

Vol. 487

Cape Town,  
Kaapstad,

26 January 2006  
26 Januarie 2006

**No. 28426**

**THE PRESIDENCY**

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No. 69

26 January 2006

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 24 of 2005: Education Laws Amendment Act, 2005.**

**DIE PRESIDENSIE**

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No. 69

26 Januarie 2006

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

**No. 24 van 2005: Wysigingswet op Onderwyswette, 2005.**

**GENERAL EXPLANATORY NOTE:**

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

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

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(English text signed by the President.)  
(Assented to 23 January 2006.)

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# ACT

To amend the South African Schools Act, 1996, so as to add new definitions; to clarify the manner in which disciplinary proceedings must be conducted; to provide for a process to establish *norms and standards for school funding* by means of quintiles; to clarify the charging and payment of *school fees*; to provide for the right of a *learner* to participate in all aspects of the programme of a *public school*; to provide for the alienation of the assets of a *public school*; to amend the Employment of Educators Act, 1998, so as to provide for the refinement of the process of the appointment of educators; to provide for the repeal of laws; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 84 of 1996, as amended by section 1 of Act 100 of 1997, section 6 of Act 48 of 1999 and section 1 of Act 50 of 2002**

1. Section 1 of the South African Schools Act, 1996, is hereby amended by— 5
- (a) the insertion after the definition of “*Minister*” of the following definitions: 5
- “***no fee threshold***” means the level of funding per learner contemplated in the *norms and standards for school funding* applicable to a *public school* which enables the *Minister* to declare a *school* a *no fee school* in terms of *this Act*; 10
- “***norms and standards for school funding***” means the national norms and standards for the funding of *schools* determined by the *Minister* in terms of section 35;” and 10
- (b) the insertion after the definition of “*school*” of the following definition: 15
- “***school fees***” means *school fees* contemplated in section 39 and includes any form of contribution of a monetary nature made or paid by a person or body in relation to the attendance or participation by a *learner* in any programme of a *public school*;” 15

**Amendment of section 9 of Act 84 of 1996 as amended by section 7 of Act 48 of 1999**

2. Section 9 of the South African Schools Act, 1996, is hereby amended by— 20
- (a) the substitution for subsection (1) of the following subsections:
- “(1) [Subject to *this Act* and any applicable provincial law, the] The governing body [of a *public school*] may, [after a fair hearing] on

## ALGEMENE VERDUIDELIKENDE NOTA:

- [ ]      Woorde in vet druk tussen vierkantige hake dui skrappings uit  
bestaande verordenings aan.
- \_\_\_\_\_      Woorde met 'n volstreep daaronder dui invoegings in bestaande  
verordenings aan.
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(Engelse teks deur die President geteken.)  
(Goedgekeur op 23 Januarie 2006.)

# WET

Tot wysiging van die Suid-Afrikaanse Skolewet, 1996, ten einde nuwe woordomskrywings by te voeg; om duidelikheid te bring oor die wyse waarop dissiplinêre verrigtinge gehou moet word; om voorsiening te maak vir 'n proses om *norme en standaarde vir skoolbefondsing* deur middel van kwintiele te vestig; om duidelikheid te bring oor die heffing en betaling van *skoolgelde*; om voorsiening te maak vir die reg van 'n *leerder* om aan alle aspekte van die program van 'n *openbare skool* deel te neem; om voorsiening te maak vir die vervreemding van die bates van 'n *openbare skool*; om die Wet op die Indiensneming van Opvoeders, 1998, te wysig ten einde voorsiening te maak vir die verfyning van die proses van die aanstelling van opvoeders; om voorsiening te maak vir die herroeping van wette; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 84 van 1996, soos gewysig deur artikel 1 van Wet 100 van 1997, artikel 6 van Wet 48 van 1999 en artikel 1 van Wet 50 van 2002

1. Artikel 1 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur— 5
  - (a) die volgende omskrywing na die omskrywing van “Departementshoof” in te voeg:  
“‘geen skoolgelde drempel’ die vlak van befondsing per leerder beoog in die norme en standaarde vir skoolbefondsing aangaande ’n openbare skool wat die Minister die bevoegdheid gee om die skool te verklaar tot ’n geen skoolgelde skool ingevolge hierdie Wet;” 10
  - (b) die volgende omskrywing na die omskrywing van “Minister” in te voeg:  
“‘norme en standaarde vir skoolbefondsing’ die nasionale norme en standaarde vir die befondsing van openbare skole deur die Minister ingevolge artikel 35 bepaal;” en 15
  - (c) die volgende omskrywing na die omskrywing van “skool” in te voeg:  
“‘skoolgelde’ skoolgelde in artikel 39 beoog en ook enige vorm van bydrae, van ’n monetêre aard gelewer of betaal deur ’n persoon of liggaam met betrekking tot die bywoning of deelname van ’n leerder aan enige program van ’n openbare skool;” 20

reasonable grounds and as a precautionary measure, suspend a learner who is suspected of serious misconduct from attending school—

- (a) as a correctional measure for a period not longer than one week; or  
 or  
 (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]

, but may only enforce such suspension after the learner has been granted a reasonable opportunity to make representations to it in relation to such suspension.

