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## GENERAL NOTICES

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### NOTICE 1926 OF 1999

#### DEPARTMENT OF EDUCATION

#### NATIONAL EDUCATION POLICY ACT, 1996 (NO. 27 OF 1996)

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

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

PROFESSOR KADER ASMAL  
MINISTER OF EDUCATION  
AUGUST 1999

## **SCHEDULE**

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

#### **PREAMBLE**

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

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

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

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

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

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

HIV-infected babies generally survive for shorter periods than HIV-infected adults. Many die within two years of birth, and most will die before they turn

five. However, a significant number may survive even into their teenage years before developing AIDS.

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

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

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

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



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

## 1. DEFINITIONS

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

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

**"HIV"** means the human immunodeficiency virus;

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

**"sexual abuse"** means abuse of a person targeting their sexual organs, e.g. rape, touching their private parts, or inserting objects into their private parts;

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

**"universal precautions"** refers to the concept used worldwide in the context of HIV/AIDS to indicate standard infection control procedures or precautionary measures aimed at the prevention of HIV transmission from one person to another and includes procedures concerning basic hygiene and the wearing of protective clothing such as latex or rubber

gloves or plastic bags when there is a risk of exposure to blood, blood-borne pathogens or blood-stained body fluids;

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

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

## 2. PREMISES

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

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

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

HIV/AIDS in schools, it is imperative that each school must have a planned strategy to cope with the epidemic.

- 2.4 Because of the nature of HIV antibody testing and the "window period" or "apparently well period" between infection and the onset of clearly identifiable symptoms, it is impossible to know with absolute certainty who has HIV/AIDS and who does not. Although the Department of Health conducts tests among women attending ante-natal clinics in public health facilities in South Africa as a mechanism of monitoring the progression of the HIV epidemic in South Africa, testing for HIV/AIDS for employment or attendance at schools is prohibited.
- 2.5 Compulsory disclosure of a learner's, student's or educator's HIV/AIDS status to school or institution authorities is not advocated as this would serve no meaningful purpose. In case of disclosure, educators should be prepared to handle such disclosures and be given support to handle confidentiality issues.
- 2.6 Learners and students with HIV/AIDS should lead as full a life as possible and should not be denied the opportunity to receive an education to the maximum of their ability. Likewise, educators with HIV/AIDS should lead as full a professional life as possible, with the same rights and opportunities as other educators and with no unfair discrimination being practised against them. Infection control measures and adaptations must be universally applied and carried out regardless of the known or unknown HIV status of individuals concerned.
  - 2.6.1 The risk of transmission of HIV in the day-to-day school or institution environment in the context of physical injuries, can be effectively eliminated by following standard infection-control procedures or precautionary measures (also known as universal precautions) and good hygiene practices under all circumstances. This would imply that in situations of potential exposure, such as in dealing with accidental or other physical

injuries, or medical intervention on school or institution premises in case of illness, all persons should be considered as potentially infected and their blood and body fluids treated as such.

2.6.2 Strict adherence to universal precautions under all circumstances in the school or institution is advised.

2.6.3 Current scientific evidence suggests that the risk of HIV transmission during teaching, sport and play activities is insignificant. There is no risk of transmission from saliva, sweat, tears, urine, respiratory droplets, handshaking, swimming-pool water, communal bath water, toilets, food or drinking water. The statement about the insignificant risk of transmission during teaching, sport and play activities, however, holds true only if universal precautions are adhered to. Adequate wound management has to take place in the classroom and laboratory or on the sports field or playground when a learner or student sustains an open bleeding wound. Contact sports such as boxing and rugby could probably be regarded as sports representing a higher risk of HIV transmission than other sports, although the inherent risk of transmission during any such sport is very low.

2.6.4 Public funds should be made available to ensure the application of universal precautions and the supply of adequate information and education on HIV transmission. The State's duty to take all reasonable steps to ensure safe school and institution environments, is regarded as a sound investment in the future of South Africa.

2.6.5 Within the context of sexual relations, the risk of contracting HIV is significant. There are high levels of sexually active persons

morality and life skills education being provided by educators, parents should be encouraged to provide their children with healthy morals, sexuality education and guidance regarding sexual abstinence until marriage and faithfulness to their partners. Sexually active persons should be advised to practise safe sex and to use condoms. Learners and students should be educated about their rights concerning their own bodies, to protect themselves against rape, violence, inappropriate sexual behaviour and contracting HIV.

- 2.7 The constitutional rights of all learners, students and educators must be protected on an equal basis. If a suitably qualified person ascertains that a learner, student or educator poses a medically recognised significant health risk to others, appropriate measures should be taken. A medically recognised significant health risk in the context of HIV/AIDS could include the presence of untreatable contagious (highly communicable) diseases, uncontrollable bleeding, unmanageable wounds, or sexual or physically aggressive behaviour, which may create the risk of HIV transmission.
- 2.8 Furthermore, learners and students with infectious illnesses such as measles, German measles, chicken pox, whooping cough and mumps should be kept away from the school or institution to protect all other members of the school or institution, especially those whose immune systems may be impaired by HIV/AIDS.
- 2.9 Schools and institutions should inform parents of vaccination/inoculation programmes and of their possible significance for the wellbeing of learners and students with HIV/AIDS. Local health clinics could be approached to assist with immunisation.
- 2.10 Learners and students must receive education about HIV/AIDS and abstinence in the context of life-skills education on an ongoing basis.

Life skills and HIV/AIDS education should not be presented as isolated learning content, but should be integrated in the whole curriculum. It should be presented in a scientific but understandable way. Appropriate course content should be available for the pre-service and in-service training of educators to cope with HIV/AIDS in schools. Enough educators to educate learners about the epidemic should also be provided.

2.10.1 The purpose of education about HIV/AIDS is to prevent the spread of HIV infection, to allay excessive fears of the epidemic, to reduce the stigma attached to it and to instill non-discriminatory attitudes towards persons with HIV/AIDS. Education should ensure that learners and students acquire age- and context-appropriate knowledge and skills in order that they may adopt and maintain behaviour that will protect them from HIV infection.

2.10.2 In the primary grades, the regular educator should provide education about HIV/AIDS, while in secondary grades the guidance counsellor would ideally be the appropriate educator. Because of the sensitive nature of the learning content, the educators selected to offer this education should be specifically trained and supported by the support staff responsible for life-skills and HIV/AIDS education in the school and province. The educators should feel at ease with the content and should be a rolemodel with whom learners and students can easily identify. Educators should also be informed by the principal and educator unions of courses for educators to improve their knowledge of, and skills to deal with, HIV/AIDS.

2.10.3 All educators should be trained to give guidance on HIV/AIDS. Educators should respect their position of trust and the constitutional rights of all learners and students in the context of HIV/AIDS.

- 2.11 In order to meet the demands of the wide variety of circumstances posed by the South African community and to acknowledge the importance of governing bodies, councils and parents in the education partnership, this national policy is intended as broad principles only. It is envisaged that the governing body of a school, acting within its functions under the South African Schools Act, 1996, and the Council of a Further Education and Training Institution, acting within its functions under the Further Education and Training Act, 1998, or any provincial law, should preferably give operational effect to the national policy by developing and adopting an HIV/AIDS implementation plan that would reflect the needs, ethos and values of a specific school or institution and its community within the framework of the national policy.

### **3. NON-DISCRIMINATION AND EQUALITY WITH REGARD TO LEARNERS, STUDENTS AND EDUCATORS WITH HIV/AIDS**

- 3.1 No learner, student or educator with HIV/AIDS may be unfairly discriminated against directly or indirectly. Educators should be alert to unfair accusations against any person suspected to have HIV/AIDS.
- 3.2 Learners, students, educators and other staff with HIV/AIDS should be treated in a just, humane and life-affirming way.
- 3.3 Any special measures in respect of a learner, student or educator with HIV should be fair and justifiable in the light of medical facts; established legal rules and principles; ethical guidelines; the best interest of the learner, student and educator with HIV/AIDS; school or institution conditions; and the best interest of other learners, students and educators.
- 3.4 To prevent discrimination, all learners, students and educators should be educated about fundamental human rights as contained in the Constitution of the Republic of South Africa, 1996.

**4. HIV/AIDS TESTING AND THE ADMISSION OF LEARNERS TO A SCHOOL AND STUDENTS TO AN INSTITUTION, OR THE APPOINTMENT OF EDUCATORS**

4.1 No learner or student may be denied admission to or continued attendance at a school or an institution on account of his or her HIV/AIDS status or perceived HIV/AIDS status.

4.2 No educator may be denied the right to be appointed in a post, to teach or to be promoted on account of his or her HIV/AIDS status or perceived HIV/AIDS status. HIV/AIDS status may not be a reason for dismissal of an educator, nor for refusing to conclude, or continue, or renew an educator's employment contract, nor to treat him or her in any unfair discriminatory manner.

4.3. There is no medical justification for routine testing of learners, students or educators for evidence of HIV infection. The testing of learners or students for HIV/AIDS as a prerequisite for admission to, or continued attendance at school or institution, to determine the incidence of HIV/AIDS at schools or institutions, is prohibited. The testing of educators for HIV/AIDS as a prerequisite for appointment or continued service is prohibited.

