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Government Notice

OFFICE OF THE PRIME MINISTER

No. 254

2001

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 16 of 2001: Education Act, 2001.

PORTION ONLY

PART VIII PRIVATE SCHOOLS

Establishment of private school

41. (1) A person has the right to establish and maintain a private school at such person's own expense, but is required to register such school in terms of section 42 before education is provided to any person at the school.

(2) The name of the owner of a private school, who may be a natural person, a body corporate, a trust, a church, or a registered welfare organization, and the name of the school must be clearly indicated in the register and on the school premises.

Registration of private school

42. (1) An application for the registration of a private school must be made to the Minister in the prescribed form.

(2) The Minister must register a private school within a reasonable period, if-

(a) the Minister is satisfied that the school and any hostel premises or other facilities provided or to be provided at the school, are suitable and adequate in accordance with the

prescribed minimum requirements applicable to state schools having regard to the total number, ages and gender of the learners who are to attend the school; and

- (b) the owner of the school undertakes, to the satisfaction of the Minister, that-
- i. adequate financial provision has been made or guaranteed for the maintenance of the school for a reasonable period;
 - ii. the teaching staff to be employed at the school are sufficiently qualified for the purpose of efficient provision of qualitative basic education;
 - iii. the school will provide a standard of education not inferior to the standard maintained in comparable state schools;
 - iv. the school will not impose restrictions of whatever nature with respect to the admission of learners based on race, ethnic origin, colour or creed; and
 - v. the school will not impose restrictions of whatever nature with respect to the recruitment and appointment of staff based on race, ethnic origin or colour.

Register of private schools

43. The Minister must cause to be kept and maintained a register of private schools in the prescribed form.

Transfer of ownership of private school

44. (1) If the ownership of a private school is to be transferred, the new owner's name must be entered in the register and the previous owner's name deleted.

- (2) If the person to whom a private school is to be transferred proposes to deviate from the terms and conditions under which the school was initially registered, such person must apply anew for the registration of the school.

Deregistration of private school

45. (1) The Minister may, subject to subsection (2), deregister a private school registered in terms of section 42, if-

- a) any of the circumstances arises on which the Permanent Secretary would have refused such registration under section 42;
- b) subsequent to the registration of the school, the school has contravened any of the terms and conditions under which the school has been registered;
- c) the school has ceased to operate or exist; or
- d) the school has been closed under section 47 and remains closed after a period of six months of such closure.

- (2) The Minister must, in writing, notify the owner of the private school of his or her intention to deregister the school under subsection (1), and the owner may, within a period of 30 days from the date of receipt of the notification, make representations in writing to the Minister.

- (3) If, after consideration of the representations made under subsection (2), the Minister decides to deregister a private school under subsection (1), he or she must, in writing, notify the owner of the school of his or her decision to deregister.

Failure to comply with terms and conditions and issue of notice of warning

46. If, following an inspection conducted at a private school under section 64, the Minister is satisfied -

- a) that the owner of the private school fails to comply with the terms and conditions of registration of the school or with any provision of this Act ; or
- b) that the school is being conducted in a way which is prejudicial to the welfare of the learners of the school or the peace, good order or good governance of the Republic of Namibia,

the Minister must by notice in writing inform the owner of the private school accordingly and direct the owner to remedy the defects within such period, not exceeding six months, as may be specified in the notice.

Failure to satisfy notice of warning and closure of private school

47. (1) If the owner of the private school fails to remedy the defects within the period specified in a notice issued under section 46, the Minister may order the closure of the school.
- (2) If, after the closure of a private school has been ordered under subsection (1), the owner of the school complies with the notice, the Minister may grant permission to re-open the school.
- (3) A private school which has been closed under subsection (1) and remains closed for a period exceeding six months may be deregistered under section 45, and the owner of the school is required to apply for re-registration under section 42 before being allowed to re-open the school.

Takeover of management and control of private school

48. The Minister may take over the management and control of a private school, if-
- (a) the owner of the school has requested the takeover; or
 - (b) the school has been deregistered under section 45 or closed under section 47, and the owner of the school has agreed to the Minister's request for the takeover.