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

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

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

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

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

(1E) A governing body may suspend or extend the suspension of a learner for a period not longer than 14 days pending the decision by the Head of Department whether or not to expel such learner from the public school.”;

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

“(2) [Subject to any applicable provincial law, a] A learner at a public school may be expelled only—

- (a) by the Head of Department; and  
 (b) if found guilty of serious misconduct after [a fair hearing] disciplinary proceedings contemplated in section 8 were conducted.”.

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

“(4) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Department to the Member of the Executive Council within 14 days of receiving the notice of expulsion.”; and

- (d) the addition of the following subsections:

“(6) A learner who has appealed in the manner contemplated in subsection (4), must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department.

(7) The Head of Department, in determining the manner of attendance contemplated in subsection (6)—

- (a) must take reasonable measures to protect the rights of other learners at the public school; and  
 (b) may consider an alternative method of providing education to the learner contemplated in subsection (6).

(8) If the Head of Department decides not to expel a learner as contemplated in subsection (2), the Head of Department may, after consultation with the governing body, impose a suitable sanction on the learner.

(9) If the Head of Department decides not to impose a sanction on the learner, the Head of Department must refer the matter back to the governing body for an alternative sanction in terms of the code of conduct contemplated in section 8, other than expulsion.

**Wysiging van artikel 9 van Wet 84 van 1996, soos gewysig deur artikel 7 van Wet 48 van 1999**

2. Artikel 9 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur—
- (a) subartikel (1) deur die volgende subartikels te vervang:
- “(1) [**Behoudens hierdie Wet en enige toepaslike provinsiale wet, kan die** Die beheerliggaam [van ’n openbare skool] kan, [ná ’n regverdigde verhoor,] op redelike gronde en as ’n voorsorgmaatreël, ’n leerder wat vermoedelik ernstige wangedrag gepleeg het, skors van bywoning van die skool [—] **(a) as ’n korrektiewe maatreël vir ’n tydperk wat nie een week te bowe gaan nie; of**
- (b) in oorleg met die Departementshoof, in afwagting van ’n beslissing deur die Departementshoof of die leerder uit die skool gesit moet word.]**
- , maar mag sodanige skorsing opdwing slegs nadat die leerder ’n redelike geleentheid gebied is om verhoë in verband met sodanige skorsing aan hom te rig.
- (1A) ’n *Beheerliggaam* moet binne sewe skooldae na die skorsing van ’n *leerder* dissiplinêre verrigtinge teen sodanige *leerder* hou op die wyse in artikel 8 beoog.
- (1B) Indien dissiplinêre verrigtinge nie binne sewe skooldae na die skorsing van ’n *leerder* gehou word nie, moet die *beheerliggaam* die goedkeuring van die *Departementshoof* verkry vir die voortsetting van die skorsing van sodanige *leerder*.
- (1C) ’n *Beheerliggaam* kan, nadat ’n *leerder* gedurende die dissiplinêre verrigtinge in artikel 8 beoog skuldig bevind is aan ernstige wangedrag —
- (a) skorsing van sodanige *leerder* vir ’n tydperk van hoogstens sewe skooldae oplê, of enige ander sanksie in die gedragskode van die *openbare skool* beoog; of
- (b) ’n aanbeveling aan die *Departementshoof* doen om sodanige *leerder* uit die *openbare skool* te sit.
- (1D) ’n *Departementshoof* moet die aanbeveling van die *beheerliggaam* in subartikel (1C)(b) bedoel oorweeg en moet besluit om die *leerder* uit die skool te sit al dan nie binne 14 dae na ontvangs van sodanige aanbeveling.
- (1E) ’n *Beheerliggaam* kan die skorsing van ’n *leerder* oplê of verleng vir ’n tydperk van hoogstens 14 dae hangende die besluit deur die *Departementshoof* of sodanige *leerder* uit die *openbare skool* gesit moet word al dan nie.”;
- (b) subartikel (2) deur die volgende subartikel te vervang:
- “(2) [**Behoudens enige toepaslike provinsiale wet, mag** ’n *Leerder* by ’n *openbare skool* **mag** uit die skool gesit word slegs—
- (a) deur die *Departementshoof*; en
- (b) indien hy of sy ná [**’n regverdigde verhoor**] dissiplinêre verrigtinge in artikel 8 beoog, skuldig bevind is aan ernstige wangedrag.”;
- (c) subartikel (4) deur die volgende subartikel te vervang:
- “(4) ’n *Leerder* of die *ouer* van ’n *leerder* wat uit ’n *openbare skool* gesit is, kan binne 14 dae na ontvangs van die kennisgewing van uitsetting teen die beslissing van die *Departementshoof* appèl aanteken by die *Lid van die Uitvoerende Raad*.”; en
- (d) die volgende subartikels hy te voeg:
- “(6) ’n *Leerder* wat appèl aangeteken het op die wyse in subartikel (4) bedoel, moet toegang tot onderwys verleen word op die wyse deur die *Departementshoof* bepaal, hangende die uitkoms van die appèl.
- (7) Die *Departementshoof*, by die bepaling van die wyse van bywoning in subartikel (6) beoog—
- (a) moet redelike maatreëls tref om die regte van ander *leerders* by die *openbare skool* te beskerm; en
- (b) kan ’n alternatiewe metode oorweeg om onderwys te verskaf aan die *leerder* in subartikel (6) beoog.