**5. ATTENDANCE AT SCHOOLS AND INSTITUTIONS BY LEARNERS OR STUDENTS WITH HIV/AIDS**

5.1 Learners and students with HIV have the right to attend any school or institution. The needs of learners and students with HIV/AIDS with regard to their right to basic education should as far as is reasonably practicable be accommodated in the school or institution.



- 5.2 Learners and students with HIV/AIDS are expected to attend classes in accordance with statutory requirements for as long as they are able to do so effectively.
- 5.3 Learners of compulsory school-going age with HIV/AIDS, who are unable to benefit from attendance at school or home education, may be granted exemption from attendance in terms of section 4(1) of the South African Schools Act, 1996, by the Head of Department, after consultation with the principal, the parent and the medical practitioner where possible.
- 5.4 If and when learners and students with HIV/AIDS become incapacitated through illness, the school or institution should make work available to them for study at home and should support continued learning where possible. Parents should, where practically possible, be allowed to educate their children at home in accordance with the policy for home education in terms of section 51 of the South African Schools Act, 1996, or provide older learners with distance education.
- 5.5 Learners and students who cannot be accommodated in this way or who develop HIV/AIDS-related behavioural problems or neurological damage, should be accommodated, as far as is practically possible, within the education system in special schools or specialised residential institutions for learners with special education needs. Educators in these institutions must be empowered to take care of and support HIV-positive learners. However, placement in special schools should not be used as an excuse to remove HIV-positive learners from mainstream schools.

## **6. DISCLOSURE OF HIV/AIDS-RELATED INFORMATION AND CONFIDENTIALITY**

- 6.1 No learner or student (or parent on behalf of a learner or student), or educator, is compelled to disclose his or her HIV/AIDS status to the school or institution or employer. (In cases where the medical condition

diagnosed is the HIV/AIDS disease, the Regulations relating to communicable diseases and the notification of notifiable medical conditions [Health Act, 1977] only require the person performing the diagnosis to inform the immediate family members and the persons giving care to the person and, in cases of HIV/AIDS-related death, the persons responsible for the preparation of the body of the deceased.)

- 6.2 Voluntary disclosure of a learner's, student's or educator's HIV/AIDS status to the appropriate authority should be welcomed and an enabling environment should be cultivated in which the confidentiality of such information is ensured and in which unfair discrimination is not tolerated. In terms of section 39 of the Child Care Act, 1983 (Act No. 74 of 1983), any learner or student above the age of 14 years with HIV/AIDS, or if the learner is younger than 14 years, his or her parent, is free to disclose such information voluntarily.
- 6.3 A holistic programme for life-skills and HIV/AIDS education should encourage disclosure. In the event of voluntary disclosure, it may be in the best interests of a learner or student with HIV/AIDS if a member of the staff of the school or institution directly involved with the care of the learner or student, is informed of his or her HIV/AIDS status. An educator may disclose his or her HIV/AIDS status to the principal of the school or institution.
- 6.4 Any person to whom any information about the medical condition of a learner, student or educator with HIV/AIDS has been divulged, must keep this information confidential.
- 6.5 Unauthorised disclosure of HIV/AIDS-related information could give rise to legal liability.
- 6.6 No employer can require an applicant for a job to undergo an HIV test before he/she is considered for employment. An employee cannot be

dismissed, retrenched or refused a job simply because he or she is HIV positive.

## **7. A SAFE SCHOOL AND INSTITUTION ENVIRONMENT**

7.1 The MEC should make provision for all schools and institutions to implement universal precautions to eliminate the risk of transmission of all blood-borne pathogens, including HIV, effectively in the school or institution environment. Universal precautions include the following:

7.1.1 The basis for advocating the consistent application of universal precautions lies in the assumption that in situations of potential exposure to HIV, all persons are potentially infected and all blood should be treated as such. All blood, open wounds, sores, breaks in the skin, grazes and open skin lesions, as well as all body fluids and excretions which could be stained or contaminated with blood (for example tears, saliva, mucus, phlegm, urine, vomit, faeces and pus) should therefore be treated as potentially infectious.

- (a) Blood, especially in large spills such as from nosebleeds, and old blood or blood stains, should be handled with extreme caution.
- (b) Skin exposed accidentally to blood should be washed immediately with soap and running water.
- (c) All bleeding wounds, sores, breaks in the skin, grazes and open skin lesions should ideally be cleaned immediately with running water and/or other antiseptics.
- (d) If there is a biting or scratching incident where the skin is broken, the wound should be washed and cleansed

under running water, dried, treated with antiseptic and covered with a waterproof dressing.

- (e) Blood splashes to the face (mucous membranes of eyes, nose or mouth) should be flushed with running water for at least three minutes.
- (f) Disposable bags and incinerators must be made available to dispose of sanitary wear.

7.1.2 All open wounds, sores, breaks in the skin, grazes and open skin lesions should at all times be covered completely and securely with a non-porous or waterproof dressing or plaster so that there is no risk of exposure to blood.

7.1.3 Cleansing and washing should always be done with running water and not in containers of water. Where running tap water is not available, containers should be used to pour water over the area to be cleansed. Schools without running water should keep a supply, e.g. in a 25-litre drum, on hand specifically for use in emergencies. This water can be kept fresh for a long period of time by adding a disinfectant, such as Milton, to it.

7.1.4 All persons attending to blood spills, open wounds, sores, breaks in the skin, grazes, open skin lesions, body fluids and excretions should wear protective latex gloves or plastic bags over their hands to eliminate the risk of HIV transmission effectively. Bleeding can be managed by compression with material that will absorb the blood, e.g. a towel.

7.1.5 If a surface has been contaminated with body fluids and excretions which could be stained or contaminated with blood (for instance tears, saliva, mucus, phlegm, urine, vomit, faeces and pus), that surface should be cleaned with running water and

fresh, clean household bleach (1:10 solution), and paper or disposable cloths. The person doing the cleaning must wear protective gloves or plastic bags.

7.1.6 Blood-contaminated material should be sealed in a plastic bag and incinerated or sent to an appropriate disposal firm. Tissues and toilet paper can readily be flushed down a toilet.

7.1.7 If instruments (for instance scissors) become contaminated with blood or other body fluids, they should be washed and placed in a strong household bleach solution for at least one hour before drying and re-using.

7.1.8 Needles and syringes should not be re-used, but should be safely disposed of.

7.2 All schools and institutions should train learners, students, educators and staff in first aid, and have available and maintain at least two first-aid kits, each of which should contain the following:

- (a) two large and two medium pairs of disposable latex gloves;
- (b) two large and two medium pairs of household rubber gloves for handling blood-soaked material in specific instances (for example when broken glass makes the use of latex gloves inappropriate);
- (c) absorbent material, waterproof plasters, disinfectant (such as hypochlorite), scissors, cotton wool, gauze tape, tissues, containers for water and a resuscitation mouth piece or similar device with which mouth-to-mouth resuscitation could be applied without any contact being made with blood or other body fluids.
- (d) protective eye wear; and

- (e) a protective face mask to cover nose and mouth

7.3 Universal precautions are in essence barriers to prevent contact with blood or body fluids. Adequate barriers can also be established by using less sophisticated devices than those described in 7.2, such as -

- (a) unbroken plastic bags on hands where latex or rubber gloves are not available;
- (b) common household bleach for use as disinfectant, diluted one part bleach to ten parts water (1:10 solution) made up as needed.
- (c) spectacles; and
- (d) a scarf.

7.4 Each classroom or other teaching area should preferably have a pair of latex or household rubber gloves.

7.5 Latex or household rubber gloves should be available at every sports event and should also be carried by the playground supervisor.

7.6 First-aid kits and appropriate cleaning equipment should be stored in one or more selected rooms in the school or institution and should be accessible at all times, also by the playground supervisor.

7.7 Used items should be dealt with as indicated in paragraphs 7.1.6 and 7.1.7.

7.8 The contents of the first-aid kits, or the availability of other suitable barriers, should be checked each week against a contents list by a designated staff member of the school or institution. Expired and depleted items should be replaced immediately.

- 7.9 A fully equipped first-aid kit should be available at all school or institution events, outings and tours, and should be kept on vehicles for the transport of learners to such events.
- 7.10 All learners, students, educators and other staff members, including sports coaches, should be given appropriate information and training on HIV transmission, the handling and use of first-aid kits, the application of universal precautions and the importance of adherence universal precautions.
- 7.10.1 Learners, students, educators and other staff members should be trained to manage their own bleeding or injuries and to assist and protect others.
- 7.10.2 Learners, especially those in pre-primary and primary schools, and students should be instructed never to touch the blood, open wounds, sores, breaks in the skin, grazes and open skin lesions of others, nor to handle emergencies such as nosebleeds, cuts and scrapes of friends on their own. They should be taught to call for the assistance of an educator or other staff member immediately.
- 7.10.3 Learners and students should be taught that all open wounds, sores, breaks in the skin, grazes and open skin lesions on all persons should be kept covered completely with waterproof dressings or plasters at all times, not only when they occur in the school or institution environment.
- 7.11 All cleaning staff, learners, students, educators and parents should be informed about the universal precautions that will be adhered to at a school or an institution.
- 7.12 A copy of this policy must be kept in the media centre of each school or institution.

