\)](#) of Act 84 of 1996 prior to amendment by [Act 100 of 1997](#)

14. Public schools on private property.—(1) Subject to [the Constitution](#) and an expropriation in terms of [section 58](#) of land or a real right to use the property on which the *public school* is situated, a *public school* may be provided on private property only in terms of an agreement between the *Member of the Executive Council* and the owner of the private property.

[[Sub-s. \(1\)](#) substituted by [s. 2](#) of [Act No. 53 of 2000](#).]

[Wording of Sections](#)

(2) An agreement contemplated in [subsection \(1\)](#) must be consistent with *this Act* and in particular must provide for—

- (a) the provision of education and the performance of the normal functions of a *public school*;
- (b) governance of the *school*, including the relationship between the *governing body* of the *school* and the owner;
- (c) access by all interested parties to the property on which the *school* stands;
- (d) security of occupation and use of the property by the *school*;
- (e) maintenance and improvement of the *school* buildings and the property on which the *school* stands and the supply of necessary services;
- (f)

protection of the owner's rights in respect of the property occupied, affected or used by the *school*.

(3) The provisions of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)), do not apply to a real right, excluding ownership, acquired by the State, a *public school* or another party in terms of an agreement contemplated in this section.

(4) The right contemplated in [subsection \(3\)](#) is enforceable against any successor in title to the owner of the immovable property in question.

(5) Despite [subsection \(3\)](#), a Registrar of deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the *Registrar of deeds* receives—

(a) an application for such endorsement by the owner of the property, or the *Member of the Executive Council* or any other holder of a right contemplated in [subsection \(3\)](#), together with the title deed of the property; and

(b) affidavits by the owner of the property and the *Member of the Executive Council* stating that an agreement contemplated in this section has been concluded.

[[Sub-s. \(5\)](#) amended by [s. 5 \(a\)](#) of [Act No. 100 of 1997](#) (English only).]

[Wording of Sections](#)

(6) The *Minister* must, after consultation with the *Council of Education Ministers*, make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) The *Registrar of deeds* may cancel any endorsement made in accordance with [subsection \(5\)](#) if the owner of the property submits an affidavit from the *Member of the Executive Council* of the province in which the *public school* is situated to the effect that such *public school* has been closed in terms of [section 33](#).

[[Sub-s. \(7\)](#) inserted by [s. 5 \(b\)](#) of [Act No. 100 of 1997](#).]

(8) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of [subsection \(3\)](#) may be paid in full or in part from funds appropriated by the *provincial legislature* for that purpose, but the *public school* contemplated in [subsection \(1\)](#) is not responsible for such duties, fees or costs.

[[Sub-s. \(8\)](#), previously [sub-s. \(7\)](#), renumbered by [s. 5 \(b\)](#) of [Act No. 100 of 1997](#).]

[Wording of Sections](#)

Wording of Sections	✘
s 14(1) of Act 84 of 1996 prior to amendment by Act 53 of 2000	
Wording of Sections	✘
s 14(5) of Act 84 of 1996 prior to amendment by Act 100 of 1997	
Wording of Sections	✘
s 14(8), (7) of Act 84 of 1996 prior to amendment by Act 100 of 1997	

15. Status of public schools.—Every *public school* is a juristic person, with legal capacity to perform its functions in terms of *this Act*.

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

[Sub-s. (1) substituted by s. 2 of Act No. 57 of 2001.]

Wording of Sections

(2) A *governing body* stands in a position of trust towards the *school*.

(3) Subject to *this Act* and any applicable provincial law, the professional management of a *public school* must be undertaken by the *principal* under the authority of the *Head of Department*.

(4) The *Head of Department* may close a *public school* temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of *learners* and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

[Sub-s. (4) added by s. 9 of Act No. 48 of 1999.]

(5) When the *Head of Department* decides that the *school* should be re-opened, he or she must inform the *governing body* and the *principal* of the date on which the *school* must reopen.

[Sub-s. (5) added by s. 9 of Act No. 48 of 1999.]

(6) The *principal* or a person designated by the *Head of Department* must inform the *educators* and *parents* of the date contemplated in subsection (5).

[Sub-s. (6) added by s. 9 of Act No. 48 of 1999.]

(7) If a new *public school* is provided in terms of section 12, the governance of that *school* vests in the *Head of Department* until a *governing body* has been constituted in terms of *this Act*.

[Sub-s. (7) added by s. 3 of Act No. 53 of 2000.]

Wording of Sections



s 16(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001

16A. Functions and responsibilities of principal of public school.—(1) (a) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23 (1) (b) and 24 (1) (j).

(b) The *principal* must prepare and submit to the *Head of Department* an annual report in respect of—

(i)
the academic performance of that *school* in relation to minimum outcomes and standards and procedures for assessment determined by the *Minister* in terms of section 6A; and

(ii)
the effective use of available resources.

(c) (i) The *principal* of a *public school* identified by the *Head of Department* in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the *school* will be improved.

(ii) The academic performance improvement plan must be—

(aa)
presented to the *Head of Department* on a date determined by him or her; and

(bb)
tabled at a *governing body* meeting.

(iii) The *Head of Department* may approve the academic performance improvement plan or return it to the *principal* with such recommendations as may be necessary in the circumstances.

(iv) If the *Head of Department* approves the academic performance improvement plan the principal must, by 30 June, report to the *Head of Department* and the *governing body* on progress made in implementing that plan.

(v) The *Head of Department* may extend the date contemplated subparagraph (iv) on good cause shown.

(2) The *principal* must—

(a)

in undertaking the professional management of a *public school* as contemplated in [section 16 \(3\)](#), carry out duties which include, but are not limited to—

(i) the implementation of all the educational programmes and curriculum activities;

(ii) the management of all educators and support staff;

(iii) the management of the use of learning support material and other equipment;

(iv) the performance of functions delegated to him or her by the Head of Department in terms of this Act;

(v) the safekeeping of all school records; and

(vi) the implementation of policy and legislation;

(b)

attend and participate in all meetings of the *governing body*;

(c)

provide the *governing body* with a report about the professional management relating to the *public school*;

(d)

assist the *governing body* in handling disciplinary matters pertaining to *learners*;

(e)

assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;

(f)

inform the *governing body* about policy and legislation;

[[Para. \(f\)](#) amended by [s. 9 of Act No. 15 of 2011](#).]

[Wording of Sections](#)

(g)

provide accurate data to the *Head of Department* when requested to do so; and;

[[Para. \(g\)](#) amended by [s. 9 of Act No. 15 of 2011](#).]

[Wording of Sections](#)

(h)

assist the *governing body* with the management of the *school's* funds, which assistance must include—

(i)

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

(ii)

the giving of advice to the *governing body* on the financial implications of decisions relating to the financial matters of the *school*;

[[Para. \(h\)](#) added by [s. 9](#) of [Act No. 15 of 2011](#).]

(h)

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

[[Para. \(i\)](#) added by [s. 9](#) of [Act No. 15 of 2011](#).]

(j)

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

[[Para. \(j\)](#) added by [s. 9](#) of [Act No. 15 of 2011](#).]

(k)

report any maladministration or mismanagement of financial matters to the *governing body* of the *school* and to the *Head of Department*.

[[Para. \(k\)](#) added by [s. 9](#) of [Act No. 15 of 2011](#).]