(10) The *governing body* must implement the sanction contemplated in subsection (8).”

### Substitution of section 35 of Act 84 of 1996

3. The following section is hereby substituted for section 35 of the South African Schools Act, 1996:

#### “*Norms and standards for school funding [of public schools]*”

35. (1) Subject to the *Constitution* and *this Act*, the *Minister* must determine national quintiles for public schools and national norms and [minimum] standards for [the] school funding [of public schools] after consultation with the *Council of Education Ministers* [, **the Financial and Fiscal Commission**] and the Minister of Finance.

(2) The *norms and standards for school funding* contemplated in subsection (1) must—

- (a) set out criteria for the distribution of state funding to all *public schools* in a fair and equitable manner;
- (b) provide for a system in terms of which *learners* at all *public schools* can be placed into quintiles, referred to as national quintiles for *learners*, according to financial means;
- (c) provide for a system in terms of which all *public schools* in the Republic can be placed into quintiles referred to as national quintiles for *public schools*, according to the distribution of *learners* in the national quintiles for *learners*; and
- (d) determine the procedure in terms of which the *Member of the Executive Council* must apply the criteria contemplated in paragraph (a).”

### Amendment of section 39 of Act 84 of 1996

4. Section 39 of the South African Schools Act, 1996, is hereby amended by—

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

“(2) A resolution contemplated in subsection (1) must provide for—

- (a) the amount of *school fees* to be charged; **[and]**
- (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school fees*.; and
- (c) a school budget that reflects the estimated cumulative effect of—
  - (i) the established trends of non-payment of school fees; and
  - (ii) the total, partial or conditional exemptions granted to parents in terms of the regulations contemplated in subsection (4).”; and

(b) the addition after subsection (4) of the following subsections:

“(5) No *public school* may charge any registration, administration or other fee, except *school fees* as defined in section 1.

(6) A *public school* may not charge a *parent* of a *learner* at that *school* different *school fees* based on curriculum or extramural curriculum within the same *grade*.

(7) Despite subsection (1), the *Minister* must by notice in the Government Gazette annually determine the national quintiles for *public schools* or part of such quintiles which must be used by the *Member of the Executive Council* to identify *schools* that may not charge *school fees*.

(8) The *Minister* may make a determination in terms of subsection (7) only if sufficient funding, not less than the *no fee threshold*, has been secured to fund *learners* at the *schools* affected by the determination.

(9) The *Member of the Executive Council* must identify and draw a list of all the *schools* contemplated in subsection (7) within his or her *province*.

(10) The *Minister* must—

- (a) consider the list of *schools* identified in terms of subsection (9);

(8) Indien die *Departementshoof* besluit om nie 'n leerder uit die skool te sit soos in subartikel (2) beoog nie, kan die *Departementshoof*, na oorleg met die beheerliggaam, 'n gepaste straf aan die leerder oplê.

(9) Indien die *Departementshoof* besluit om nie 'n straf aan die leerder op te lê nie, moet die *Departementshoof* die aangeleentheid na die beheerliggaam terugverwys vir 'n alternatiewe straf ingevolge die gedragskode in artikel 8 beoog, uitsetting uitgesluit.

(10) Die *beheerliggaam* moet die straf in subartikel (8) beoog, implementeer.”.

### Vervanging van artikel 35 van Wet 84 van 1996

3. Artikel 35 van die Suid-Afrikaanse Skolewet, 1996, word hierby deur die volgende artikel vervang:

#### **“Norme en standaarde vir [befondsing van openbare skole] skoolbefondsing**

35. (1) Behoudens die *Grondwet* en *hierdie Wet* moet die *Minister*, ná oorleg met die *Raad van Onderwysministers* [, die **Finansiële en Fiskale Kommissie**] en die *Minister van Finansies*, nasionale kwintiele vir openbare skole en nasionale norme en [minimum] standaarde vir [die befondsing van openbare skole] skoolbefondsing bepaal.

(2) Die *norme en standaarde vir skoolbefondsing* in subartikel (1) beoog, moet—

- (a) kriteria uiteensit vir die verspreiding van staatsbefondsing aan alle openbare skole op 'n regverdige en billike manier;
- (b) voorsiening maak vir 'n stelsel waarvolgens leerders van alle openbare skole geplaas kan word in kwintiele, wat nasionale kwintiele vir leerders genoem word, volgens finansiële vermoë;
- (c) voorsiening maak vir 'n stelsel waarvolgens alle openbare skole in die Republiek geplaas kan word in kwintiele, wat nasionale kwintiele vir openbare skole genoem word, volgens die verspreiding van leerders in die nasionale kwintiele vir leerders; en
- (d) die prosedure bepaal waarvolgens die *Lid van die Uitvoerende Raad* die kriteria in paragraaf (a) bedoel, moet toepas.”.