## 8. PREVENTION OF HIV TRANSMISSION DURING PLAY AND SPORT

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

8.1.1 The risk increases where open wounds, sores, breaks in the skin, grazes, open skin lesions or mucous membranes of learners, students and educators are exposed to infected blood.

8.1.2 Certain contact sports may represent an increased risk of HIV transmission.

8.2 Adequate wound management, in the form of the application of universal precautions, is essential to contain the risk of HIV transmission during contact play and contact sport.

8.2.1 No learner, student or educator may participate in contact play or contact sport with an open wound, sore, break in the skin, graze or open skin lesion.

8.2.2 If bleeding occurs during contact play or contact sport, the injured player should be removed from the playground or sports field immediately and treated appropriately as described in paragraphs 7.1.1 to 7.1.4. Only then may the player resume playing and only for as long as any open wound, sore, break in the skin, graze or open skin lesion remains completely and securely covered.

8.2.3 Blood-stained clothes must be changed.

8.2.4 The same precautions should be applied to injured educators, staff members and injured spectators.



- 8.3 A fully equipped first-aid kit should be available wherever contact play or contact sport takes place.
- 8.4 Sports participants, including coaches, with HIV/AIDS should seek medical counselling before participation in sport, in order to assess risks to their own health as well as the risk of HIV transmission to other participants.
- 8.5 Staff members acting as sports administrators, managers and coaches should ensure the availability of first-aid kits and the adherence to universal precautions in the event of bleeding during participation in sport.
- 8.6 Staff members acting as sports administrators, managers and coaches have special opportunities for meaningful education of sports participants with respect to HIV/AIDS. They should encourage sports participants to seek medical and other appropriate counselling where appropriate.

## **9. EDUCATION ON HIV/AIDS**

- 9.1 A continuing life-skills and HIV/AIDS education programme must be implemented at all schools and institutions for all learners, students, educators and other staff members. Measures must also be implemented at hostels.
- 9.2 Age-appropriate education on HIV/AIDS must form part of the curriculum for all learners and students, and should be integrated in the life-skills education programme for pre-primary, primary and secondary school learners. This should include the following:
  - 9.2.1 providing information on HIV/AIDS and developing the life skills necessary for the prevention of HIV transmission;

- 9.2.2 inculcating from an early age onwards basic first-aid principles, including how to deal with bleeding with the necessary safety precautions;
  - 9.2.3 emphasising the role of drugs, sexual abuse and violence, and sexually transmitted diseases (STDs) in the transmission of HIV, and empowering learners to deal with these situations;
  - 9.2.4 encouraging learners and students to make use of health care, counselling and support services (including services related to reproductive health care and the prevention and treatment of sexually transmitted diseases) offered by community service organisations and other disciplines;
  - 9.2.5 teaching learners and students how to behave towards persons with HIV/AIDS, raising awareness on prejudice and stereotypes around HIV/AIDS;
  - 9.2.6 cultivating an enabling environment and a culture of non-discrimination towards persons with HIV/AIDS; and
  - 9.2.7 providing information on appropriate prevention and avoidance measures, including abstinence from sexual intercourse and immorality, the use of condoms, faithfulness to one's partner, obtaining prompt medical treatment for sexually transmitted diseases and tuberculosis, avoiding traumatic contact with blood, and the application of universal precautions.
- 9.3 Education and information regarding HIV/AIDS must be given in an accurate and scientific manner and in language and terms that are understandable.
- 9.4 Parents of learners and students must be informed about all life-skills and HIV/AIDS education offered at the school and institution, the

learning content and methodology to be used, as well as values that will be imparted. They should be invited to participate in parental guidance sessions and should be made aware of their role as sexuality educators and imparters of values at home.

9.5 Educators may not have sexual relations with learners or students. Should this happen, the matter has to be handled in terms of the Employment of Educators Act, 1998.

9.6 If learners, students or educators are infected with HIV, they should be informed that they can still lead normal, healthy lives for many years by taking care of their health.

## **10. DUTIES AND RESPONSIBILITIES OF LEARNERS, STUDENTS, EDUCATORS AND PARENTS**

10.1 All learners, students and educators should respect the rights of other learners, students and educators.

10.2 The Code of Conduct adopted for learners at a school or for students at an institution should include provisions regarding the unacceptability of behaviour that may create the risk of HIV transmission.

10.3 The ultimate responsibility for the behaviour of a learner or a student rests with his or her parents. Parents of all learners and students:-

10.3.1 are expected to require learners or students to observe all rules aimed at preventing behaviour which may create a risk of HIV transmission; and

10.3.2 are encouraged to take an active interest in acquiring any information or knowledge on HIV/AIDS supplied by the school or institution, and to attend meetings convened for them by the governing body or council.

10.4 It is recommended that a learner, student or educator with HIV/AIDS and his or her parent, in the case of learners or students, should consult medical opinion to assess whether the learner, student or educator, owing to his or her condition or conduct, poses a medically recognised significant health risk to others. If such a risk is established, the principal of the school or institution should be informed. The principal of the school or institution must take the necessary steps to ensure the health and safety of other learners, students, educators and staff members.

10.5 Educators have a particular duty to ensure that the rights and dignity of all learners, students and educators are respected and protected.

#### 11. REFUSAL TO STUDY WITH OR TEACH A LEARNER OR STUDENT WITH HIV/AIDS, OR TO WORK WITH OR BE TAUGHT BY AN EDUCATOR WITH HIV/AIDS

11.1 Refusal to study with a learner or student, or to work with or be taught by an educator or other staff member with, or perceived to have HIV/AIDS, should be preempted by providing accurate and understandable information on HIV/AIDS to all educators, staff members, learners, students and their parents.

11.2 Learners and students who refuse to study with a fellow learner or student or be taught by an educator or educators and staff who refuse to work with a fellow educator or staff member or to teach or interact with a learner or student with or perceived to have HIV/AIDS and are concerned that they themselves will be infected, should be counselled.

11.3 The situation should be resolved by the principal and educators in accordance with the principles contained in this policy, the code of conduct for learners, or the code of professional ethics for educators. Should the matter not be resolved through counselling and mediation, disciplinary steps may be taken.

## **12. SCHOOL AND INSTITUTIONAL IMPLEMENTATION PLANS**

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

## **13. HEALTH ADVISORY COMMITTEE**

- 13.1 Where community resources make this possible, it is recommended that each school and institution should establish its own Health Advisory Committee as a committee of the governing body or council. Where the establishment of such a committee is not possible, the school or

institution should draw on expertise available to it within the education and health systems. The Health Advisory Committee may as far as possible use the assistance of community health workers led by a nurse, or local clinics.

13.2 Where it is possible to establish a Health Advisory Committee, the Committee should:

13.2.1 be set up by the governing body or council and should consist of educators and other staff, representatives of the parents of learners at the school or students at the institution, representatives of the learners or students, and representatives from the medical or health care professions;

13.2.2 elect its own chairperson who should preferably be a person with knowledge in the field of health care;

13.2.3 advise the governing body or council on all health matters, including HIV/AIDS;

13.2.4 be responsible for developing and promoting a school or institution plan of implementation on HIV/AIDS and review the plan from time to time, especially as new scientific knowledge about HIV/AIDS becomes available; and

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

**14. IMPLEMENTATION OF THIS NATIONAL POLICY ON HIV/AIDS**

14.1 The Director-General of Education and the Heads of provincial departments of education are responsible for the implementation of this policy, in accordance with their responsibilities in terms of the Constitution of the Republic of South Africa, 1996, and any applicable

law. Every education department must designate an HIV/AIDS Programme Manager and a working group to communicate the policy to all staff, to implement, monitor and evaluate the Department's HIV/AIDS programme, to advise management regarding programme implementation and progress, and to create a supportive and non-discriminatory environment.

- 14.2 The principal or the head of a hostel is responsible for the practical implementation of this policy at school, institutional or hostel level, and for maintaining an adequate standard of safety according to this policy.
- 14.3 It is recommended that a school governing body or the council of an institution should take all reasonable measures within its means to supplement the resources supplied by the State in order to ensure the availability at the school or institution of adequate barriers (even in the form of less sophisticated material) to prevent contact with blood or body fluids.
- 14.4 Strict adherence to universal precautions under all circumstances (including play and sports activities) is advised, as the State will be liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school or institution.

## **15. REGULAR REVIEW**

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

## **16. APPLICATION**

- 16.1 This policy applies to public schools which enroll learners in one or more grades between grade zero and grade twelve, to further education and training institutions, and to educators.

- 16.2 Copies of this policy must be made available to independent schools registered with the provincial departments of education.

## **17. INTERPRETATION**

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

## **18. WHERE THIS POLICY MAY BE OBTAINED**

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

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

For further information, please see the attached ANNEXURE.