Aid for private schools

49. (1) The Minister may, out of money appropriated for this purpose by Parliament, grant aid to private schools on the prescribed conditions and such other conditions as the Minister may impose, which may require a private school –
- (a) to establish a school board or school development fund in accordance with the provisions of Part V;
 - (b) to alter the school's power in respect of appointment, transfer or dismissal of teachers referred to in section 51;
 - (c) to regulate the admission of learners to the school in accordance with section 54;
 - (d) to draft and adopt a learners' code of conduct in accordance with section 55;
 - (e) to establish a body of learners in accordance with section 60;
 - (f) to offer any course of study instituted under section 61.
- (2) The Minister may, by notice in the *Gazette*, categorize the private schools which receive aid under subsection (1), in accordance with the form of aid a school receives.
- (3) If a condition subject to which aid was granted to a private school has not been complied with, the Minister may, subject to subsection (4), reduce or terminate the aid.
- (4) The Minister may not under subsection (3) reduce or terminate any aid granted to a private school, unless the Minister has given the owner of the private school concerned a reasonable opportunity to make written representations giving reasons why the aid should not be reduced or terminated.
- (5) Aid to a private school or hostel may be granted in the form of-
- (a) subsidy;
 - (b) the provision of materials;
 - (c) the provision of teachers who are staff members of the Ministry;
 - (d) the combination of two or more of the forms of aid referred to in paragraphs (a), (b) and (c); or
 - (e) any other form of aid determined by the Minister.
- (6) As soon as practicable after the commencement of this Act, the Minister must review all existing aid granted to private schools before the commencement of this Act, and may, depending on the terms and conditions of the aid so reviewed -
- (a) extend the aid on improved terms and conditions in accordance with this Act; or
 - (b) reduce or terminate the aid.
- (7) The owner of a private school must be given a reasonable opportunity to make representations to the Minister before any aid is reduced or terminated under subsection (6)(b).

Approval of curriculum, medium of instruction or examining body for private school

50. (1) Subject to section 41, the Minister may upon application approve a curriculum, a language as medium of instruction, or an examining body for a private school, if such curriculum, medium of instruction or examining body differs from that applicable to state schools.

(2) The Minister may determine the minimum time to be allocated to the teaching of the English language, if the medium of instruction at a private school is not English.

Powers of private school in relation to staff matters

51. Subject to the Labour Act, 1992 (Act No. 6 of 1992), the power to appoint, transfer or dismiss teachers to or from posts on the establishment of a private school except teachers referred to in section 49(5)(c) -

- (a) vests in the owner or controlling body of the school; and
- (b) is subject to any restrictions determined in the conditions of registration or conditions of aid.

Registration of learner for education at home

52. (1) A parent may apply to the Minister for the registration of a learner to receive education at home.

(2) The Minister may only register a learner under subsection (1), if the Minister is satisfied that -

- (a) a situation exists that prevents the learner from attending or fully benefiting from the regular school attendance;
- (b) the registration is in the best interest of the learner;
- (c) the education to be received by the learner at home-
 - i. meets the minimum requirements of the curriculum at state schools; and
 - ii. is of a standard not inferior to the standard of education provided at state schools.

(3) The Minister may grant registration under subsection (2) subject to such conditions as the Minister may impose.

(4) The Minister may withdraw the registration referred to in subsection (1), if-

- (a) the situation contemplated in subsection (2)(a) ceases to exist;
- (b) the best interest of the learner is no longer served; or
- (c) the parent fails to comply with -
 - i. the minimum requirements or standard referred to in subsection (2)(c); or
 - ii. the conditions contemplated in subsection (3).

(5) The Minister may not withdraw the registration of a learner under subsection

(4) unless the Minister-

- (a) has informed the parent of his or her intention to withdraw the registration and the reasons for such withdrawal; and
- (b) has granted to the parent a reasonable opportunity to make representations in relation to such withdrawal.

PART IX LEARNERS

Compulsory school attendance

- 53.** (1) Subject to subsection (2), school attendance is compulsory for every child from the beginning of the year in which the child attains the age of seven years, until-
- (a) the day the child completes primary education before reaching the age of 16 years; or
 - (b) the last school day of the year in which the child reaches the age of 16 years.
- (2) Notwithstanding the provision of subsection (1), the Minister may-
- (a) on grounds of health or other considerations pertaining to the public interest, by notice in the *Gazette* determine that during a specified period compulsory school attendance does not apply -
 - i. to children who reside in a geographic area which is specified in the notice; or
 - ii. to children of an age group which is specified in the notice; or
 - (b) exempt a child entirely or partially from compulsory school attendance, if it is in the best interest of the child or in the public interest.
- (3) Subject to subsection (2), the parent of a child for whom regular school attendance is compulsory, must ensure that such child is registered with a school and regularly attends school.
- (4) The Minister may appoint any staff member to investigate the registration and the school attendance of any child for whom school attendance is compulsory.
- (5) If the parent of a child referred to in subsection (3), fails or refuses to comply with subsection (3), the Minister must issue a notice in writing to the parent requesting the parent to comply with that subsection within the period specified in the notice.

