

GOVERNMENT NOTICE NO 23315 OF 2002

DEPARTMENT OF EDUCATION

SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO. 84 OF 1996)
CALL FOR COMMENT ON REGULATIONS TO PROHIBIT INITIATION PRACTICES IN SCHOOLS

The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 61 (c) as read with the Preamble to the South African Schools Act, 1996 and in compliance with section 4(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) of the regulations relating to the prohibition of initiation practices as set out in the Schedule.

Comments from interested parties are invited, and should reach the Department not later than 15 May 2002.

Comments should be directed to the Director-General, Private Bag X895, Pretoria, 0001, for attention: Ms M Locke. Comments may also be faxed to (012) 326-9128 or sent by e-mail to locke.m@doe.gov.za.

The name, address, telephone number and fax number of the person, governing body or organization responsible for submitting comments must also be provided.

PROFESSOR KADER ASMAL, MP
MINISTER OF EDUCATION

SCHEDULE

Scope of application

1. These regulations apply to all public and independent schools.

Definitions

2. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context indicates otherwise –

"assault" means the unlawful and intentional-

- (a) application of force, directly or indirectly, to another person, or
- (b) threatening another with immediate personal violence in circumstances which lead the threatened person to believe that the other intends or has the power to carry out the threat;

"*crimen iniuria*" means the unlawful and intentional violation of the dignity or privacy of another, in circumstances where such violation is not of a trifling nature;

"degradation" means any behaviour towards humiliating another, causing loss of respect or standing in the school community;

"harassment" means behaviour which is hostile or offensive to a reasonable person and which unreasonably interferes with an individual's work, academic performance or social life and any behaviour that creates an undermining of the integrity or dignity of an individual. Such behaviour can make a reasonable person feel uncomfortable, unsafe, frightened, embarrassed, and may be physical, verbal or non-verbal. The common link is that the behaviour would be unwanted by any reasonable person and could not be justified through a personal or family relationship;

"humiliation" means any word or act which causes another to lose self-respect or the respect of others;

"initiation practice" means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of a school, a group, intramural or extramural activities, interschools sports team, or organization-

- (a) endangers the mental or physical health or safety of a person;
- (b) seeks to undermine the intrinsic worth of human beings by treating some as inferior to others;
- (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
- (d) undermines the fundamental rights and values that underpin the Constitution;
- (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or
- (f) destroys public or private property.

Any activity irrespective of its designation other than referred to in regulation 3.5.4 which has a similar effect and object as initiation is deemed to be an initiation practice.

"*in loco parentis*" means acting in the place of a parent who has entrusted the custody and control of his or her child to an educator or another person during normal intramural or extramural school activities.

"intimidation" means any act by a person with the intent to compel or induce a particular person to do or to abstain from doing any act or to assume or to abandon a particular standpoint by means of-

- (a) assault, injury or causing damage to that person or any other person; or
- (b) threats to kill, assault, injure or cause damage to that person or any other person.

"peer pressure" means the influencing factor –

- (a) whereby a learner feels pressured by any learner to act or not to act and to participate or not to participate in an activity in order not to be ostracized;

(b) whereby a learner would not come forward after being initiated for fear of victimization.

“protect” means the act of guarding a person or an object against current or future loss, damage or harm.

Principles and Values

3. The Preamble to the Act requires that rights of learners, parents and educators are upheld and to promote the acceptance of responsibility for the organization and governance of schools in partnership with the State. Such rights include but are not limited to the following:

3.1 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

3.2 Privacy, respect and dignity

3.2.1 Every learner has a right to dignity and has the right to have his or her human dignity respected. Recognizing a right of dignity is an acknowledgement of the intrinsic worth of human beings. That implies mutual respect including respect for one another's convictions and cultural traditions.

3.2.2 Every learner has the right to privacy, which includes the right not to have his or her person or property searched or his or her possessions seized. Notwithstanding this the principal or an educator may search learners based on his or her reasonable suspicion that the learner is in possession of an illegal object, using search methods that are reasonable in scope.

3.3 Non-violence and the freedom and security of a person

3.3.1 Every learner has the right to freedom and security of his or her person, which includes the right to be free from all forms of violence or assault, and not to be treated or punished in a cruel, inhuman or degrading way.