# HIV/AIDS Workplace Resource Guide

20% of SA workforce  
HIV+ by the year 2000



**AIDS HELPLINE**  
☎ 0800-012-322

HIV/AIDS and STD Directorate  
Department of Health  
Beyond Awareness Campaign

## DEVELOPING AN HIV/AIDS POLICY IN THE WORKPLACE

**HIV/AIDS Management can involve the following:**

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

### HIV/AIDS MANAGEMENT SERVICES

Consultancy	Contact Name	Contact Details
AIDS Management and Support*	Dr. Clive Eviar	Tel: (011) 786 6492 Fax: (011) 786 6492 E-mail: drclive@icon.co.za
Business and Practice Development*	Mr. Charles Harbottle	Tel: (011) 469 0546 Fax: (011) 469 0546 Cell: 083 777 1959
HIV Management Services*	Dr. Malcolm Steinberg/ Dr. Anthony Kinghorn	Tel: (011) 269 4033 Fax: (011) 884 7524 E-mail: anking@iafrica.com
Metropolitan Life*	Dr. Thomas Muhr	Tel: (021) 940 5177 Fax: (021) 940 5678 E-mail: thomas.muhr@metlife.co.za
Mx Health Institute*	Dr. L. McDonald	Tel: (012) 663 8111 Fax: (012) 663 3009 E-mail: mxhealth@pixie.co.za
Southern Life Association – AIDS Management Consultancy*	Mr. Wayne Myslik	Tel: (021) 658 0963 Tel: (021) 658 0347 E-mail: wmyslik@iafrica.com
University of Natal – Health Economics and HIV/AIDS Research Division *	Prof. Alan Whiteside	Tel: (031) 260 2590 Fax: (031) 260 2587 E-mail: whitesid@shephs2.und.ac.za

### LEGAL CONSULTANTS

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

AIDS Legal Network*	Ms. Mary Ceasar	Tel: (021) 448 3812 Fax: (021) 448 4089
Centre for Applied Legal Studies / AIDS Law Project*	Mr. Mark Heywood	Tel: (011) 403 6918 Fax: (011) 403 2341 E-mail: 125ma3he@solan.law.wits.ac.za
Lawyers for Human Rights*	Ms. Ann Strade	Tel: (0331) 421 130 Fax: (0331) 949 522 E-mail: lhprmb@wn.apc.org
Legal and Human Rights Programme (National Department of Health, HIV/AIDS & STDs Directorate)	Ms. Ann Strade & Ms. Catherine Barnett	Tel: (0331) 421 130 Fax: (0331) 949 522

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

\*services offered nationally

## PREVENTION OF HIV/AIDS

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



### 1. AWARENESS/EDUCATIONAL PROGRAMMES

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

Organisation/Department	Contact Details
<b>a) Educational Resources</b>	
Catalogue of HIV/AIDS materials: National Department of Health, HIV/AIDS & STDs Directorate	Tel: (012) 312 0121 Fax: (012) 328 5743
Film Resource Unit - Videos	Tel: (011) 838 4280/1/2 Fax: (011) 838 4451
AIDS HELPLINE	Tel: 0800 012 322
ATCCs	see back page
Provincial Health Departments	see back page
<b>b) Industrial Theatre</b>	
Hecate*	Tel: (011) 465 8748 Fax: (011) 465 4079
Raintree*	Tel: (011) 325 5535 Fax: (011) 325 5540
AREPP - African Research and Educational Puppetry Program*	Tel: (011) 483 1024/5 Fax: (011) 483 1786
CJ Industrial Theatre Consultants*	Tel/Fax: (016) 815 638 cell: 083 726 4596
<b>c) Peer Education Training</b>	
AIDS Education and Training	Tel: (011) 726 1495 Fax: (011) 726 8673
Mx Health Institute Ms. Engela Roos	Tel: (012) 663 8111 Fax: (012) 663 3009
Project Support Group (Zimbabwe) Prof. David Wilson	Tel: (09 263 4) 334 830 Fax: (09 263 4) 333 407 E-mail: david@psg.uz.zw
ATCCs (service/referral)	see back page
<b>d) Presentations by People Living with HIV/AIDS (PWAs)</b>	
NAPWA (service)	see back page
Old Mutual - "I Have Hope" Peer Group Project*	Tel: (021) 509 6769 Fax: (021) 509 5193
Metropolitan Life - EduAids Project*	Tel: (021) 940 6121 Fax: (021) 253 348
ATCCs (referral)	see back page

\*services offered nationally

### 2. UNIVERSAL PRECAUTIONS

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

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

### 3. CONDOMS

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

#### a) Free Condom Supply

Provincial Health Departments	see back page
ATCCs	see back page

#### b) Subsidised Condoms (Social Marketing)

Society for Family Health*	Tel: (011) 482 1427 Fax: (011) 482 3333
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#### c) Commercial Condom Supply

Durex	Tel: (011) 314 3102 Fax: (011) 314 3210
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#### d) Condom Distribution

Condom dispensers (free condoms):	
Condocan	Tel/Fax: (011) 786 6492
Society for Family Health	Tel: (011) 482 1427 Fax: (011) 482 3333
Chapmar Industries	Tel: (011) 452 1101 Fax: (011) 609 3898
Condom Vending Machines (socially marketed condoms):	
Society for Family Health*	Tel: (011) 482 1427 Fax: (011) 482 3333



## WELLNESS MANAGEMENT

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

### 1. TREATMENT OF STDs

Treatment of STD's dramatically reduces the risk of contracting HIV (see also Health Care #)

Organisation/Department	Contact Details
AIDS Management and Support – Dr. Clive Ewari	Tel/Fax: 786 9492 Cell: 082 456 3717
DoH, HIV/AIDS & STDs Directorate, Dr. David Coetzee	Tel: (012) 312 0129 Fax: (012) 326 2891
STD Reference Centre - SAHMR	Tel: (011) 489 9490 Fax: (011) 489 9492
ATICCs (service and referral)	see back page

### 2. TESTING

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

ATICCs (service and referral)	see back page
Provincial Health Depts (referral)	see back page
Provincial Government Hospitals	
Private pathologists	

### 3. COUNSELLING

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

ATICCs (service & referral)	see back page
Life Line Southern Africa* (service & referral)	Tel: (011) 880 9676 Fax: (011) 447 4084
NAPWA (service and referral)	see back page
AIDS HELPLINE	Tel: 0800 012 322

### 4. HEALTH CARE\*

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

South African Occupational Health Nursing Association*	Tel: (011) 239 3743 Fax: (011) 239 3702
South African Society of Occupational Medicine*	Tel/Fax: (012) 667 5160

### 5. TB TREATMENT

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

DoH, HIV/AIDS & STDs Directorate, Dr. H. Hausler	Tel: (012) 312 0121 Fax: (012) 326 2891
SANTA (South African National Tuberculosis Association)*	Tel: (011) 454 0260 Fax: (011) 454 0096
TB Alliance*	Tel: (021) 946 3873 Fax: (021) 946 3830
TB Care Association	Tel: (021) 400 3787 Fax: (021) 211980

### 6. HOSPICE/HOME BASED CARE

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

Hospice Association of South Africa*	Tel: (021) 531 2094 Fax: (021) 731 7917
Red Cross Society*	Tel: (011) 486 1313/4 Fax: (011) 486 1092

## Further Resources and Information

### PUBLICATIONS

- "Guidelines for Developing a Workplace Policy and Programme on HIV/AIDS and STDs"
- South African AIDS Network - Directory
- "AIDS and the Law - a Resource Manual"
- Employment Code of Good Practice

National Department of Health, HIV/AIDS & STDs Directorate, Tel: (012) 312 0121

AIDS Law Project and Lawyers for Human Rights, Tel: (011) 403 6918

### NETWORKING /FORUMS

AIDS and the Workplace Forum - DoH, HIV/AIDS and STDs Directorate  
South African AIDS Business Council (Mr. Wayne Mystlik)  
AIDS Consortium (Ms. Morna Camell)

Tel: (012) 312 0121  
Tel: (021) 658 0963  
Tel: (011) 403 0265

\*services offered nationally



**"The deployment of energies and resources; the unity and commitment to common goals - all these are needed if we are to bring AIDS under control"**  
*Nelson Mandela, Honorary President of the Global Business Council on AIDS*

**The HIV/AIDS epidemic poses one of the greatest challenges to business development in South Africa. HIV-related absenteeism, loss of productivity and the cost of replacing workers lost to AIDS threaten the survival of businesses and industrial sectors and threaten the transformation of the public sector.**

To bring AIDS under control the workplace plays a pivotal role. Energies and resources can be invested in the following ways:

- Develop an HIV/AIDS policy to clarify human resource issues relating to HIV/AIDS.
- Introduce prevention programmes to curb the spread of HIV.
- Institute wellness management measures to maintain the health of HIV positive employees.

This HIV/AIDS Workplace Resource Guide offers a sample of resources available to assist in the establishment of an HIV/AIDS programme in your workplace.



The Office of the President began its HIV/AIDS programme by staging HIV/AIDS performances and making condoms available to all staff.



ESKOM is one of the first companies to offer HIV positive employees anti-retroviral treatment as part of their medical aid scheme.



Woolworths has trained their occupational health nurses as AIDS counsellors and an employee in each store as a peer educator.



Alusaf, Mondi, Portnet, Richards Bay Coal Terminal and Richards Bay Minerals have joined forces to fund a hospice for employees with AIDS.



Following an AIDS Impact study the Gauteng Government secured an additional HIV/AIDS budget of R47 million for an Intersectoral HIV/AIDS programme.

**HIV/AIDS Policy Framework**

**Employment**  
 Applicants for employment are required to pass a standard pre-employment medical examination. This does not include an HIV test. Employees who become HIV+ will continue to be employed until they become medically unfit to work.

**Employee Benefits**  
 Medical assistance will be provided for HIV+ employees in accordance with the rules of the relevant medical scheme. When an employee is no longer able to continue in employment due to ill-health, the company's rules governing ill-health and retirement will apply.