Wording of Sections	x
s 16A(2)(f) of Act 84 of 1996 prior to amendment by Act 15 of 2011	
Wording of Sections	x
s 16A(2)(g) of Act 84 of 1996 prior to amendment by Act 15 of 2011	

17. Governing body serving two or more schools.—(1) The *Member of the Executive Council* may determine that the governance of two or more *public schools* must vest in a single *governing body* if it is in the best interests of education at the *schools* in question.

(2) The *Member of the Executive Council* may not act under [subsection \(1\)](#) unless he or she has—

(a)

given notice in the Provincial Gazette of his or her intention so to act;

(b)

given interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(c)

considered all such submissions.

18. Constitution of governing body.—(1) Subject to *this Act* and any applicable provincial law, the *governing body* of a *public school* must function in terms of a constitution which complies with minimum requirements determined by the *Member of the Executive Council* by notice in the Provincial Gazette.

(2) A constitution contemplated in [subsection \(1\)](#) must provide for—

(a)

a meeting of the *governing body* at least once every *school* term;

- (b) meetings of the *governing body* with *parents, learners, educators* and other staff at the *school*, respectively, at least once a year;
- (c) recording and keeping of minutes of *governing body* meetings;
- (d) making available such minutes for inspection by the *Head of Department*; and
- (e) rendering a report on its activities to *parents, learners, educators* and other staff of the *school* at least once a year.

(3) The *governing body* must submit a copy of its constitution to the *Head of Department* within 90 days of its election.

18A. Code of conduct of governing body.—(1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine a code of conduct for the members of the *governing body* of a *public school* after consultation with associations of *governing bodies* in that province, if applicable.

(2) The code of conduct referred to in [subsection \(1\)](#) must be aimed at establishing a disciplined and purposeful *school* environment dedicated to the improvement and maintenance of a quality governance structure at a *public school*.

(3) All members of a *governing body* must adhere to the code of conduct.

(4) The code of conduct must contain provisions of due process, safeguarding the interests of the members of the *governing body* in disciplinary proceedings.

(5) The *Head of Department* may suspend or terminate the membership of a *governing body* member for a breach of the code of conduct after due process.

(6) A member of the *governing body* may appeal to the *Member of the Executive Council* against a decision of a *Head of Department* regarding the suspension or termination of his or her membership as a *governing body* member.

[S. 18A inserted by s. 6 of [Act No. 50 of 2002](#).]

19. Enhancement of capacity of governing bodies.—(1) Out of funds appropriated for this purpose by the *provincial legislature*, the *Head of Department* must establish a programme to—

- (a) provide introductory training for newly elected *governing bodies* to enable them to perform their functions; and
- (b) provide continuing training to *governing bodies* to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The *Head of Department* must ensure that *principals* and other officers of the *education department* render all necessary assistance to *governing bodies* in the performance of their functions in terms of *this Act*.

(3) The *norms and standards for school funding* must include—

- (a)

criteria for authorising a *governing body* association to perform the functions contemplated in [subsection \(4\)](#);

- (b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the *Head of Department* in relation to the performance of the functions contemplated in [subsection \(4\)](#);
- (c) guidelines relating to the nature, content, extent and duration of the functions contemplated in [subsection \(4\)](#); and
- (d) criteria for granting a *governing body* an allocation for contribution towards membership of a recognised *governing body* association.

[Sub s. (3) added by [s. 10 of Act No. 15 of 2011.](#)]

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

(b) For the purposes of [paragraph \(a\)](#), the *Head of Department*—

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

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

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

[Sub s. (4) added by [s. 10 of Act No. 15 of 2011.](#)]

20. Functions of all governing bodies.—(1) Subject to *this Act*, the *governing body* of a *public school* must—

- (a) promote the best interests of the *school* and strive to ensure its development through the provision of quality education for all *learners* at the *school*;
- (b) adopt a constitution;
- (c) develop the mission statement of the *school*;
- (d) adopt a code of conduct for *learners* at the *school*;
- (e) support the *principal*, *educators* and other staff of the *school* in the performance of their professional functions;
- (eA)

adhere to any actions taken by the Head of Department in terms of [section 16](#) of the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)), to address the incapacity of a *principal* or *educator* to carry out his or her duties effectively;

[[Para. \(eA\)](#) inserted by [s. 9 \(a\)](#) of [Act No. 31 of 2007](#).]

(f)

determine times of the *school* day consistent with any applicable conditions of employment of staff at the *school*;

(g)

administer and control the *school's* property, and buildings and grounds occupied by the *school*, including *school* hostels, but the exercise of this power must not in any manner interfere with or otherwise hamper the implementation of a decision made by the *Member of the Executive Council* or *Head of Department* in terms of any law or policy;

[[Para. \(g\)](#) substituted by [s. 9 \(b\)](#) of [Act No. 31 of 2007](#).]

Wording of Sections

(h)

encourage *parents*, *learners*, *educators* and other staff at the *school* to render voluntary services to the *school*;

(i)

recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)), and the Labour Relations Act, 1995 ([Act No. 66 of 1995](#));

[[Para. \(i\)](#) substituted by [s. 3](#) of [Act No. 57 of 2001](#).]

Wording of Sections

(j)

recommend to the *Head of Department* the appointment of non-educator staff at the *school*, subject to the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), and the Labour Relations Act, 1995 ([Act No. 66 of 1995](#));

(jA)

make the recommendation contemplated in [paragraph \(j\)](#) within the time frames contemplated in [section 6 \(3\) \(j\)](#) of the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)).

[[Para. \(jA\)](#) inserted by [s. 9 \(c\)](#) of [Act No. 31 of 2007](#).]

(k)

at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the *school* for educational programmes not conducted by the *school*;

[[Para. \(k\)](#) substituted by [s. 4](#) of [Act No. 53 of 2000](#).]

Wording of Sections

(l)

discharge all other functions imposed upon the *governing body* by or under *this Act*; and

(m)

discharge other functions consistent with *this Act* as determined by the *Minister* by notice in the Government Gazette, or by the *Member of the Executive Council* by notice in the Provincial Gazette.

(2) The *governing body* may allow the reasonable use of the facilities of the *school* for community, social and *school* fund-raising purposes, subject to such reasonable and equitable conditions as the *governing body* may determine, which may include the charging of a fee or tariff which accrues to the *school*.

(3) The *governing body* may join a voluntary association representing *governing bodies* of *public schools*.

(4) Subject to *this Act*, the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of [section 3 \(1\)](#) of the Educators' Employment Act, 1994.

[[Sub-s. \(4\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(5) Subject to *this Act*, the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)).

[[Sub-s. \(5\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(6) An *educator* and a non-*educator* employed in a post established in terms of [subsection \(4\)](#) or [\(5\)](#) must comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995 ([Act No. 66 of 1995](#)), and any other applicable law.

[[Sub-s. \(6\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(7) A *public school* may only employ an *educator* in a post established in terms of [subsection \(4\)](#) if such *educator* is registered as an *educator* with the South African Council of Educators.

[[Sub-s. \(7\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(8) The staff contemplated in [subsections \(4\)](#) and [\(5\)](#) must be employed in compliance with the basic values and principles referred to in [section 195](#) of [the Constitution](#), and the factors to be taken into account when making appointments include, but are not limited to—

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

[[Sub-s. \(8\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(9) When presenting the annual budget contemplated in [section 38](#), the *governing body* of a *public school* must provide sufficient details of any posts envisaged in terms of [subsections \(4\)](#) and [\(5\)](#), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

[[Sub-s. \(9\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(10) Despite [section 60](#), the State is not liable for any act or omission by the *public school* relating to its contractual responsibility as the employer in respect of staff employed in terms of [subsections \(4\)](#) and [\(5\)](#).