### Wysiging van artikel 39 van Wet 84 van 1996

4. Artikel 39 van die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur—

(a) subartikel (2) deur die volgende subartikel te vervang:

“(2) 'n Besluit beoog in subartikel (1) moet voorsiening maak vir—

- (a) die bedrag van [gelde] skoolgelde wat hef staan te word; [en]
- (b) billike maatstawwe en prosedures vir die algehele, gedeeltelike of voorwaardelike vrystelling van ouers wat nie in staat is om skoolgelde te betaal nie [.] ; en
- (c) 'n skoolbegroting wat die geraamde kumulatiewe effek weerspieël

van—

(i) die gevestigde tendense van niebetaling van skoolgelde wat vir daardie jaar beoog word; en

(ii) die totale, gedeeltelike of voorwaardelike vrystellings wat aan ouers verleen is ingevolge die regulasies in subartikel (4) beoog.”; en

(b) die volgende subartikels na subartikel (4) by te voeg:

“(5) Geen openbare skool mag enige registrasie-, administrasie- of enige ander gelde hef nie, uitgesonder skoolgelde soos in artikel 1 omskryf.

(6) 'n Openbare skool mag nie verskillende skoolgelde gebaseer op die kurrikulum of buitemuurse kurrikulum binne dieselfde graad op 'n ouer van 'n leerder by daardie skool hef nie.

(7) Ondanks subartikel (1) moet die *Minister* by kennisgewing in die Staatskoerant jaarliks die nasionale kwintiele vir openbare skole of deel van sodanige kwintiele bepaal wat deur die *Lid van die Uitvoerende*

(b) compare the list with the determination contemplated in section 35(1); and

(c) publish the list per *province*, in the Government Gazette if it complies with the determination.

(11) The *schools* contemplated in subsection (7) may, despite that subsection, charge *school fees* if they receive less than the *no fee threshold* from the provincial *education department*.

(12) The right of the *school* to charge *school fees* in terms of subsection (11) is limited to an amount equal to the sum obtained if the actual amount received from the State is deducted from the *no fee threshold*.”.

#### Amendment of section 41 of Act 84 of 1996

5. The South African Schools Act, 1996, is hereby amended by the substitution for section 41 of the following section:

#### “Enforcement of payment of *school fees*

41. (1) [The governing body of a] A public school may by process of law enforce the payment of *school fees* by *parents* who are liable to pay in terms of section 40.

(2) The exemption from payment of *school fees* must be calculated according to the regulations contemplated in section 39(4).

(3) The exemption from payment of *school fees* in terms of *this Act* is calculated retrospectively from the date on which the *parent* qualifies for the exemption.

(4) A *public school* may act in terms of subsection (1) only after it has ascertained that—

(a) the *parent* does not qualify for exemption from payment of *school fees* in terms of *this Act*;

(b) deductions have been made in terms of regulations contemplated in section 39(4), for a *parent* who qualifies for partial exemption; and

(c) the *parent* has completed and signed the form prescribed in the regulations contemplated in section 39(4).

(5) Despite subsection (4), a *public school* may act in terms of subsection (1) if—

(a) that *school* can provide proof of a written notification to the *parent* delivered by hand or registered post that the *parent* has failed to apply for exemption contemplated in section 39; and

(b) despite the notice contemplated in paragraph (a), the *parent* fails to pay the *school fees* after a period of three months from the date of notification.

(6) A *public school* may not attach the dwelling in which a *parent* resides.

(7) A *learner* may not be deprived of his or her right to participate in all aspects of the programme of a *public school* despite the non-payment of *school fees* by his or her *parent* and may not be victimised in any manner, including but not limited to the following conduct:

(a) Suspension from classes;

(b) verbal or non-verbal abuse;

(c) denial of access to—

(i) cultural, sporting or social activities of the *school*; or

(ii) the nutrition programme of the *school* for those *learners* who qualify in terms of the applicable policy; or

(d) denial of a *school* report or transfer certificate.”.



*Raad gebruik moet word om skole te identifiseer wat nie skoolgelde mag hef nie.*

(8) Die *Minister* kan 'n bepaling ingevolge subartikel (7) maak slegs as voldoende befondsing van minstens die *geen skoolgelde drempel* bereik is om *leerders* te befonds in die *skole* wat deur die bepaling geraak word.

(9) Die *Lid van die Uitvoerende Raad* moet al die *skole* in subartikel (7) beoog, binne sy of haar *provinsie* identifiseer en 'n lys van sulke skole opstel.

(10) Die *Minister* moet—

(a) die lys van skole geïdentifiseer ingevolge subartikel (9) oorweeg;

(b) die lys vergelyk met die bepaling beoog in artikel 35(1); en

(c) die lys per *provinsie*, in die Staatskoerant publiseer indien dit aan die bepaling voldoen.

(11) Die *skole* in subartikel (7) beoog, kan ondanks daardie subartikel *skoolgelde* hef indien hulle minder as die *geen skoolgelde drempel* van die provinsiale *onderwysdepartement* ontvang.

(12) Die reg van die *skool* om *skoolgelde* ingevolge subartikel (11) te hef, word beperk tot 'n bedrag gelyk aan die bedrag wat verkry word as die werklike bedrag wat van die Staat ontvang word, van die *geen skoolgelde drempel afgetrek word*.

### Wysiging van artikel 41 van Wet 84 van 1996

5. Die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur artikel 41 deur die volgende artikel te vervang:

#### “Afdwing van betaling van skoolgelde

41. (1) [Die *beheerliggaam van*] 'n *Openbare skool* kan die *betaling van skoolgelde* deur *ouers* wat ingevolge artikel 40 daarvoor aanspreeklik is, deur regsproses afdwing.