**Confidentiality**  
 An employee who becomes HIV+ will not be obligated to inform management.

**Counselling**  
 Access to appropriate support and counselling services will be made available to all employees affected by the disease.

**Education**  
 Information and education programmes on HIV and AIDS will be made available to all employees.

**Policy Review**  
 This policy will be reviewed on a regular basis.

Anglo American distributed a policy framework to all their companies to assist in their own policy development (as above).



Old Mutual sponsors a nation-wide AIDS education initiative in schools, workplaces and communities. This social investment programme is conducted by a person living with HIV/AIDS.

This Resource Guide complements the manual "Guidelines for Developing a Workplace Policy and Programme on HIV/AIDS and STDs" which offers more detailed information on the planning and implementation of a successful workplace HIV/AIDS programme. The manual is available from the Department of Health. Contact Ms. Ria Schoeman, (012) 312 0119.

## GENERAL REFERENCE

### AIDS Training Information and Counselling Centres (ATICCs)

City	Contact Person	Tel	Fax
Bloemfontein	Ms. Daleen Raubenheimer	(051) 405 8544	(051) 405 8818
Cape Town	Ms. Trish Van der Velde	(021) 400 3400/2184	(021) 419 5248
Durban	Mr. Themba Mduli	(031) 300 3104	(031) 306 9294
East London	Ms. Rose Hegner	(0431) 342 096/383	(0431) 439 743
Gwa Gwa	Ms. Ansie Claasens	(058) 713 2572	(058) 713 2502
Johannesburg	Ms. Mary Crewe	(011) 725 6711/2	(011) 725 5966
Klerksdorp	ATICC Manager	(018) 464 2010	(018) 464 2151
Nelspruit	Mr. Elphas Nkosi	(013) 759 2167	(013) 752 3770
Pietermaritzburg	Ms. Heidi van Rooyen	(0331) 942 111	(0331) 423 245
Pietersburg	Mr. Herbie Smith	(015) 290 2363	(015) 290 2364
Port Elizabeth	Mrs. Jeeva Munsamy	(041) 506 1249	(041) 506 1486
		(041) 506 1415	
Pretoria	Ms. Marlene Fourie	(012) 308 8743	(012) 308 8754
Queenstown	Ms. Victoria Ndyamara	(0451) 82233 x 2291	(0451) 83244
Rodepoort	Ms. Antonia Bomard	(011) 763 1224	(011) 763 6588
Umtata	Mrs. Nokwanda Mzinyathi	(0471) 312 763	(0471) 311 944
Vanderbijlpark	Mr. Stanley Rangaza	(016) 950 5337/8	(016) 981 9722
Welkom	Ms. Joanne Bartlett	(057) 353 3029	(057) 352 9277
Witbank	Mr. Gerhard Burger	(0135) 906 204	(0135) 906 459

### Provincial Health Departments

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

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

Province	Contact Person	Tel	Fax
National Office	Mr Peter Busse	(011) 403 8113	(011) 403 4404
Gauteng	Mr. Ben Masuku	(011) 982 5451	(011) 982 5451
KwaZulu Natal	Mrs. Mercy Mkhalemele	(031) 300 3914 082 676 6617	(031) 305 5032
Western Cape	Mr. Rick Stephen	(021) 24 1106	(021) 24 1107
North West	Mr. Martin Malete	(01465) 55763	(01465) 56655
Eastern Cape	Mr. Thanduxolo Doro	(041) 573397	(041) 544083

Please note: These numbers are subject to change but were correct at the time of going to print. September 1998

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**NOTICE 1927 OF 1999****MINISTRY OF EDUCATION****EDUCATION LAWS AMENDMENT BILL, 1999**

The Minister of Education, hereby publishes the Education Laws Amendment Bill, 1999 for comments. An explanatory memorandum is attached to this notice to assist the reader of the Bill regarding the nature and reason for such amendments.

All persons concerned are invited to comment in writing on the draft bill and to send the comments to:

The Director-General, Private Bag X895, Pretoria, 0001, for attention:

Ms M Locke, Fax no. (012) 326 9128, or e-mail: [locke.m@educa.gov.za](mailto:locke.m@educa.gov.za)

The comment must reach the Department of Education not later than 31 August 1999.

Please also provide the name, address, telephone number, fax number and e-mail address of the person or organisation responsible for submitting the comment.

**DEPARTMENT OF EDUCATION**

**AUGUST 1999**

## EXPLANATORY MEMORANDUM

### EDUCATION LAWS AMENDMENT BILL, 1999

#### INTRODUCTION

This Bill seeks to amend an array of education legislation within the general and further education sectors. It addresses those issues identified in the various Acts indicated in the Bill, which make it problematic to implement the policy framework of the Department of Education. Amendments to the various pieces of education are dealt with under the heading indicating the specific Act which this Bill seeks to amend.

#### SOUTH AFRICAN SCHOOLS ACT, 1996 (NO. 84 OF 1996)

##### 1. Clause 1

Two definitions in section 1 of the South African Schools Act are amended as follows:

The definition of "educator" is amended to define an educator in terms of the South African Schools Act, 1996 by linking this definition to the Employment of Educators Act, 1994, which Act has been repealed. It cannot be linked to the Employment of Educators Act, 1998, as this Act only applies to educators employed by the State. "Educators" in terms of the South African Schools Act, 1996 has a wider scope, as it includes educators employed by a governing body out of own resources in terms of section 20(4) of the Act.

The definition of a "school" is also amended to refer to the reception year as "reception grade" instead of the current reference to grade zero, as this terminology has become defunct.



## **2. Clause 2**

Section 9 of the Act, which deals with suspension and expulsion from public schools, is to be amended. Provision is made for the Head of Department to be involved in the decision-making process when a learner is suspended pending a decision to expel. The Head of Department is responsible for providing sufficient school places to learners who exercise their fundamental right to have access to general and further education in a public school. The Head of Department has currently no function in the decision to suspend a learner pending the decision of expulsion, but is constitutionally obliged to provide access by learners to public schools.

## **3. Clause 3**

A new section 12A is to be inserted and cater for the merger of public schools, and to provide for a process and to deal with the consequences of such a merger. The current provisions require a Head of Department to close down a public school/s through a process provided for in section 33 of the Act. The Head of Department must then establish a new school. The process of closing down a school is usually resisted by the community, who are determined that there is a need for a school in that area, and that schools should just be merged instead of being closed down. This was not possible under the existing provisions, and through this amendment authority will be given to the Head of Department to rationalise existing legal entities into one without closing down such schools.

## **4. Clause 4**

Section 16 is amended to empower the Head of Department to close a school temporarily in the case of an emergency. This will happen in the event of learners and staff members being endangered or in the event of a real threat of damage to property. The discretion to reopen the school rests with the Head of Department after proper notice has been given.

**5. Clause 5**

Section 21 is amended to empower a school governing body or council to provide for an adult basic education class or centre, with the concurrence of the Head of Department

**6. Clause 6**

Section 23 of the Act is amended to provide for voting rights to co-opted parents in case the number of parents in the governing body and councils do not exceed the combined total number of other members with voting rights. The Act prescribes that parents must always be in the majority. The effective functioning of a governing body is undermined when parent numbers in a governing body falls below this quota. The re-appoint of a parent member is a process that takes time (democratic process). The option to co-opt a parent to the governing body is not feasible, as such co-opted member has no voting rights.

**7. Clause 7**

This clause seeks to amend section 29 of the Act. An anomaly exists in the Act, which stipulates that a parent must be the chairperson, but provides that, in the case of public schools for learners with special education needs, a parent category does not need to be represented on the governing body. It is a reality that some public schools for learners with special education needs do not have parents on their governing bodies and cannot therefore appoint a parent as a chairperson. This amendment will allow such schools to elect a chairperson from any of the categories represented on the governing body.

**8. Clause 8**

Any officer in charge of a deeds office is now empowered to endorse a title deed concerning the transfer of immovable property to the state, as in the case of schools situated on property with mining rights, the process of registration and the registration authority differ from normal procedures. This clause seeks to amend section 55 of the Act to allow such officer to make the necessary endorsement as required by the Act

## **9. Clause 9**

This clause seeks to amend section 60 of the Act. The Act provides that a claim against a school should be instituted against the State. Some confusion exists as to who must be cited in the court proceedings, namely the school or the province. This clause seeks to ensure that the correct authority is cited when a claim for damage or loss at a public school is instituted.

The amendment further seeks to exclude the State's liability in cases where a school or a college operates an enterprise or a business, when supplementing their resources. It also obliges a person who acts against a public school in these circumstances to give notice of his or her intentions before instituting such action.

## **NATIONAL EDUCATION POLICY ACT, 27 (NO. 27 OF 1996)**

## **10. Clause 10**

Clause 10 seeks to amend section 3 of this Act by simplifying the language used in the Act. Provinces should adhere to national policy, which requires uniformity across the nation. This policy determined by the Minister should prevail over provincial policy if a conflict between national and provincial policy exists.

## **11. Clause 11**

The amendment to section 5 is required owing to the need for the Minister to consult with the correct stakeholder. The change in the status and type of stakeholders has been brought about owing to legislation subsequent to 1996. This is to ensure that the bodies and authorities that are currently regarded as key stakeholders be referred to correctly in terms of this Act.