[[Sub-s. \(10\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

(11) After consultation as contemplated in [section 5](#) of the National Education Policy Act, 1996 ([Act No. 27 of 1996](#)), the *Minister* may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in [subsections \(4\)](#) and [\(5\)](#), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

[[Sub-s. \(11\)](#) added by [s. 6](#) of [Act No. 100 of 1997](#).]

Wording of Sections



[s 20\(1\)\(g\)](#) of Act 84 of 1996 prior to amendment by [Act 31 of 2007](#)

Wording of Sections	✕
s 20(1)(i) of Act 84 of 1996 prior to amendment by Act 57 of 2001	
Wording of Sections	✕
s 20(1)(k) of Act 84 of 1996 prior to amendment by Act 53 of 2000	

21. Allocated functions of governing bodies.—(1) Subject to *this Act*, a *governing body* may apply to the *Head of Department* in writing to be allocated any of the following functions:

- (a) To maintain and improve the *school's* property, and buildings and grounds occupied by the *school*, including *school* hostels, if applicable;
- (b) to determine the extra-mural curriculum of the *school* and the choice of subject options in terms of provincial curriculum policy;
- (c) to purchase textbooks, educational materials or equipment for the *school*;
- (d) to pay for services to the *school*;
- (dA) to provide an adult basic education and training class or centre subject to any applicable law; or
 - [[Para. \(dA\)](#) inserted by [s. 10 \(b\)](#) of [Act No. 48 of 1999](#).]
- (e) other functions consistent with *this Act* and any applicable provincial law.

(2) The *Head of Department* may refuse an application contemplated in [subsection \(1\)](#) only if the *governing body* concerned does not have the capacity to perform such function effectively.

(3) The *Head of Department* may approve such application unconditionally or subject to conditions.

(4) The decision of the *Head of Department* on such application must be conveyed in writing to the *governing body* concerned, giving reasons.

(5) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal to the *Member of the Executive Council*.

(6) The *Member of the Executive Council* may, by notice in the Provincial Gazette, determine that some governing bodies may exercise one or more functions without making an application contemplated in [subsection \(1\)](#), if—

- (a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and
- (b) there is a reasonable and equitable basis for doing so.

22. Withdrawal of functions from governing bodies.—(1) The *Head of Department* may, on reasonable grounds, withdraw a function of a *governing body*.

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

- (a) informed the *governing body* of his or her intention so to act and the reasons therefor;
 - (b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; and
 - (c) given due consideration to any such representations received.
- (3) In cases of urgency, the *Head of Department* may act in terms of [subsection \(1\)](#) without prior communication to such *governing body*, if the *Head of Department* thereafter—
- (a) furnishes the *governing body* with reasons for his or her actions;
 - (b) gives the *governing body* a reasonable opportunity to make representations relating to such actions; and
 - (c) duly considers any such representations received.
- (4) The *Head of Department* may for sufficient reasons reverse or suspend his or her action in terms of [subsection \(3\)](#).
- (5) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of the Executive Council*.

23. Membership of governing body of ordinary public school.—(1) Subject to *this Act*, the membership of the *governing body* of an ordinary *public school* comprises—

- (a) elected members;
 - (b) the *principal*, in his or her official capacity;
 - (c) co-opted members.
- (2) Elected members of the *governing body* shall comprise a member or members of each of the following categories:
- (a) *Parents of learners at the school*;
 - (b) *educators at the school*;
 - (c) members of staff at the *school* who are not *educators*; and
 - (d) *learners in the eighth grade or higher at the school*.
- (3) A *parent* who is employed at the *school* may not represent *parents* on the *governing body* in terms of [subsection \(2\) \(a\)](#).
- (4) The representative council of *learners* referred to in [section 11 \(1\)](#) must elect the *learner* or *learners* referred to in [subsection \(2\) \(d\)](#).

(5) The *governing body* of an ordinary *public school* which provides education to *learners* with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such *learners*.

(6) A *governing body* may co-opt a member or members of the community to assist it in discharging its functions.

(7) The *governing body* of a *public school* contemplated in [section 14](#) may co-opt the owner of the property occupied by the *school* or the nominated representative of such owner.

(8) Subject to [subsection \(10\)](#), co-opted members do not have voting rights on the *governing body*.

[[Sub-s. \(8\)](#) substituted by [s. 11 \(a\)](#) of [Act No. 48 of 1999](#).]

Wording of Sections

(9) The number of *parent* members must comprise one more than the combined total of other members of a *governing body* who have voting rights.

(10) If the number of *parents* at any stage is not more than the combined total of other members with voting rights, the *governing body* must temporarily co-opt *parents* with voting rights.

[[Sub-s. \(10\)](#) added by [s. 11 \(b\)](#) of [Act No. 48 of 1999](#).]

(11) If a *parent* is co-opted with voting rights as contemplated in [subsection \(10\)](#), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of [section 28 \(d\)](#) within 90 days after the vacancy has occurred.

[[Sub-s. \(11\)](#) added by [s. 11 \(b\)](#) of [Act No. 48 of 1999](#).]

(12) If a person elected as a member of a *governing body* as contemplated in [subsection \(2\)](#) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the *governing body*.

[[Sub-s. \(12\)](#) added by [s. 11 \(b\)](#) of [Act No. 48 of 1999](#).]

Wording of Sections



[s 23\(8\)](#) of Act 84 of 1996 prior to amendment by [Act 48 of 1999](#)

24. Membership of governing body of public school for learners with special education needs.—(1) The following categories of persons must be represented on a *governing body* of a *public school* for *learners* with special education needs, in each case by a member or members of the respective category:

- (a) *Parents of learners* at the *school*, if reasonably practicable;
- (b) *educators* at the *school*;
- (c) members of staff at the *school* who are not *educators*;
- (d) *learners* attending the eighth *grade* or higher, if reasonably practicable;
- (e) representatives of sponsoring bodies, if applicable;
- (f) representatives of organisations of *parents of learners* with special education needs, if applicable;
- (g)

representatives of organisations of disabled persons, if applicable;

- (h) disabled persons, if applicable; and
- (i) experts in appropriate fields of special needs education.
- (j) the *principal* in his or her official capacity.

[Para. (j) added by s. 7 of Act No. 100 of 1997.]

(2) Subject to *this Act*, the *Member of the Executive Council* must, by notice in the Provincial Gazette, determine the number of members in each category referred to in [subsection \(1\)](#) and the manner of election or appointment of such members at every *public school* for *learners* with special education needs within his or her *province*.

(3) A notice contemplated in [subsection \(2\)](#) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.

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

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

[Sub-s. (1) substituted by s. 4 (a) of Act No. 57 of 2001.]

Wording of Sections

(2) The *Head of Department* may extend the period referred to in [subsection \(1\)](#), by further periods not exceeding three months each, but the total period may not exceed one year.

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

[Sub-s. (3) substituted by s. 4 (b) of Act No. 57 of 2001.]

Wording of Sections

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

[Sub-s. (4) added by s. 4 (c) of Act No. 57 of 2001.]

Wording of Sections	✘
s 25(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001	
Wording of Sections	✘
s 25(3) of Act 84 of 1996 prior to amendment by Act 57 of 2001	

26. Recusal by members of governing body.—A member of a *governing body* must withdraw from a meeting of the *governing body* for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

27. Reimbursement of members of governing body.—(1) Necessary expenses incurred by a member of a *governing body* in the performance of his or her duties may be reimbursed by the *governing body*.