(2) Die *vrystelling van die betaling van skoolgelde* moet bereken word in ooreenstemming met die regulasies in artikel 39(4) beoog.

(3) Die *vrystelling van die betaling van skoolgelde* ingevolge *hierdie Wet* word terugwerkend bereken vanaf die datum waarop die *ouer* vir *vrystelling* kwalifiseer.

(4) 'n *Openbare skool* kan ingevolge subartikel (1) optree slegs nadat by vasgestel het dat—

(a) die *ouer* nie ingevolge *hierdie Wet* vir *vrystelling van die betaling van skoolgelde* kwalifiseer nie;

(b) *aftrekkings* gemaak is ingevolge regulasies in artikel 39(4) beoog vir 'n *ouer* wat vir gedeeltelike *vrystelling* kwalifiseer; en

(c) die *ouer* die vorm wat in die regulasies in artikel 39(4) beoog word, ingevul en geteken bet.

(5) Ondanks subartikel (4), kan 'n *openbare skool* ingevolge subartikel (1) optree indien—

(a) die *skool* bewys kan verskaf van 'n skriftelike kennisgewing aan die *ouer* wat per hand of geregistreerde pos gelewer is dat die *ouer* versuim het om vir *vrystelling* aansoek te doen soos in artikel 39 beoog; en

(b) ondanks die kennisgewing in paragraaf (a) beoog, die *ouer* versuim om die *skoolgelde* te betaal na 'n tydperk van drie maande na die datum van kennisgewing.

(6) 'n *Openbare skool* mag nie op die woning waarin 'n *ouer* woon, beslag lê nie.

(7) 'n *Leerder* mag ondanks die niebetaling van *skoolgelde* deur sy of haar *ouer* nie van sy of haar reg om aan alle aspekte van die program van 'n *openbare skool* deel te neem, ontnem word nie en mag op geen manier geviktimizeer word nie, insluitend maar nie beperk nie tot die volgende optrede:

**Insertion of section 58A in Act 84 of 1996**

6. The South African Schools Act, 1996, is hereby amended by the insertion after section 58 of the following section:

**“Alienation of assets of public school**

**58A.** (1) The *Head of Department* has the right to compile or inspect an inventory of all the assets of a *public school*. 5

(2) No person may alienate any assets owned by a *public school* to another person or body without the written approval of the *Member of the Executive Council*.

(3) Despite subsection (2), the *Member of the Executive Council* may— 10

(a) determine that certain categories of assets below a certain value may be alienated without his or her written approval; and

(b) determine and publish the value contemplated in paragraph (a) by notice in the Provincial Gazette.

(4) The assets of a *public school* may not be attached as a result of any legal action taken against the *school*.”. 15

**Amendment of section 6 of Act 76 of 1998, as amended by section 15 of the Act 48 of 1999 and section 7 of Act 53 of 2000**

7. (1) Section 6 of the Employment of Educators Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection: 20

“(3) (a) Subject to paragraph (m), any appointment, promotion or transfer to any post on the educator establishment of a public school or a further education and training institution, may only be made on the recommendation of the governing body of the public school or the council of the further education and training institution, as the case may be, and, if there are educators in the provincial department of education concerned who are in excess of the educator establishment of a public school or further education and training institution due to operational requirements, that recommendation may only be made from candidates identified by the Head of Department, who are in excess and suitable for the post concerned. 25

(b) In considering the applications, the governing body or the council, as the case may be, must ensure that the principles of equity, redress and representivity are complied with and the governing body or council, as the case may be, must adhere to— 30

(i) the democratic values and principles referred to in section 7(1);

(ii) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators; 35

(iii) any requirement collectively agreed upon or determined by the Minister for the appointment, promotion or transfer of educators which the candidate must meet;

(iv) a procedure whereby it is established that the candidate is registered or qualifies for registration as an educator with the South African Council for Educators; and 40

(v) procedures that would ensure that the recommendation is not obtained through undue influence on the members of the governing body or the council, as the case may be. 45

(c) The governing body or the council, as the case may be, must submit, in order of preference to the Head of Department, a list of—

(i) at least three names of recommended candidates; or

(ii) fewer than three candidates in consultation with the Head of Department. 50

(d) When the Head of Department considers the recommendation contemplated in paragraph (c), he or she must, before making an appointment, ensure that the governing body or council, as the case may, has met the requirements in paragraph (b). 50

(e) If the governing body or council, as the case may be, has not met the requirements in paragraph (b), the Head of Department must decline the recommendation. 55

(f) Despite the order of preference in paragraph (c) and subject to paragraph (d), the Head of Department may appoint any suitable candidate on the list.

- (a) Skorsing uit klasse;
- (b) mondelinge of niemondelinge belediging;
- (c) ontsegging van toegang tot—
  - (i) kultuur-, sport- of sosiale aktiwiteite van die *skool*; of
  - (ii) die *skool* se voedingsprogram vir daardie *leerders* wat ingevolge die toepaslike beleid kwalifiseer; of
- (d) ontsegging van 'n skoolrapport of oorpasingertifikaat.