## **12. Clause 12**

Clause 12 seeks to amend section 11 of the Act. A difficulty has been raised by stakeholders that the Minister has established statutory structures to advise him in the various areas of education, but that the Minister is under no obligation to follow such advice. The Minister must always be the proper authority to make the final decision and the amendment seeks to ensure that the Minister will be obliged to provide reasons to an advisory structure if the advice is not acceptable. In cases of urgency or if the advice is not forwarded within a reasonable timeframe, the Minister may act without such advice, but must provide reasons to such body for so doing.

### **SOUTH AFRICAN CERTIFICATION COUNCIL ACT, 1986 (NO. 85 OF 1986)**

#### **13. Clause 13**

This clause seeks to amend the long title of the Act owing to the amendments made to this Bill which are of a technical nature.

#### **14. Clause 14**

Clause 14 seeks to amend various definitions in this Act. These amendments are mainly of a technical nature to ensure that this Act is in keeping with the terminology used in the latest legislation and policy documents, and also to correct the language that refers to repealed pieces of legislation.

#### **15. Clause 15**

This clause seeks to repeal section 9 of the Act and replace it with three new sections which provide for the responsibilities of an examining body, the functions of the Director-General and the functions of the council, so as to ensure that examinations are conducted in a proper way free from irregularities. These clauses are desperately needed to ensure that irregularities that occurred during the 1998 section certificate examination in Mpumalanga may be prevented. The authorities identified by these clauses will be co-ordinated by this amendment.

**EMPLOYMENT OF EDUCATORS ACT, 1998 (NO. 76 OF 1998)****16. Clause 16**

This clause seeks to amend section 6 of this Act. The current legislation gives the governing body the authority to make recommendations for the appointment of educators employed by the State in terms of this Act. This provision is read with section 20 of the South African Schools Act. Practice has shown that not all governing bodies of public schools are performing this function within a reasonable timeframe. This practice has a huge financial implication as educators who need to be redeployed depend on such a recommendation, and it slows down the process considerably. This amendment seeks to place an obligation on a governing body to act within a period of two months after being requested to make such a recommendation, after which the employer may appoint or transfer an educator without such recommendation.

**17. Clause 17**

This clause seeks to amend section 8 of this Act. Owing to the need to have an educator in each classroom and to ensure that public resources are not wasted by appointing temporary educators for this purpose, the need has been identified to create a speedy procedure to allow an employer to send an educator who is in excess to the establishment of a particular school to provide education in a classroom in another classroom at a public school in the same province where there is a need for an educator. Owing to the urgency of such actions, it will not be required of the employer to obtain a recommendation from the governing body, but such transfers may be only of a temporally nature. This amendment will ensure that budgets are utilised effectively and that excess educators to the establishment are redeployed to posts where there is a need for a teacher in a classroom. It will drastically reduce the wastage pertaining to personnel expenditure drastically.

**18. Clause 18**

The clause seeks to repeal Chapter 5 of the Act to bring it in line with the approach in the Public Service, where misconduct and incapacity are dealt with through collective

agreements. There is, however, a transitional arrangement that the existing provision in the Act will continue to be in force until the date on which the collective agreement becomes effective.

## EDUCATION LAWS AMENDMENT BILL, 1999

### GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

### BILL

To amend the South African Schools Act, 1996 so as to substitute two definitions; to provide for the merger of two or more public schools and to regulate the consequences of such merger; to make provision for the temporary closure of a public school in the case of an emergency; to provide for an additional function of a governing body; and to make certain technical adjustments; to amend the National Education Policy Act, 1996 so as to enable the Minister to act without the advice of a consultative body under certain circumstances; and to make certain technical adjustments; to amend the South African Certification Council Act, 1986 so as to substitute certain definitions, to delete others and to insert two new definitions; to repeal section 9 and to insert three new sections dealing with the responsibilities of an examining body and the Director-General and the functions of the council, so as to ensure that examinations are conducted in a proper way free from irregularities; to amend the Employment of Educators Act, 1998 so as to make provision for a timeframe with which a Governing Body or Council must make its recommendations when an educator is appointed; to make provision that in the case of temporarily transfers no recommendation of a Governing Body of Council is needed; to repeal the provisions dealing with misconduct and incapacity; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 84 of 1996 as amended by section 1 of Act 100 of 1997

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

- (a) by the substitution for the definition of "educator" of the following definition:  
"educator" means [an educator as defined in the Educators' Employment Act, 1994 (Proclamation No. 138 of 1994)] any person who teaches, educates or trains other persons or who provides professional educational services at a school;"; and
- (b) by the substitution for the definition of "school" of the following definition:  
"school" means a public school or an independent school which enrolls learners in one or more grades from grade [zero] R (Reception) to grade twelve;"

**Amendment of section 9 of Act 84 of 1996**

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

"(b) in consultation with the Head of Department, pending a decision as to whether the learner is to be expelled from the school by the Head of Department."

**Insertion of a new section in Act 84 of 1996**

3. The South African Schools Act, 1996, is hereby amended by the insertion after section 12 of the following new section:

"Merger of public schools

12A.(1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette merge two or more public schools into a single school.

(2) Before merging two or more public schools the Member of the Executive Council must-

- (a) give written notice to the schools in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
- (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within at least 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the public 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 intention to merge the schools concerned;
- (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
- (c) renegotiate his obligations in terms of the existing agreement; and
- (d) negotiate a new agreement in terms of section 14 if the single school referred to in subsection (1) is situated on private property.

(4) The single school contemplated in subsection (1) is regarded as a public school provided under this Act.

(5) All assets, liabilities, rights and obligations of the schools that are merged, shall, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school."

**Amendment of section 16 of Act 84 of 1996**

4. Section 16 of the South African Schools Act, 1996 is hereby amended by the addition of the following subsections:



"(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.

(5) When the Head of Department decides that the school should be reopened, he or she must inform the governing body and the principal of the date on which the school must reopen.

(6) The principal must inform the educators and parents of the date contemplated in subsection (5).".

#### **Amendment of section 21 of Act 84 of 1996**

5. Section 21 of the South African Schools Act, 1996 is hereby amended by the renumbering of the existing paragraph (e) of subsection (1) as paragraph (f) and by the insertion of the following new paragraph:

"(e) to provide an adult basic education and training class or centre subject to any applicable law; or".

#### **Amendment of section 23 of Act 84 of 1996**

6. Section 23 of the South African Schools Act, 1996 is hereby amended-

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

"(8) Subject to subsection (10) [Co-opted] co-opted members do not have voting rights on the governing body.

(b) by the addition of the following subsections:

"(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.

(11) In the case where parents are co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy or vacancies have been filled as contemplated in section 28(d).

(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.".

#### **Amendment of section 29 of Act 84 of 1996**

7. Section 29 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsection:

"(3) The provisions of subsection (2) do not apply to a public school for learners with special education needs.".

#### **Amendment of section 55 of Act 84 of 1996 as amended by section 9 of Act 100 of 1997**

8. Section 55 of the South African Schools Act, 1996, is hereby amended by the substitution for subsection (11) of the following subsection:

"(11) The [Registrar of deeds in the office] officer in charge of a 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.”.

#### **Amendment of section 60 of Act 84 of 1996**

9. Section 60 of the South African Schools Act, 1996, is hereby amended by the addition of the following subsections:

“(3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned.

(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 related to that enterprise or business.

(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.”.

#### **Amendment of section 3 of Act 27 of 1996**

10. Section 3 of the National Education Policy Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) [Whenever the Minister wishes a particular] Subject to the Constitution, national policy [to prevail] prevails over the whole or a part of any provincial [laws] policy on education if there is a conflict between the national and provincial policies. [the Minister shall inform the provincial political heads of education accordingly, and make a specific declaration in the policy instrument to that effect.]

#### **Amendment of section 5 of Act 27 of 1996**

11. Section 5 of the National Education Policy Act, 1996, is hereby amended by the substitution for paragraphs (b), (c) and (d) of subsection (1) of the following paragraphs:

“(b) such national organisations representing [college rectors] principals of institutions providing further education and training as defined in the Further Education and Training Act, 1998 (Act No. 98 of 1998) as the Minister may recognise for this purpose;

(c) the [organised teaching profession] trade unions represented in the Education Labour Relations Council;

(d) such national organisations representing [parents] governing bodies of schools as the Minister may recognise for this purpose;”.

### Amendment of section 11 of Act 27 of 1996

12. Section 11 of the National Education Policy Act, 1996, is hereby amended by the addition of the following subsections:

"(4) The Minister must-

- (a) consider any advice given by a body contemplated in subsection (1); and
- (b) provide reasons in writing to the body concerned if the Minister does not accept the advice.

(5) The Minister may act without the advice of a body contemplated in subsection (1) if-

- (a) the matter is urgent; or
- (b) the body has failed to provide the advice within a reasonable time.

(6) If the Minister acts as contemplated in subsection (5) the Minister must-

- (a) notify the body concerned of such action; and
- (b) provide reasons in writing to the body for such action."