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

28. Election of members of governing body.—Subject to *this Act* and any applicable provincial law, the *Member of the Executive Council* must, by notice in the Provincial Gazette, determine—

- (a) the term of office of members and office-bearers of a *governing body*;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the *governing body*;
- (c) the procedure for the disqualification or removal of a member of the *governing body* or the dissolution of a *governing body*, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the *governing body*;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the *governing body*;
- (f) a formula or formulae for the calculation of the number of members of the *governing body* to be elected in each of the categories referred to in [section 23 \(2\)](#), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of *public schools*; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the *governing body*.

29. Office-bearers of governing bodies.—(1) A *governing body* must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a *parent* member of a *governing body* who is not employed at the *public school* may serve as the chairperson of the *governing body*.

(3) In the case of a *public school* for *learners* with special education needs any member of the *governing body* elected from the categories of persons referred to in [section 24 \(1\) \(a\)](#), [\(e\)](#), [\(f\)](#), [\(g\)](#), [\(h\)](#) and [\(i\)](#) may serve as the chairperson of that *governing body*.

[Sub-s. (3) added by s. 12 of [Act No. 48 of 1999](#).]

30. Committees of governing body.—(1) A *governing body* may—

- (a) establish committees, including an executive committee; and

(b) appoint persons who are not members of the *governing body* to such committees on grounds of expertise, but a member of the *governing body* must chair each committee.

(2) A *governing body* of an ordinary *public school* which provides education to *learners* with special education needs must establish a committee on special education needs.

31. Term of office of members and office-bearers of governing bodies.—(1) The term of office of a member of a *governing body* other than a *learner* may not exceed three years.

(2) The term of office of a member of a *governing body* who is a *learner* may not exceed one year.

(3) The term of office of an office-bearer of a *governing body* may not exceed one year.

(4) A member or office-bearer of a *governing body* may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

32. Status of minors on governing bodies of public schools.—(1) A member of a *governing body* who is a minor may not contract on behalf of a *public school*.

(2) A member of a *governing body* who is a minor may not vote on resolutions of a *governing body* which impose liabilities on third parties or on the *school*.

(3) A member of a *governing body* who is a minor incurs no personal liability for any consequence of his or her membership of the *governing body*.

33. Closure of public schools.—(1) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school*.

(2) The *Member of the Executive Council* may not act under [subsection \(1\)](#) unless he or she has—

(a) informed the *governing body* of the *school* of his or her intention so to act and his or her reasons therefor;

(b) granted the *governing body* of the *school* a reasonable opportunity to make representations to him or her in relation to such action;

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

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

(3) If a *public school* is closed in terms of [subsection \(1\)](#) all assets and liabilities of such *school* must, subject to the conditions of any donation, bequest or trust contemplated in [section 37 \(4\)](#), devolve on the State unless otherwise agreed between the *Member of the Executive Council* and the *governing body* of the *school*.

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

(2) The party-political activities contemplated in [subsection \(1\)](#) include, but are not limited to—

- (a) campaigning;
- (b) the conducting of rallies;
- (c) the distribution of pamphlets and fliers; and
- (d) the hanging or putting up of posters and banners.

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

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

[S. 33A inserted by s. 11 of [Act No. 15 of 2011](#).]

CHAPTER 4 FUNDING OF PUBLIC SCHOOLS

34. Responsibility of State.—(1) The State must fund *public schools* from public revenue on an equitable basis in order to ensure the proper exercise of the rights of *learners* to education and the redress of past inequalities in education provision.

(2) The State must, on an annual basis, provide sufficient information to *public schools* regarding the funding referred to in [subsection \(1\)](#) to enable *public schools* to prepare their budgets for the next financial year.

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

(2) The *norms and standards for school funding* contemplated in [subsection \(1\)](#) must—

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

determine the procedure in terms of which the *Member of the Executive Council* must apply the criteria contemplated in [paragraph \(a\)](#).

[[S. 35](#) substituted by [s. 3](#) of [Act No. 24 of 2005](#).]

[Wording of Sections](#)

Wording of Sections



[s 35](#) of Act 84 of 1996 prior to amendment by [Act 24 of 2005](#)

36. Responsibility of governing body.—(1) A *governing body* of a *public school* must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the *school* to all *learners* at the *school*.

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

[[Sub-s. \(2\)](#) added by [s. 5](#) of [Act No. 57 of 2001](#).]

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

[[S. 36](#) amended by [s. 5](#) of [Act No. 57 of 2001](#). [Sub-s. \(3\)](#) added by [s. 5](#) of [Act No. 57 of 2001](#).]

[Wording of Sections](#)

(4) (a) A *governing body* may, with the approval of the *Member of the Executive Council*—

(i) lease, burden, convert or alter immovable property of the *school* to provide for *school activities* or to supplement the *school* fund of that *school*; and

(ii) allow any person to conduct any business on *school* property to supplement the *school* fund.

(b) A *governing body* may not allow any activity on *school* property that is hazardous or disruptive to *learners* or prohibited by *this Act*.

[[Sub-s. \(4\)](#) added by [s. 12](#) of [Act No. 15 of 2011](#).]

(5) For the purposes of [subsection \(4\)](#), "*school* property" means immovable property owned by the State, including property contemplated in [sections 13](#) and [55](#) and any immovable property bought by a *school* from the *school* funds or donations to the *school*.

[[Sub-s. \(5\)](#) added by [s. 12](#) of [Act No. 15 of 2011](#).]

Wording of Sections



[s 36](#) of Act 84 of 1996 prior to amendment by [Act 57 of 2001](#)

37. School funds and assets of public schools.—(1) The *governing body* of a *public school* must establish a *school* fund and Administer it in accordance with directions issued by the *Head of Department*.

(2) Subject to [subsection \(3\)](#), all money received by a *public school* including *school* fees and voluntary contributions must be paid into the *school* fund.

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

[[Sub-s. \(3\)](#) substituted by [s. 6 \(a\)](#) of [Act No. 57 of 2001](#).]

Wording of Sections

(4) Money or other goods donated or bequeathed to or received in trust by a *public school* must be applied in accordance with the conditions of such donation, bequest or trust.

(5) All assets acquired by a *public school* on or after the commencement of this Act are the property of the *school*.

(6) The *school* fund, all proceeds thereof and any other assets of the *public school* must be used only for—

- (a) educational purposes, at or in connection with such *school*;
- (b) educational purposes, at or in connection with another *public school*, by agreement with such other *public school* and with the consent of the *Head of Department*;
- (c) the performance of the functions of the *governing body*; or
- (d) another educational purpose agreed between the *governing body* and the *Head of Department*.

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

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

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

[Sub-s. (7) inserted by s. 6 (b) of Act No. 57 of 2001.]

Wording of Sections ✕

[s 37\(3\)](#) of Act 84 of 1996 prior to amendment by [Act 57 of 2001](#)

38. Annual budget of public school.—(1) A governing body of a public school must prepare a budget each year according to prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.

[Sub-s. (1) substituted by s. 7 of Act No. 57 of 2001.]

Wording of Sections

(2) Before a budget referred to in [subsection \(1\)](#) is approved by the *governing body*, it must be presented to a general meeting of *parents* convened on at least 30 days' notice, for consideration and approval by a majority of *parents* present and voting.

(3) The notice contemplated in [subsection \(2\)](#) must also inform the *parents* that the budget will be available for inspection at the *school* at least 14 days prior to the meeting.

[Sub-s. (3) added by s. 7 of Act No. 50 of 2002.]