#### Invoeging van artikel 58A in Wet 84 van 1996

6. Die Suid-Afrikaanse Skolewet, 1996, word hierby gewysig deur die invoeging van die volgende artikel na artikel 58: 10

#### “Vervreemding van bates van openbare skool

- 58A. (1) Die Departementshoof het die reg om 'n inventaris van al die bates van 'n openbare skool op te stel en te inspekteer.**
- (2) Geen persoon mag enige bates van 'n openbare skool aan 'n ander persoon of liggaam vervreem sonder die skriftelike goedkeuring van die *Lid van die Uitvoerende Raad* nie. 15
- (3) Ondanks subartikel (2) kan die *Lid van die Uitvoerende Raad*—
- (a) bepaal dat sekere kategorieë bates onder 'n sekere waarde sonder sy of haar skriftelike goedkeuring vervreem kan word;
  - (b) van tyd tot tyd die waarde in paragraaf (a) beoog, bepaal en by kennisgewing in die Provinsiale Koerant publiseer. 20
- (4) Daar mag nie op die bates van 'n openbare skool beslag gelê word as gevolg van enige regsaksie teen die skool nie.”

Wysiging van artikel 6 van Wet 76 van 1998, soos gewysig deur artikel 15 van Wet 48 van 1999 en artikel 7 van Wet 53 van 2000 25

7. (1) Artikel 6 van die Wet op die Indiensneming van Opvoeders, 1998, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

- “(3)(a) Behoudens paragraaf (m) kan enige aanstelling, bevordering of oorpasing in of na enige pos op die diensstaat vir opvoeders van 'n openbare skool of 'n inrigting vir verdere onderwys en opleiding slegs op aanbeveling van die beheerliggaam van die openbare skool of die raad van die inrigting vir verdere onderwys en opleiding, na gelang van die geval, gedoen word. en indien daar opvoeders in die betrokke provinsiale onderwysdepartement is wat as gevolg van operasionele vereistes meer is as die diensstaat vir opvoeders van 'n openbare skool of inrigting vir verdere onderwys en opleiding, kan sodanige aanbeveling gedoen word slegs uit kandidate deur die Departementshoof geïdentifiseer, wat botallig en vir die betrokke pos geskik is.
- (b) By oorweging van die aansoeke moet die beheerliggaam of die raad, na gelang van die geval, verseker dat die beginsels van billikheid, herstel en verteenwoordigendheid nagekom word en die beheerliggaam of raad, na gelang van die geval, moet hou by—
- (i) die demokratiese waardes en beginsels in artikel 7(1) bedoel;
  - (ii) enige prosedure waarop kollektief ooreengekom is of wat deur die Minister bepaal is vir die aanstelling, bevordering of oorpasing van opvoeders;
  - (iii) enige vereiste waarop kollektief ooreengekom is of wat deur die Minister bepaal is vir die aanstelling, bevordering of oorpasing van opvoeders, waaraan die kandidaat moet voldoen;
  - (iv) 'n prosedure waardeur vasgestel word dat die kandidaat geregistreer is of kwalifiseer vir registrasie as 'n opvoeder by die Suid-Afrikaanse Raad vir Opvoeders; en
  - (v) prosedures wat sal verseker dat die aanbeveling nie deur onbehoorlike invloed op die lede van die beheerliggaam of die raad, na gelang van die geval, verkry word nie.
- (c) Die beheerliggaam of die raad, na gelang van die geval, moet 'n lys in voorkeurvulgorde aan die Departementshoof voorlê van— 55
- (i) minstens drie name van aanbevole kandidate; of
  - (ii) minder as drie kandidate in oorleg met die Departementshoof.

- (g) If the Head of Department declines a recommendation, he or she must—
- (i) consider all the applications submitted for that post;
  - (ii) apply the requirements in paragraph (b)(i) to (iv); and
  - (iii) despite paragraph (a), appoint a suitable candidate temporarily or re-advertise the post. 5
- (h) The governing body or the council, as the case may be, may appeal to the Member of the Executive Council against the decision of the Head of Department regarding the temporary appointment contemplated in paragraph (g).
- (i) The appeal contemplated in paragraph (h) must be lodged within 14 days of receiving the notice of appointment. 10
- (j) The appeal must be finalised by the Member of the Executive Council within 30 days.
- (k) If no appeal is lodged within 14 days, the Head of Department may convert the temporary appointment into a permanent appointment as contemplated in section 6B. 15
- (l) A recommendation contemplated in paragraph (a) shall be made within two months from the date on which a governing body or council, as the case may be, was requested to make a recommendation, failing which the Head of Department may, subject to paragraph (g), make an appointment without such recommendation.
- (m) Until the relevant governing body or council, as the case may be, is established, the appointment, promotion or transfer in a temporary capacity to any post on the educator establishment must be made by the Head of Department where a— 20
- (i) new public school is established in terms of the South African Schools Act, 1996, and any applicable provincial law; 25
  - (ii) new further education and training institution is established in terms of the Further Education and Training Act, 1998, and any applicable provincial law; or
  - (iii) new public adult learning centre is established in terms of the Adult Basic Education and Training Act, 2000, and any applicable provincial law.”. 30

(2) Any vacant post that was advertised before the commencement of this section must be filled in terms of the provisions of the Employment of Educators Act, 1998, as it existed immediately before the commencement of this section if interviews in respect of the vacant post were held before such commencement.