### Amendment of the long title of Act 85 of 1986

13. The South African Certification Council Act, 1986, is hereby amended by the substitution for the long title of the following long title:

"To provide for control over the norms and standards of subject matter and examination, and for the issuing of certificates, at the different points of withdrawal in school education and **[technical college education]** further education and training **[and non-formal education]**; and for that purpose to establish the South African Certification Council; and to provide for the conducting of **[common]** examinations; and to provide for matters connected therewith.

### Amendment of section 1 of Act 85 of 1986

14. Section 1 of the South African Certification Council Act, 1986, is hereby amended-

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

"'certificate' means a certificate contemplated in section **[9(1)]** 9C(1)(d)";

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

"'Director-General' means the Director-General of **[National Education]** the Government department responsible for education at national level";

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

"'education department' means a department **[of State responsible for general and own education matters including a provincial education department]** responsible for education in a province";

(d) by the substitution for the definition of "examining body" of the following definition:

"'examining body' means an education department or any other body registered with the council as a body responsible for conducting external examinations **[at a point of withdrawal]**";

(e) by the insertion after the definition of "executive officer" of the following definition:

- "external examination' means an examination at a point of withdrawal written by the candidates of an examining body;"
- (f) by the deletion of the following definitions:
    - "formal education";
    - "non-formal education"; and
    - "school or technical college education";
  - (g) by the substitution for the definition of "Minister" of the following definition:
    - "Minister' means the Minister of **[National]** Education;"
  - (h) by the substitution for the definition of "point of withdrawal" of the following definition:
    - "point of withdrawal' means a stage in school **[or technical college]** education or **[non-formal education]** further education and training at which a candidate is required to sit for an examination with a view to obtaining documentary proof of proficiency;"
  - (i) by the insertion after the definition of "prescribe" of the following definition:
    - "raw marks' means the actual marks obtained by a candidate in a subject in an external examination before any adjustment of the marks is made by the council."

#### **Repeal of section 9 of Act 85 of 1986 and insertion of new sections**

15. The South African Certification Council Act, 1986 is hereby **amended** by the repeal of section 9 and the insertion of the following new sections:

##### **"Responsibilities of examining body**

9A . In respect of an external examination to be conducted an examining body, subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996)-

- (a) shall take adequate measures, including measures to combat irregularities in the examination venue and security measures for ensuring the confidentiality of examination papers, to ensure the integrity of the examinations;
- (b) shall ensure that each paper in an external examination is representative of the prescribed subject matter;
- (c) shall ensure that each paper in an external examination is moderated by at least one competent internal moderator;
- (d) shall submit a paper and memorandum in an external examination to an external moderator for confirmation that they conform to the required standards;
- (e) shall ensure that a sample of the examination scripts is moderated by an external moderator;
- (f) shall schedule a particular paper in an external examination for a stipulated date and time on the examination time-table;
- (g) shall supply the council on or before a date and in the form determined by the council, with a mark for each subject in which a candidate sat for an external examination;
- (h) shall supply the council and the Director-general without delay in writing with full details of any irregularities that occurred in respect

- of an external examination as well as the steps taken in consequence;
- (i) shall publish the results of the external examination after obtaining the approval of the council; and
- (j) may recommend to the council during the standardisation process that raw marks be adjusted.

### **Functions of the Director-General**

#### **9B. The Director-General-**

- (a) shall promote the integrity of the examination system;
- (b) shall monitor the conduct of the council and the examining body in upholding the minimum norms and standards set by the South African Qualifications Authority or determined by policy; and
- (c) may institute an investigation into any irregularities which may occur.

### **Functions of the Council**

#### **9C.(1) Subject to policy determined in terms of section 3(4) of the National Education Policy Act, 1996 (Act No. 27 of 1996) the council -**

- (a) shall perform the external moderation of examination papers, memoranda and samples of examination scripts of all examining bodies;
- (b) may adjust raw marks during the standardisation process in consultation with the Director-General;
- (c) shall, in consultation with the Director-General and the examining body, approve the publication of the results of candidates if the council is satisfied that the examining body-
  - (i) conducted the examination free from any irregularity;
  - (ii) complied with the requirements prescribed by the council for conducting examinations with a view to the obtaining of certificates;
  - (iii) applied the norms and standards which may be prescribed by the council and the South African Qualifications Authority and with which a candidate is required to comply in those examinations in order to obtain a certificate; and
  - (iv) complied with such other conditions as may be determined by the council; and
- (d) shall issue certificates in the form prescribed by council to candidates who in a subject or all the subjects at a point of withdrawal -
  - (i) have met the requirements set by the council to obtain a certificate; and
  - (ii) complied with such other conditions as may be determined by the council.

(2) The council, subject to the approval of the Minister, may register an examining body other than a department of education in accordance with criteria determined by the council.

(3) Subject to section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997), the council may with the approval of a body authorised to determine the requirements for admission to study at a higher education institution, endorse accordingly a certificate of a candidate who has complied with the minimum requirements for admission to study at a higher education institution.

#### **Money payable to the council**

9D. Money payable to the council in respect of-

- (a) the issue of a certificate as contemplated in section 9C(1)(d) or of a duplicate thereof; or
- (b) the endorsing of a certificate as contemplated in subsection 9C(3) or of a duplicate thereof,

may be prescribed by the council."

#### **Amendment of section 6 of Act 76 of 1998**

16. Section 6 of the Employment of Educators Act, 1998, is hereby amended by the addition in subsection (3) of the following paragraph:

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

#### **Amendment of section 8 of Act 76 of 1998**

17. Section 8 of the Employment of Educators Act, 1998, is hereby amended by the addition of the following subsections:

"(4) A recommendation contemplated in subsection (2) must be made within two months from the date on which a governing body or council was requested to make a recommendation, failing which the Head of Department may make a transfer without such recommendation.

(5) The Head of Department may, without a recommendation contemplated in subsection (2), transfer an educator temporarily for a stated period from a post at a public school or public further education and training institution, to a post at another public school or public further education and training institution.

(6) An educator referred to in subsection (5) must return to his or her previous post at the end of the period contemplated in that subsection."

#### **Repeal of Chapter 5 of Act 76 of 1998**

18. (1) The Employment of Educators Act, 1998, is hereby amended by the repeal of Chapter 5.

(2) Notwithstanding the provisions of subsection (1) –

- (a) any inquiry into incapacity and any proceedings in respect of a charge of misconduct instituted or commenced under the principal Act, shall be continued and concluded as if Chapter 5 had not been repealed; and
- (b) the provisions relating to incapacity and misconduct shall have the effect and status of a collective agreement concluded in the Education Labour Relations Council.

**Short title**

19. This Act is the Education Laws Amendment Act, 1999.

## EDUCATION LAWS AMENDMENT BILL

### MEMORANDUM ON THE OBJECTS OF THE EDUCATION LAWS AMENDMENT BILL, 1999

This Bill amends the South African Schools Act (No. 84 of 1996), the National Education Policy Act (No. 27 of 1996), the South African Certification Council Act (No. 58 of 1986), and the Employment of Educators Act (No. 76 of 1998).

#### **South African Schools Act, 1996**

The Act is amended in section 1 by substituting the definition of educators. The existing definition is incorrect, as it refers to educators employed in terms of the repealed Educators Employment Act, 1994. The definition of a school is also amended to refer to the reception year as "reception grade".

Section 9 of the Act is amended to ensure that the Head of Department is part of the decision-making process when a learner is suspended pending a decision to expel. The Head of Department is responsible for ensuring that the learner exercises his/her right to education, but the current wording makes him/her responsible for education without being part of the decision-making process when a learner is suspended.

A new clause is inserted as clause 12A to cater for the merger of public schools, and to provide for a process and to deal with the consequences of such a merger.

Section 16 of the Act is amended to empower the Head of Department to close a school temporarily in the case of an emergency, when learners and staff members are endangered or in the event case of a real threat of damage to property. The discretion to reopen the school rests with the Head of Department.

This amendment is necessary to ensure the safety of learners and staff members, as well as school property, which is not provided for in the current Act.



Amendments to section 21 of the Act empower a school governing body or council, on application to the Head of Department, to provide for an adult basic education class or centre.

The amendment to section 23 of the Act provides voting rights to co-opted members in the event of the number of parents in a governing body or council not exceeding the combined total number of other members with voting rights.

An anomaly exists in the Act, which stipulates that a parent must be the chairperson, but provides that in the case of public schools for learners with special education needs, a parent category does not need to be represented on the governing body. Section 29 is amended to address this anomaly.

Section 55 of the Act is amended to empower any officer in charge of a deeds office to endorse a title deed concerning the transfer of immovable property to the state, as in the case of schools situated on property with mining rights, the process of registration and the registration authority differ from normal procedures.

Section 60 of the Act is amended to provide clarity on the authority against which a claim for damage or loss at a public school is instituted. The amendment indemnifies the state from liability for any damage or loss caused by contractual liability between the public school and any enterprise or business operated at the school.

### **National Education Policy Act, 1996**

An amendment to section 3 is necessary to simplify the language used in the Act and to ensure that policy declared by the Minister prevails over provincial policy on education.

The amendment to section 5 of the Act replaces "college rectors" by "principals of Further Education and Training Institutions", as defined in the Further Education and Training Act, 1998, and the "organised teaching profession" by "trade unions" and "parents" by "governing bodies".

The amendment to section 11 ensures that advice given by statutory bodies will be seriously considered, and if not, reasons must be provided as to why it is not acceptable and therefore necessary to disregard such advice.