Wording of Sections ✕

[s 38\(1\)](#) of Act 84 of 1996 prior to amendment by [Act 57 of 2001](#)

38A. Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees.—(1) Subject to [subsection \(2\)](#), a governing body may not pay or give to a state 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](#)), any unauthorised—

- (a) remuneration;
- (b) other financial benefit; or
- (c) benefit in kind.

(2) A governing body may apply to the employer for approval to pay a state employee any payment contemplated in [subsection \(1\)](#).

(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;
- (b) the process and resources that will be used to compensate or remunerate the state employee; and
- (c) the extent of compliance with [section 20 \(5\)](#) to [\(9\)](#).

(4) The governing body must make the application contemplated in [subsection \(2\)](#) at least four months prior to the finalisation of the school's budget.

(5) Despite [subsection \(1\)](#), a governing body may pay travel and subsistence expenses relating to official school activities but such expenses may not be greater than those that would be payable to a public servant in similar circumstances.

(6) An employer must not unreasonably refuse an application contemplated in [subsection \(2\)](#).

(7) In considering the application, the employer must take into account—

- (a) the implications for the employer in terms of the employment contract and labour law;
- (b) whether the service concerned in the application will interfere with the normal service delivery of the employee;
- (c) whether the service concerned in the application has already been paid for by the employer; and
- (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school.

(8) The payment 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 \(2\)](#).

(9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in [subsection \(1\)](#) to an employee without prior approval of the employer, the amount of

money paid or benefit given must be recovered by the employer on behalf of the school from members of the governing body who took that decision, excluding a member of the governing body who is a minor.

(10) A governing body may appeal to the Member of the Executive Council against—

- (a) the refusal by the employer of an application contemplated in [subsection \(2\)](#); or
- (b) the failure of the employer to provide a decision on an application contemplated in [subsection \(2\)](#) within three months after the lodging of the application in the office of the employer.

[[S. 38A](#) inserted by [s. 2](#) of [Act No. 1 of 2004](#).]

39. School fees at public schools.—(1) Subject to *this Act*, school fees may be determined and charged at a *public school* only if a resolution to do so has been adopted by a majority of *parents* attending the meeting referred to in [section 38 \(2\)](#).

(2) A resolution contemplated in [subsection \(1\)](#) must provide for—

- (a) the amount of *school fees* to be charged;
- (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school fees*; and
- (c) a *school* budget that reflects the estimated cumulative effect of—

(i)

the established trends of non-payment of *school fees*; and

(ii)

the total, partial or conditional exemptions granted to *parents* in terms of the regulations contemplated in [subsection \(4\)](#).

[[Sub-s. \(2\)](#) substituted by [s. 4 \(a\)](#) of [Act No. 24 of 2005](#).]

[Wording of Sections](#)

(3) The *governing body* must implement a resolution adopted at the meeting contemplated in [subsection \(1\)](#).

(4) The *Minister* must, after consultation with the *Council of Education Ministers* and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in [subsection \(2\) \(b\)](#).

(5) No *public school* may charge any registration, administration or other fee, except *school fees* as defined in [section 1](#).

[[Sub-s. \(5\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(6\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(7\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(8\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(9\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

(10) The *Minister* must—

- (a) consider the list of *schools* identified in terms of [subsection \(9\)](#);
- (b) compare the list with the determination contemplated in [section 35 \(1\)](#); and
- (c) publish the list per *province*, in the Government Gazette if it complies with the determination.

[[Sub-s. \(10\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(11\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(12\)](#) added by [s. 4 \(b\)](#) of [Act No. 24 of 2005](#).]

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

[[Sub-s. \(13\)](#) added by [s. 13](#) of [Act No. 15 of 2011](#).]

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

[[Sub-s. \(14\)](#) added by [s. 13](#) of [Act No. 15 of 2011](#).]

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

[[Sub-s. \(15\)](#) added by [s. 13](#) of [Act No. 15 of 2011](#).]

(16) For the purposes of [subsection \(15\)](#), “sufficient funding” means funding that is not less than the *no fee threshold*.

[[Sub-s. \(16\)](#) added by [s. 13](#) of [Act No. 15 of 2011](#).]

Wording of Sections

✕

[s 39\(2\)](#) of Act 84 of 1996 prior to amendment by [Act 24 of 2005](#)

40. Parent’s liability for payment of school fees.—(1) A *parent* is liable to pay the *school fees* determined in terms of [section 39](#) unless or to the extent that he or she has been exempted from payment in terms of *this Act*.

(2) A *parent* may appeal to the *Head of Department* against a decision of a *governing body* regarding the exemption of such *parent* from payment of *school fees*.

(3) In deciding an appeal referred to in [subsection \(2\)](#), the *Head of Department* must follow due process which safeguards the interests of the *parent* and the *governing body*.

41. Enforcement of payment of school fees.—(1) A *public school* may by process of law enforce the payment of *school fees* by *parents* who are liable to pay in terms of [section 40](#).

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

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

(4) A *public school* may act in terms of [subsection \(1\)](#) only after it has ascertained that—

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

(5) Despite [subsection \(4\)](#), a *public school* may act in terms of [subsection \(1\)](#) if—

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

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

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

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

[S. 41 substituted by s. (5) of [Act No. 24 of 2005](#).]

[Wording of Sections](#)

Wording of Sections	
s 41 of Act 84 of 1996 prior to amendment by Act 24 of 2005	X

42. Financial records and statements of public schools.—The *governing body* of a *public school* must—

- (a) keep records of funds received and spent by the *public school* and of its assets, liabilities and financial transactions; and
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the *Member of the Executive Council*.

43. Audit or examination of financial records and statements.—(1) The *governing body* of a *public school* must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 ([Act No. 26 of 2005](#)), to audit the records and financial statements referred to in [section 42](#).

[Sub-s. (1) substituted by s. 10 of [Act No. 31 of 2007](#).]

[Wording of Sections](#)

(2) If the audit referred to in subsection (1) is not reasonably practicable, the *governing body* of a *public school* must appoint a person to examine and report on the records and financial statements referred to in [section 42](#), who—

- (a) is qualified to perform the duties of an accounting officer in terms of [section 60](#) of the Close Corporations Act, 1984 ([Act No. 69 of 1984](#)); or
- (b) is approved by the *Member of the Executive Council* for this purpose.

(3) No person who has a financial interest in the affairs of the *public school* may be appointed under this section.

(4) If the *Member of the Executive Council* deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a *public school*.

(5) A *governing body* must submit to the *Head of Department*, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.

(6) At the request of an interested person, the *governing body* must make the records referred to in [section 42](#), and the audited or examined financial statements referred to in this section, available for inspection.

Wording of Sections	
s 43(1) of Act 84 of 1996 prior to amendment by Act 31 of 2007	X

44. Financial year of public school.—The financial year of a *public school* commences on the first day of January and ends on the last day of December of each year.

CHAPTER 5
INDEPENDENT SCHOOLS

45. Establishment of independent school.—Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an *independent school*.

45A. Admission age to independent school.—(a) The admission age of a *learner* to an *independent school* to—

(i)

grade R is age four turning five by 30 June in the year of admission;

(ii)

grade 1 is age five turning six by 30 June in the year of admission.

(b) An *independent school* may admit a *learner* who—

(i)

is under the age contemplated in [paragraph \(a\)](#) if good cause is shown; and

(ii)

complies with the criteria contemplated in paragraph (c).

(c) The *Minister* may, by regulation, prescribe—

(i)

criteria² for the admission to an *independent school* at an age lower than the admission age of an underage *learner* who complies with the criteria;

(ii)

age requirements for different *grades* at an *independent school*.