#### Insertion of section 6B in Act 76 of 1998 35

8. The Employment of Educators Act, 1998, is hereby amended by the insertion after section 6A of the following section:

#### “Conversion of temporary employment to permanent employment

**6B.** The Head of Department may, after consultation with the governing body of a public school or the council of a further education and training institution, as the case may be, convert the temporary appointment of an educator appointed to a post on the educator establishment of the public school or the further education and training institution into a permanent appointment in that post without the recommendation of the governing body or the council, as the case may be.”. 40 45

#### Repeal of laws

9. The laws mentioned in the second column of the Schedule are hereby repealed to the extent indicated in the third column of that Schedule.

#### Short title

10. This Act is called the Education Laws Amendment Act, 2005. 50

(d) Wanneer die Departementshoof die aanbeveling in paragraaf (c) beoog oorweeg, moet hy of sy, voordat hy of sy 'n aanstelling doen, verseker dat die beheerliggaam of die raad, na gelang van die geval, aan die vereistes in paragraaf (b) voldoen het.

(e) Indien die beheerliggaam of die raad, na gelang van die geval, nie aan die vereistes in paragraaf (b) voldoen het nie, moet die Departementshoof die aanbeveling verwerp. 5

(f) Ondanks die voorkeurvorgorde in paragraaf (c) en behoudens paragraaf (d) kan die Departementshoof enige geskikte kandidaat op die lys aanstel.

(g) Indien die Departementshoof 'n aanbeveling verwerp, moet hy of sy— 10  
 (i) al die aansoeke oorweeg wat vir daardie pos voorgelê is;  
 (ii) die vereistes in paragraaf (b)(i) tot (iv) toepas; en  
 (iii) ondanks paragraaf (a), 'n geskikte kandidaat tydelik aanstel of die pos heradverteer.

(h) Die beheerliggaam of die raad, na gelang van die geval, kan by die Lid van die Uitvoerende Raad appèl aanteken teen die besluit van die Departementshoof oor die tydelike aanstelling in paragraaf (g) beoog. 15

(i) Die appèl in paragraaf (h) beoog, moet ingedien word binne 14 dae na ontvangs van die kennisgewing van aanstelling.

(j) Die appèl moet binne 30 dae deur die Lid van die Uitvoerende Raad afgehandel word. 20

(k) Indien geen appèl binne 14 dae ingedien word nie, kan die Departementshoof die tydelike aanstelling in 'n permanente aanstelling omskakel soos in artikel 6B beoog.

(l) 'n Aanbeveling in paragraaf (a) beoog, moet gedoen word binne twee maande na die datum waarop 'n beheerliggaam of raad, na gelang van die geval, versoek is om 'n aanbeveling te doen, by gebrek waarvan die Departementshoof 'n aanstelling kan doen sonder sodanige aanbeveling. 25

(m) Totdat die betrokke beheerliggaam of raad, na gelang van die geval, ingestel word, moet die aanstelling, bevordering of oorplasing in 'n tydelike hoedanigheid in enige pos op die diensstaat vir opvoeders deur die Departementshoof gedoen word waar 'n— 30

(i) nuwe openbare skool ingevolge die Suid-Afrikaanse Skolewet, 1996, en enige toepaslike provinsiale wet ingestel word;

(ii) nuwe inrigting vir verdere onderwys en opleiding ingevolge die Wet op Verdere Onderwys en Opleiding, 1998, en enige toepaslike provinsiale wet ingestel word; of 35

(iii) nuwe openbare sentrum vir onderwys vir volwassenes ingevolge die Wet op Basiese Onderwys en Opleiding vir Volwassenes, 2000, en enige toepaslike provinsiale wet ingestel word." 40

(2) Enige vakante pos wat voor die inwerkingtreding van hierdie artikel geadverteer is, moet gevul word ingevolge die bepalinge van die Wet op die Indiensneming van Opvoeders, 1998, soos dit onmiddellik voor die inwerkingtreding van hierdie artikel bestaan het, indien onderhoude ten opsigte van die vakante pos voor sodanige inwerkingtreding gevoer is. 45

### **Invoeging van artikel 6B in Wet 76 van 1998**

8. Die Wet op die Indiensneming van Opvoeders, 1998, word hierby gewysig deur die invoeging van die volgende artikel na artikel 6A:

#### **"Omskakeling van tydelike diens in permanente diens**

**6B.** Die Departementshoof kan, na oorlegpleging met die beheerliggaam van 'n openbare skool of die raad van 'n inrigting vir verdere onderwys en opleiding, na gelang van die geval, die tydelike aanstelling van 'n opvoeder wat in 'n pos op die diensstaat vir opvoeders van die openbare skool of die inrigting vir verdere onderwys en opleiding aangestel is, omskakel in 'n permanente aanstelling in daardie pos sonder die aanbeveling van die beheerliggaam of die raad, na gelang van die geval." 50 55