### **South African Certification Council Act, 1986**

A need has been identified to amend and supplement the Act by correcting the definitions in the Act and to provide for the repealing of section 9 of the Act. This amendment endeavours to identify the functions and responsibilities of the examining body, the certification council and the national Department of Education, and to co-ordinate the relationship between these authorities.

### **Employment of Educators Act, 1998**

Section 6 of the Act is amended, as it is required that a specific time frame be identified within which a governing body or council must exercise its right to make recommendations on the appointment and the redeployment of educators. If a governing body or council does not exercise its right within the specific time frame, the employer may appoint an educator without taking into account a recommendation from the governing body or council.

This amendment also provides for the purpose of temporary transfers within a province and between two different schools without the recommendation of a governing body or council. This amendment will ensure that budgets are utilised effectively and that excess educators to the establishment are redeployed to posts where there is a need for a teacher in a classroom. It will drastically reduce wastage pertaining to personnel expenditure.

Chapter 5 of the Act is also repealed to bring it in line with the approach in the Public Service, where misconduct and incapacity are dealt with through collective agreements.

**NOTICE 1928 OF 1999****SOUTH AFRICAN SCHOOLS ACT, 1996 (NO. 84 OF 1996)****CALL FOR COMMENT ON A DRAFT NOTICE CONCERNING THE TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS**

The Minister of Education hereby publishes in the Schedule the draft notice concerning the transfer of funds and other moveable assets of the State to public schools in terms of section 52(3) of the South African Schools Act, 1996 (No. 84 of 1996).

Comments are invited from interested parties on the draft notice concerning the transfer of funds and other moveable assets and should reach the Department not later than 22 August 1999.

Comments should be directed to the Acting Director-General, Private Bag X895, PRETORIA, 0001, for attention: **Ms M Locke**. The comments may also be faxed to (012) 326 9128 or sent by E-mail to [Swart.C@educ.pwv.gov.za](mailto:Swart.C@educ.pwv.gov.za).

The name, address, telephone number and fax number of the person, governing body or organisation responsible for submitting the comment should accompany the comment.

**PROFESSOR KADER ASMAL, MP**  
**MINISTER OF EDUCATION**  
**AUGUST 1999**

**SCHEDULE****TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS****Dates of transfer**

1. The funds and moveable assets used by, or held for or on behalf of a public school contemplated in section 52(1) of the South African Schools Act, 1996 (No. 84 of 1996), and which in law are the property of the State, remain at the disposal of the school and devolve upon the school on-
  - (a) the date of publication of this notice, if such a school has applied for the allocated functions in terms of section 21 of the Act and the functions contemplated in section 21(1)(a) have been allocated by the Head of the Department to the school; or
  - (b) the date from which the functions contemplated in section 21(1)(a) of the Act have been-
    - (i) allocated to the school in terms of section 21(3) of the Act on application by a public school in terms of section 21(1) of the Act; or
    - (ii) assigned to the school in terms of section 21(6) of the Act.

**Conditions for transfer**

2. The transfer of the funds and movable assets is subject to the following conditions:

- (a) The principal of a public school must draw up a financial statement of the funds and compile an inventory of the moveable state assets used by, or held for or on behalf of the public school and which in law are the property of the State. A designated official of the provincial department of education must be assigned by the Head of Education to verify in writing that the financial statement and inventory have been compiled correctly.
- (b) The chairperson of the governing body must sign a statement of receipt of the funds and movable assets from the State on behalf of the school and lay it before the first meeting of the governing body after signature. (see ANNEXURE A).
- (c) A copy of the financial statement and the inventory must thereafter be made available to the Head of Department together with the signed statement of receipt. The Head of Department must keep a running record of all such documents.
- (d) A copy of the financial statement and the inventory must be kept on record at the school.
- (e) The moveable property listed in the inventory may not be alienated without value unless agreed to by the Head of Department.
- (f) Any alienation of the property contemplated in subparagraph (a) which does not comply with the conditions set in subparagraph (e) is invalid and the ownership of such property will revert back to the State.

## ANNEXURE A

**PRO-FORMA RECEIPT OF TRANSFER OF FUNDS AND OTHER MOVABLE ASSETS USED  
BY, OR HELD FOR, OR ON BEHALF OF A PUBLIC SCHOOL**

I, .....(name of the chairperson of the governing body)

On behalf of the public school,.....(name of the public school),

duly receive from the State the funds, in the enclosed financial statement, that were paid into the bank account of the school, and the assets listed in the enclosed inventory.

THUS DONE and SIGNED at..... on this .....day of  
.....1999 (date of receipt)

.....  
Chairperson of governing body

## WITNESSES:

1. ....
2. ....

THUS DONE and SIGNED at .....on this ..... day of  
.....1999

## WITNESSES:

1. ....
2. ....

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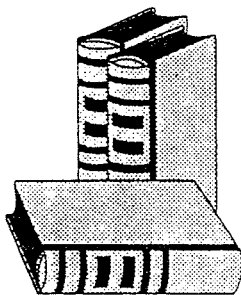
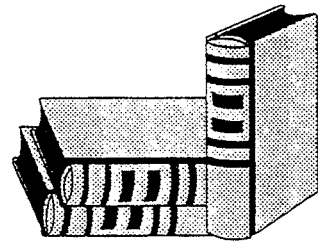
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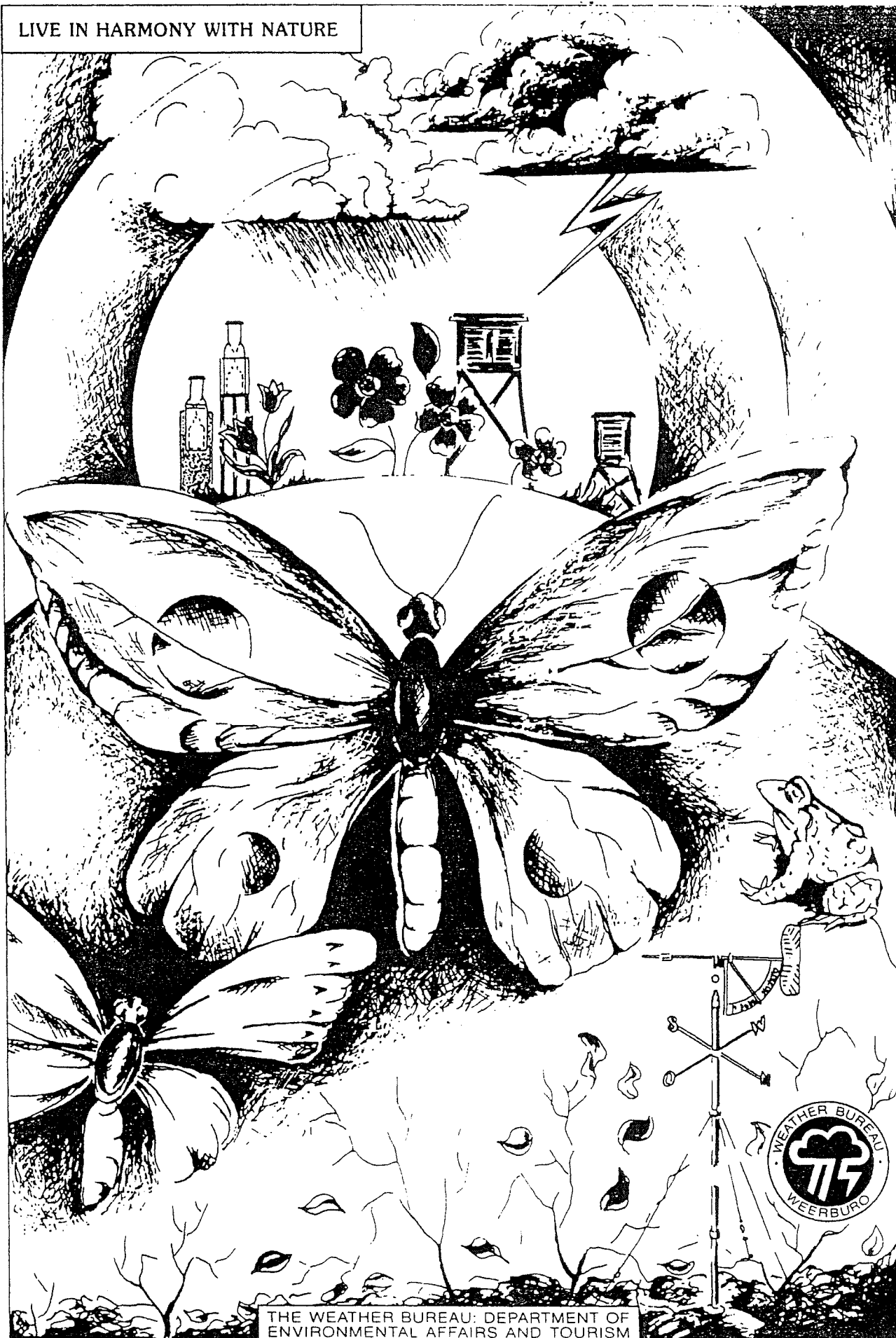
*Where is the largest amount of meteorological information in the whole of South Africa available?*



*Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?*

*Department of Environmental Affairs and Tourism  
Departement van Omgewingsake en Toerisme*

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