(d) For the purpose of [paragraph \(b\) \(i\)](#), good cause shown means that—

(i)

it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in his or her best interest; and

(ii)

the refusal to admit that *learner* would be severely detrimental to his or her development.”.

[[S. 45A](#) inserted by [s. 8](#) of [Act No. 50 of 2002](#) with effect from 1 January, 2004.]

Footnotes

2

It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable, effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;

- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child are taken into account.

Footnote		✕
		2
It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable, effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—		
(a)	learners are admitted on an equitable basis;	
(b)	there is no unfair discrimination to learners;	
(c)	the admission is fair to the individual learner as well as other learners in the classroom;	
(d)	recognition is given to the diversity of language, culture and economic background;	
(e)	notice is taken of the differences between urban and rural environments; and	
(f)	the physical, psychological and mental development of the child are taken into account.	

46. Registration of independent school.—(1) No person may establish or maintain an *independent school* unless it is registered by the *Head of Department*.

(2) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine the grounds on which the registration of an *independent school* may be granted or withdrawn by the *Head of Department*.

(3) A *Head of Department* must register an *independent school* if he or she is satisfied that—

- (a) the standards to be maintained by such *school* will not be inferior to the standards in comparable *public schools*;
- (b) the admission policy of the *school* does not discriminate on the grounds of race; and
- (c) the *school* complies with the grounds for registration contemplated in [subsection \(2\)](#).

(4) Any person who contravenes [subsection \(1\)](#) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

47. Withdrawal of registration of independent school.—(1) No withdrawal of the registration of an *independent school* is valid unless—

- (a) the owner of such *independent school* has been furnished by the *Head of Department* with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
- (b)

the owner of such *independent school* has been granted an opportunity to make written representations to the *Head of Department* as to why the registration of the *independent school* should not be withdrawn; and

- (c) any such representations received have been duly considered.

(2) The owner of an *independent school* may appeal to the *Member of the Executive Council* against the withdrawal of the registration of such *independent school*.

48. Subsidies to registered independent schools.—(1) The *Minister* may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to *independent schools* after consultation with the *Council of Education Ministers* and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The *Member of the Executive Council* may, out of funds appropriated by the *provincial legislature* for that purpose, grant a subsidy to an *independent school*.

(3) If a condition subject to which a subsidy was granted has not been complied with, the *Head of Department* may terminate or reduce the subsidy from a date determined by him or her.

(4) The *Head of Department* may not terminate or reduce a subsidy under [subsection \(3\)](#) unless—

- (a) the owner of such *independent school* has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
- (c) any such representations received have been duly considered.

(5) The owner of an *independent school* may appeal to the *Member of the Executive Council* against the termination or reduction of a subsidy to such *independent school*.

49. Declaration of independent school as public school.—(1) The *Member of the Executive Council* may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an *independent school* in terms whereof such *independent school* is declared to be a *public school*.

(2) Notice of the change of status contemplated in [subsection \(1\)](#) must be published in the Provincial Gazette.

50. Duties of Member of Executive Council relating to independent schools.—(1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine requirements for—

- (a) the admission of *learners* of an *independent school* to examinations conducted by or under the supervision of the *education department*;
- (b) the keeping of registers and other documents by an *independent school*;

- (c) criteria of eligibility, conditions and manner of payment of any subsidy to an *independent school*; and
- (d) any other matter relating to an *independent school* which must or may be prescribed in terms of *this Act*.

(2) Different requirements may be made under [subsection \(1\)](#) in respect of different *independent schools*.

(3) The *Member of the Executive Council* must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under [subsection \(1\)](#).

51. Registration of learner for education at home.—(1) A *parent* may apply to the *Head of Department* for the registration of a *learner* to receive education at the *learner's* home.

(2) The *Head of Department* must register a *learner* as contemplated in [subsection \(1\)](#) if he or she is satisfied that—

- (a) the registration is in the interests of the *learner*;
- (b) the education likely to be received by the *learner* at home—
 - (i) will meet the minimum requirements of the curriculum at *public schools*; and
 - (ii) will be of a standard not inferior to the standard of education provided at *public schools*; and
- (c) the *parent* will comply with any other reasonable conditions set by the *Head of Department*.

(3) The *Head of Department* may, subject to [subsection \(4\)](#), withdraw the registration referred to in [subsection \(1\)](#).

(4) The *Head of Department* may not withdraw the registration until he or she—

- (a) has informed the *parent* of his or her intention so to act and the reasons therefor;
- (b) has granted the *parent* an opportunity to make representations to him or her in relation to such action; and
- (c) has duly considered any such representations received.

(5) A *parent* may appeal to the *Member of the Executive Council* against the withdrawal of a registration or a refusal to register a *learner* in terms of *this Act*.

52. Transitional provisions relating to schools other than private schools.—(1) Any *school* which was established or was deemed to have been established in terms of any law governing *school* education in the Republic of South Africa and which existed immediately prior to the commencement of *this Act*, other than a private *school* referred to in [section 53](#) is deemed to be a *public school*.

(2) The assets and liabilities which vested in a *school* contemplated in [subsection \(1\)](#) immediately prior to the commencement of *this Act*, vest in the *public school* in question.

(3) Funds and other moveable assets used by, or held for or on behalf of, a *public school* contemplated in [subsection \(1\)](#) and which in law are the property of the State, remain at the disposal of the *school*, and devolve on the *school* on a date and subject to conditions determined by the *Minister* by notice in the Government Gazette, after consultation with the *Council of Education Ministers*.

(4) Any transaction entered into prior to the commencement of *this Act* by a *school* contemplated in [subsection \(1\)](#), which had the effect of transferring funds or other assets of such *school* to another person or body without value, is invalid.

53. Transitional provisions relating to private schools.—A private *school* which was registered or deemed to have been registered under the provisions of a law regulating *school* education in the Republic of South Africa and which existed immediately prior to the commencement of *this Act*, is deemed to be an *independent school*.

54. Transitional provisions relating to governing bodies.—(1) The *Minister* must, after consultation with the *Member of the Executive Council* and by notice in the Government Gazette, determine dates—

(a) by which the election of members of *governing bodies* at all *public schools* in a *province* must be finalised in terms of *this Act*; and

(b) from which the *governing bodies* referred to in subsection (1) (a) must function in terms of this Act.

(2) Different dates may be determined in terms of subsection (1) (b) in respect of *governing bodies* in the different provinces.

(3) Any *governing body*, management council or similar authority of a *public school*, which existed immediately prior to the commencement of *this Act*, continues to function until the day before the date on which the relevant *governing body* is elected and must perform all the functions it performed prior to the commencement of this Act which a *governing body* can lawfully perform in terms of *this Act*.

(4) Until a *governing body* begins to function in terms of subsection 1 (b), such *governing body* of a *school* deemed to be a *public school* in terms of [section 52 \(1\)](#) must perform the functions lawfully performed by its predecessor which are capable of being performed by a *governing body* in terms of *this Act*.

55. Transitional provisions relating to immovable property of certain schools.—(1) The immovable property of a *school* which was declared to be a state-aided *school* under [section 29 \(2A\)](#) of the Education Affairs Act, 1988 (House of Assembly) ([Act No. 70 of 1988](#)), devolves upon the State on a date determined by the *Minister* by notice in the Government Gazette.

(2) The *Minister* may determine different dates in respect of different *schools* under [subsection \(1\)](#).