3.3.2 Learners have the right not to be locked up in solitary confinement or detention or to be locked out of safe environments.

3.4 Protection from maltreatment, neglect, abuse or degradation.

Every child has the right to be protected from maltreatment, neglect, abuse or degradation. All appropriate social and educational measures must be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who acts *in loco parentis*.

3.5 School environment and discipline

3.5.1 A safe environment that is conducive to education including security of property, security of person, well-cared for school facilities, school furniture and equipment, toilet facilities, absence of harassment in attending classes, writing tests and examinations, partaking in extramural activities or sport, all create an atmosphere that is conducive to education and training. All parties have a responsibility to maintain such an environment.

3.5.2 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. The Act empowers school authorities to discipline learners, but it is unlawful to delegate this authority to learners.

3.5.3 Learners have the responsibility to learn and develop their own full potential and to allow fellow learners, without any hindrance, to reach their full potential.

3.5.4 Schools are encouraged to engage in positive orientation which involves a process of induction that seeks to introduce learners to their new academic environment in a manner where dignity is enhanced as learners are advised, guided and mentored. This process focuses on self-discipline, self-motivation and self-respect together with academic and sporting achievements.

Prohibited initiation practices

4.1 No principal, educator or learner may allow or participate in any act or practice which involves initiation practices or may cause or contribute to the humiliation, degradation, harassment, assault, *crimen iniuria*, intimidation or maltreatment of learners.

4.2 There should be a relationship of mutual trust and respect between learners, and between learners and educators. Victimisation of the one by the other is unacceptable, and peer pressure cannot be regarded as a justification for engaging in acts of victimisation.

4.3 The Learner Representative Council should represent the interests and views of all the learners and promote proper conduct of learners. However, no learner has the right or authority to punish other learners.

4.4 Learners should be protected from abuse by adults or other learners and learners' behaviour must be free of any violence and in line with the democratic values of human dignity, equality and freedom.

Responsibilities of principals and governing bodies

5.1 A principal must ensure that no initiation practices take place in his or her school, including hostels, or during any school activities away from the school premises. The principal must put systems in place to encourage learners to bring such practices to his attention and to ensure that such learners be free from victimisation. The Head of Department must ensure that this system is in place in every school in his or her province within a year after the commencement of these regulations.

5.2 The principal, as head of the institution in terms of section 16(3) of the Act, has a primary responsibility to ensure that learners are not subjected to *crimen iniuria*, assault, harassment, maltreatment, degradation, humiliation or intimidation from educators or learners and must protect learners from such practices. A principal must also take reasonable steps to ensure that such practices are not caused by peer pressure.

5.3 A disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault. Educators have a duty to care for and protect learners from violence because of their *in loco parentis* status.

5.4 If any initiation practices or acts take place through the actions of learners, the school governing body as the authority responsible for the discipline of learners, must take appropriate action in terms of section 8 of the Act to prevent such practices and to protect learners from such practices.

5.5 If any initiation practices or acts take place in a school and members of staff are involved or allow such actions to take place or not taking the necessary precautions to prevent such practices from taking place, the employer must take disciplinary actions in terms of applicable law against such perpetrators.

Responsibilities of educators

6.1 Educators must protect, promote and fulfill the rights of learners as contemplated in clause 3.

6.2 Every educator is responsible to assist the school governing body with discipline at all times at the school and at school related activities.

6.3 Every educator has a duty to control the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators must take reasonable measures where necessary to prevent a learner from harming himself or herself or others.

6.4 In cases where a learner cannot adjust to the school and where his or her behaviour is objectionable in that it violates the rights of others, an educator has the obligation to refer such a learner to the principal and to inform the learner's parents and the school governing body.

6.5 An educator at the school has the same rights and obligations as a parent to protect, control and discipline a learner according to the Code of Conduct during the time the learner is in attendance at the school, or at any school function, school excursion or school related activity.

Short title and commencement

7. These regulations may be cited as the **Regulations to Prohibit Initiation Practices in Schools** and come into operation on the date of publication thereof.