**SCHEDULE****LAWS REPEALED****(SECTION 9)**

<b>No. and year of law</b>	<b>Short title</b>	<b>Extent of repeal</b>	
Act No. 25 of 1941	Higher Education (Amendment) Act, 1941.	The whole.	5
Act No. 18 of 1946	Higher Education (Amendment) Act, 1946.	The whole.	
Act No. 9 of 1960	Matriculation Exemption Act, 1960.	The whole.	10
Act No. 82 of 1963	Orange Free State Study Bursary Fund Act, 1963.	The whole.	
Act No. 73 of 1969	National Education Policy Amendment Act, 1969.	The whole.	
Act No. 90 of 1970	National Study Loans and Bursaries Amendment Act, 1970.	The whole.	15
Act No. 60 of 1972	Educational Services Amendment Act, 1972.	The whole.	
Act No. 5 of 1973	University Education (Agricultural and Veterinary Science Affairs) Act, 1973.	The whole.	20
Act No. 69 of 1973	Education Laws Amendment Act, 1973.	The whole.	
Act No. 92 of 1974	National Education Policy Amendment Act, 1974.	The whole.	
Act No. 17 of 1975	National Education Policy Amendment Act, 1975.	The whole.	25
Act No. 23 of 1978	National Study Loans and Bursaries Amendment Act, 1978.	The whole.	
Act No. 25 of 1978	National Education Policy Amendment Act, 1978.	The whole.	
Act No. 11 of 1981	Culture and Education Laws Amendment Act, 1981.	The whole.	30
Act No. 106 of 1981	Vista University Act, 1981.	The whole.	
Act No. 16 of 1982	Education Services Amendment Act, 1982.	The whole.	
Act No. 6 of 1984	Education and Heraldry Laws Amendment Act, 1984.	The whole.	35
Act No. 57 of 1985	Universities and Technikons Advisory Council Amendment Act, 1985.	The whole.	
Act No. 71 of 1985	Universities for Blacks, Technikons (Education and Training), Education, and Training Amendment Act, 1985.	The whole.	40
Act No. 8 of 1986	National Study Loans and Bursaries Act Repeal Act, 1986.	The whole.	
Act No. 10 of 1986	National Policy for General Education Affairs Amendment Act, 1986.	The whole.	45
Act No. 40 of 1993	Vista University Amendment Act, 1993.	The whole.	

**Herroeping van wette**

9. Die wette in die tweede kolom van die Bylae genoem, word hierby herroep in die mate in die derde kolom van daardie Bylae aangedui.

**Kort titel**

10. Hierdie Wet heet die Wysigingswet op Onderwyswette, 2005.

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**BYLAE****WETTE HERROEP****(ARTIKEL 9)**

<b>No. en jaar van wet</b>	<b>Kort titel</b>	<b>In hoeverre herroep</b>	
Wet No. 25 van 1941	Wysigingswet op Hoër Onderwys, 1941	Die geheel.	10
Wet No. 18 van 1946	Wysigingswet op Hoër Onderwys, 1946	Die geheel.	
Wet No. 9 van 1960	Wet op Vrystelling van Matrikulasie, 1960	Die geheel.	
Wet No. 82 van 1963	Wet op die Oranje-Vrystaatse Studiebeursfondse, 1963	Die geheel.	15
Wet No. 73 van 1969	Wysigingswet op die Nasionale Onderwysbeleid, 1970	Die geheel.	
Wet No. 90 van 1970	Wysigingswet op Nasionale Studielenings en -beurse, 1970	Die geheel.	20
Wet No. 60 van 1972	Wysigingswet op Onderwysdienste, 1972	Die geheel.	
Wet No. 5 van 1973	Wet op Universitêre Opleiding (Landbou- en Veeartsenyaangeleenthede), 1973	Die geheel.	
Wet No. 69 van 1973	Wysigingswet op Onderwyswette, 1973	Die geheel.	
Wet No. 92 van 1974	Wysigingswet op die Nasionale Onderwysbeleid, 1974	Die geheel.	25
Wet No. 17 van 1975	Wysigingswet op die Nasionale Onderwysbeleid, 1975	Die geheel.	
Wet No. 23 van 1978	Wysigingswet op Nasionale Studielenings en -beurse, 1978	Die geheel.	30
Wet No. 25 van 1978	Wysigingswet op die Nasionale Onderwysbeleid, 1978	Die geheel.	
Wet No. 11 van 1981	Wysigingswet op Kultuur- en Onderwyswette, 1981	Die geheel.	
Wet No. 106 van 1981	Wet op die Universiteit Vista, 1981	Die geheel.	35
Wet No. 16 van 1982	Wysigingswet op Onderwysdienste, 1982	Die geheel.	
Wet No. 6 van 1984	Wysigingswet op Onderwys- en Heraldiekwette, 1984	Die geheel.	
Wet No. 57 van 1985	Wysigingswet op die Adviesraad vir Universiteite en Technikons, 1985	Die geheel.	40
Wet No. 71 van 1985	Wysigingswet op Universiteite vir Swartes. Technikons (Onderwys en Opleiding) en Onderwys en Opleiding, 1985	Die geheel.	45
Wet No. 8 van 1986	Wet op die Herroeping van die Wet op Nasionale Studielenings en -beurse, 1986	Die geheel.	
Wet No. 10 van 1986	Wysigingswet op die Nasionale Beleid vir Algemene Onderwyswette, 1986	Die geheel.	
Wet No. 40 van 1993	Wysigingswet op die Universiteit Vista, 1993	Die geheel.	50