(3) Any notice determining a date or dates referred to in [subsection \(1\)](#) or [\(2\)](#) must grant all interested parties a period of not less than 30 days in which to make written submissions.

(4) The *Minister* must consider all such submissions received, and thereafter may alter any notice referred to in [subsection \(1\)](#).

(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in [subsection \(1\)](#) must be paid in full or in part from funds appropriated by Parliament for that purpose.

(6) The *Minister* may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in [subsection \(5\)](#) be paid in respect of a particular transfer under this section.

(7) The rights of third parties with claims against the *school* in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and—

- (a) a third party acquires no right of execution against the immovable property as a result of such transfer alone;
- (b) a third party is obliged to excuse the *school* in question if the *school* fails to meet its commitments to the third party; and
- (c) the State indemnifies such a third party in its claims against the *school* which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the *school* prior to the transfer.

(8) The fact that compensation for any land and real rights in or over land expropriated in terms of [subsection \(1\)](#) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State.

(9) Until the date contemplated in [subsection \(1\)](#), a *public school* referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the *Member of the Executive Council*.

(10) Any claim for compensation arising from [subsection \(1\)](#) must be determined as contemplated in [the Constitution](#).

(11) The officer in charge of the deeds office or other office where the immovable property of a *school* is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.

[[Sub-s. \(11\)](#) added by [s. 9](#) of [Act No. 100 of 1997](#) and substituted by [s. 13](#) of [Act No. 48 of 1999](#).]

[Wording of Sections](#)

(12) Any immovable property belonging to the State which was used by a *school* and not transferred or endorsed into the name of the *school* contemplated in [subsection \(1\)](#) remains the property of the State.

[[Sub-s. \(12\)](#) added by [s. 9](#) of [Act No. 100 of 1997](#).]

(13) Any immovable property which was transferred into the name of a *school* contemplated in [subsection \(1\)](#) must, if such *school* is subsequently closed in terms of *this Act* or any other applicable law, devolve upon the State.

[[Sub-s. \(13\)](#) added by [s. 9](#) of [Act No. 100 of 1997](#).]

Wording of Sections



[s 55\(11\)](#) of Act 84 of 1996 prior to amendment by [Act 48 of 1999](#)

56. Transitional provisions relating to public schools on private property.—If an agreement contemplated in [section 14](#) does not exist at the commencement of *this Act* in respect of a *school*, standing on private property and which is deemed to be a *public school* in terms of [section 52 \(1\)](#), the *Member of the Executive Council* must take reasonable measures to conclude such an agreement within six months of the commencement of *this Act*.

57. Transitional provisions relating to private property owned by religious organisation.—If the owner of the private property referred to in [section 56](#) is a religious organisation, such owner may require that the agreement contemplated in [section 14](#) must recognise, in an appropriate manner consistent with *this Act*, the distinctive religious character of the *school*.

CHAPTER 7 GENERAL PROVISIONS

58. Expropriation.—(1) The *Member of the Executive Council* may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to *school* education in a *province*.

(2) The *Member of the Executive Council* must give notice in the Provincial Gazette of his or her intention to expropriate in terms of [subsection \(1\)](#).

(3) A notice contemplated in [subsection \(2\)](#) must—

- (a) identify the land or any real right in or over the land;
- (b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and
- (c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the *Member of the Executive Council* in that regard, and draw attention to the provisions of [subsection \(5\)](#).

(4) The *Member of the Executive Council* may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in [subsection \(3\)](#) by notice in the Provincial Gazette.

(5) Any expropriation contemplated in [subsection \(4\)](#) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

(6) If the *Member of the Executive Council* and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.

(7) The arbitrator determines the time, venue and procedures which apply in the arbitration.

(8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.

(9) The arbitrator may not make an award of costs.

(10) The arbitrator is paid, out of moneys appropriated for this purpose by the *provincial legislature*, such fees and allowances as the *Member of the Executive Council* may determine, with the concurrence of the Member of the Executive Council responsible for finance.

(11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in [subsection \(1\)](#) may be paid in full or in part from funds appropriated by the *provincial legislature* for that purpose.

(12) Any claim to compensation arising from the expropriation contemplated in [subsection \(4\)](#) must be determined as contemplated in [the Constitution](#) and this section.

58A. Alienation of assets of public school.—(1) The *Head of Department* has the right to compile or inspect an inventory of all the assets of a *public school*.

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

(3) Despite [subsection \(2\)](#), the *Member of the Executive Council* may—

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

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

[S. 58A inserted by s. 6 of [Act No. 24 of 2005](#).]

58B. Identification of underperforming public schools.—(1) The *Head of Department* must, annually, from the report contemplated in [section 16A \(1\) \(b\)](#) and from other relevant reports, identify any *public school* that is underperforming in relation to any matter referred to in [subsection \(2\) \(a\), \(b\) or \(c\)](#).

(2) The *Head of Department* must issue a written notice to the *school* contemplated in [subsection \(1\)](#), if he or she is satisfied that—

- (a) the standard of performance of *learners* is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the *Head of Department* exercises his or her power in terms of *this Act*;
- (b) there has been a serious breakdown in the way the *school* is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or
- (c) the safety of *learners* or staff is threatened.

(3) The written notice contemplated in [subsection \(2\)](#) must inform the *school* that it must—

- (a) within 14 days after delivery of the notice, respond to the notice; and
- (b) as soon as possible after that response, provide the *Head of Department* with a plan for correcting the situation.

(4) The *Head of Department* must take all reasonable steps to assist a *school* identified in terms of [subsection \(1\)](#) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in [subsection \(4\)](#), the *Head of Department* must consider—

- (a) implementing the incapacity code and procedures for poor work performance referred to in [section 16](#) of the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#));
- (b) withdrawing the functions of the *governing body* in terms of [section 22](#); or
- (c) appointing persons in terms of [section 25](#) to perform the functions or specified functions of the *governing body*.

(6) The counselling of the *principal* as contemplated in [Item 2 \(5\) \(b\) \(ii\)](#) of [Schedule 1](#) to the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)), may include the appointment of an academic mentor to take over the functions and responsibilities of the *principal* for the period determined by the *Head of Department*.

(7) In order to assist the *Minister* in carrying out his or her duties referred to in [section 8](#) of the National Education Policy Act, 1996 ([Act No. 27 of 1996](#)), the *Member of the Executive Council* must report to the *Minister* within three months after the end of a *school* year on the action taken by the *Head of Department* in regard to an underperforming *public school*.

[[S. 58B](#) inserted by [s. 11](#) of [Act No. 31 of 2007](#).]

58C. Compliance with norms and standards.—(1) The *Member of the Executive Council* must, in accordance with an implementation protocol contemplated in [section 35](#) of the Intergovernmental Relations Framework Act, 2005 ([Act No. 13 of 2005](#)), ensure compliance with—

- (a) norms and standards determined in terms of [sections 5A](#), [6 \(1\)](#), [20 \(11\)](#), [35](#) and [48 \(1\)](#);
- (b) minimum outcomes and standards set in terms of [section 6A](#); and
- (c) performance standards contemplated in [Item 2 \(2\)](#) of [Schedule 1](#) to the Employment of Educators Act, 1998 ([Act No. 76 of 1998](#)),

(in this section jointly referred to as “norms and standards”).

(2) The *Member of the Executive Council* must ensure that the policy determined by a *governing body* in terms of [sections 5 \(5\)](#) and [6 \(2\)](#) complies with the norms and standards.

(3) The *Member of the Executive Council* must, annually, report to the *Minister* the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.

(4) Any dispute between the *Minister* and a *Member of the Executive Council* in respect of non-compliance with the norms and standards contemplated in [subsection \(1\)](#) must—

- (a) be dealt with in accordance with the principles of co-operative governance referred to in [section 41 \(1\)](#) of [the Constitution](#) and the provisions of the Intergovernmental Relations Framework Act, 2005 ([Act No. 13 of 2005](#)); and
- (b) whenever necessary, be settled in accordance with [Chapter 4](#) of the Intergovernmental Relations Framework Act, 2005.

(5) The *Head of Department* must comply with all norms and standards contemplated in [subsection \(1\)](#) within a specific *public school* year by—

- (a) identifying resources with which to comply with such norms and standards;
- (b) identifying the risk areas for compliance;
- (c) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;
- (d) developing protocols with the *schools* on how to comply with norms and standards and manage the risk areas; and
- (e) reporting to the *Member of the Executive Council* on the state of compliance and on the measures contemplated in [paragraphs \(a\)](#) to [\(d\)](#), before 30 September of each year.

(6) The *Head of Department* must—

- (a) in accordance with the norms and standards contemplated in [section 5A](#) determine the minimum and maximum capacity of a *public school* in relation to the availability of classrooms and *educators*, as well as the curriculum programme of such *school*; and
- (b) in respect of each *public school* in the province, communicate such determination to the chairperson of the *governing body* and the *principal*, in writing, by not later than 30 September of each year.

[[S. 58C](#) inserted by [s. 11](#) of [Act No. 31 of 2007](#).]

59. Duty of schools to provide information.—(1) A *school* must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.

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

[[Sub-s. \(2\)](#) substituted by [s. 10](#) of [Act No. 100 of 1997](#).]

[Wording of Sections](#)

Wording of Sections



[s 59\(2\)](#) of Act 84 of 1996 prior to amendment by [Act 100 of 1997](#)

60. Liability of State.—(1) (a) Subject to [paragraph \(b\)](#), the State is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

[[Para. \(a\)](#) substituted by [s. 14](#) of [Act No. 15 of 2011](#).]

[Wording of Sections](#)

(b) Where a *public school* has taken out insurance and the *school* activity is an eventuality covered by the insurance policy, the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy.

[[Sub-s. \(1\)](#) substituted by [s. 12](#) of [Act No. 31 of 2007](#).]

Wording of Sections

(2) The provisions of the State Liability Act, 1957 ([Act No. 20 of 1957](#)), apply to any claim under [subsection \(1\)](#).

(3) Any claim for damage or loss contemplated in [subsection \(1\)](#) must be instituted against the *Member of the Executive Council* concerned.

[[Sub-s. \(3\)](#) added by [s. 14](#) of [Act No. 48 of 1999](#).]

(4) Despite the provisions of [subsection \(1\)](#), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a *public school* for purposes of supplementing the resources of the *school* as contemplated in [section 36](#), including the offering of practical educational activities relating to that enterprise or business.

[[Sub-s. \(4\)](#) added by [s. 14](#) of [Act No. 48 of 1999](#).]

(5) Any legal proceedings against a *public school* for any damage or loss contemplated in [subsection \(4\)](#), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in [section 20 \(10\)](#), may only be instituted after written notice of the intention to institute proceedings against the *school* has been given to the *Head of Department* for his or her information.

[[Sub-s. \(5\)](#) added by [s. 14](#) of [Act No. 48 of 1999](#).]

Wording of Sections	X
s 60(1)(a) of Act 84 of 1996 prior to amendment by Act 15 of 2011	
Wording of Sections	X
s 60(1) of Act 84 of 1996 prior to amendment by Act 31 of 2007	

61. Regulations.—The *Minister* may make regulations—

- (a) to provide for safety measures at *public* and *independent schools*;
- (b) on any matter which must or may be prescribed by regulation under *this Act*;
- (c) to prescribe a national curriculum statement applicable to *public* and *independent schools*;
- (d) to prescribe a national process and procedures for the assessment of *learner* achievement in *public* and *independent schools*;
- (e) to prescribe a national process for the assessment, monitoring and evaluation of education in *public* and *independent schools*;
- (f) on initiation practices at *public* and *independent schools*;
- (g) to prescribe the age norm per grade in *public* and *independent schools*;

- (h) to provide for norms and minimum standards for *school* funding; and
- (i) on any matter which may be necessary or expedient to prescribe in order to achieve the objects of *this Act*.
 [S. 61 substituted by s. 5 of [Act No. 53 of 2000](#) and by s. 9 of [Act No. 50 of 2002](#).]
[Wording of Sections](#)

Wording of Sections	
s 61 of Act 84 of 1996 prior to amendment by Act 53 of 2000	✕
s 61 of Act 84 of 1996 prior to amendment by Act 50 of 2002	

62. Delegation of powers.—(1) The *Member of the Executive Council* may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under *this Act* to the *Head of Department* or an *officer*, except the power to publish a notice and the power to decide an appeal lodged with him or her in terms of *this Act*.

(2) The *Head of Department* may, subject to such conditions as he or she may determine, delegate to an *officer* any of his or her powers in terms of *this Act* or delegated to him or her in terms of [subsection \(1\)](#).

(3) A delegation under [subsection \(1\)](#) or [\(2\)](#) does not prevent the *Member of the Executive Council* or *Head of Department*, as the case may be, from exercising such power or performing such duty.

63. Repeal and amendment of laws.—(1) The laws listed in the first column of [Schedule 1](#) are hereby repealed to the extent set out in the third column of that Schedule.

(2) The Educators' Employment Act, 1994 ([Proclamation No. 138 of 1994](#)), is hereby amended to the extent set out in [Schedule 2](#).

Repealed Act	
P 138 of 1994 has been repealed by s 137(1) of Act 76 of 1998	✕

64. Short title and commencement.—*This Act* is the South African Schools Act, 1996, and comes into operation on a date fixed by the President by proclamation in the Government Gazette.

Schedule 1

No. and year of Act	Short title	Extent of repeal
Act No. 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20 , 26 and 28 to 31
Act No. 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20 , 26 , 28 , 29 , 31 and 33 (1) (<i>g</i>)
Act No. 90 of 1979	Education and Training Act, 1979	Sections 1A, 3 , 4 , 11 to 29 , 31 , 32 , 43 and 44 (1) (<i>h</i>)

Act No. 104 of 1986	Private <i>Schools</i> Act (House of Assembly), 1986	Section 1A
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

Schedule 2

AMENDMENT OF EDUCATORS' EMPLOYMENT ACT, 1994, BY [SECTION 63](#)

1. Amends [section 1](#) as follows:—paragraph (a) inserts the definitions of “Department”, “educational institution”, “Labour Relations Act”, “public education institution”, “[public school](#)”, “state-aided college” and “unsubsidised post”; paragraph (b) substitutes the definitions of “[educator](#)”, “employee member” and “employer”; and paragraph (c) deletes the definitions of “departmental education”, “subsidised post”, “state-aided educational institution”, “Executive Council” and “Education Labour Relations Act”.

2. Substitutes [section 3](#).

3. Inserts section 3A.

4. Substitutes [section 4](#).

5. Amends [section 5](#) as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsection (2).

6. Substitutes [section 6](#).

7 to 9 inclusive. Amend [sections 7](#), [8](#), and 10, respectively, by substituting the expression “public education institution” wherever it occurs, for the expression “state educational institution”.

10. Amends [section 11](#) by substituting subsection (3).

11 and 12. Substitute [sections 22](#) and [23](#), respectively.