Admission of learner to state school

- 54.** (1) An application for admission of a learner to a state school must be made by the parent to the principal of the school in the prescribed form.
- (2) The principal must inform the applicant in writing of the outcome of the application, whether successful or not, and if the application is unsuccessful, the reasons must be provided.
- (3) The principal must notify the Minister in writing of any learner refused admission to the school on ground other than the school being full or the preferred subject choice not being offered at the school, and state that reason.
- (4) The parent of a learner who has been refused admission to a state school may, within 14 days from the date of receipt by such parent of the letter of refusal, appeal in writing to the Minister against the principal's decision referred to in subsection (2).
- (5) The Minister, within 20 days of receipt of the appeal referred to in subsection (4) and after considering the reasons and all the circumstances surrounding the matter and the representations made by the parent on appeal, may take any decision the Minister thinks fit.

General rules of conduct and learners' code of conduct

- 55.** (1) The Minister must make general rules of conduct which must be incorporated into the learners' code of conduct of all state schools.
- (2) Subject to subsection (1), a school board of a state school must, after consultation with the school parents, learners and teachers of the school, draft and adopt a learners' code of conduct.

Corporal punishment upon learner

56. (1) A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.

(2) For the purposes of the Labour Act, 1992 (Act No.6 of 1992), misconduct contemplated in subsection (1) constitutes a valid and fair reason for any disciplinary action.

Suspension of learner from state school or hostel

57. (1) If the principal of a state school has reason to believe that a learner at that school or accommodated in a hostel of that school is guilty of misconduct, the principal may charge the learner in writing with misconduct.

(2) The principal may suspend a learner from school or hostel or both at any time -
(a) before the learner is charged with misconduct under subsection (1); or
(b) after the learner is charged with misconduct under subsection (1), pending the conclusion of the disciplinary hearing in terms of subsection (6).

(3) A learner may be suspended only if-
(a) the nature of the misconduct dictates that the learner be removed from school or hostel;
(b) the possibility exists that the learner may interfere or tamper with witnesses or evidence;
or
(c) it is in the interest of the school or hostel community or public interest.

(4) The suspension of any learner may at any time be cancelled -
(a) by the principal who has suspended the learner under subsection (2), if-
(i) in the principal's opinion all the reasons for the suspension have lapsed; or
(ii) the school board has recommended to the principal the cancellation thereof; or
(b) by the Permanent Secretary, if in the Permanent Secretary's opinion no valid cause exists for the suspension.

(5) The cancellation of a suspension of a learner does not affect any proceedings in connection with the charge of misconduct against the learner.

(6) The disciplinary hearing on a charge of misconduct in terms of subsection (1) must be held before the school board within 20 days from the date the learner was charged, which may, upon a finding that the learner is guilty of misconduct -
(a) impose any prescribed penalty; or
(b) make a recommendation to the Permanent Secretary to expel the learner from school or hostel, if the learner is guilty of serious misconduct.

(7) The chairperson of the school board must-
(a) in writing notify the parent of the decision of the school board made in terms of subsection (6), and if the learner is found guilty of misconduct, the reasons must be stated;
(b) at the request of the parent, made within seven days of receipt of the notification referred to in paragraph (a), furnish the parent with a copy of the record of proceedings, documentary evidence and reasons; or
(c) within seven days of the school board's finding and recommendation under subsection (6)(b), furnish the Permanent Secretary with the record of proceedings, documentary evidence, reasons and recommendation.

(8) A parent may, within 14 days from the date of receipt of the copy of the record of proceedings, documentary evidence and reasons, appeal in writing to the Permanent Secretary against the finding of the school board, or any penalty imposed under subsection (6)(a) or against both.

(9) The Permanent Secretary, within 20 days from the date of receipt of an appeal by the parent and after consideration of all the documents referred to in subsection (8) and the representations made by the parent, may -
(a) allow the appeal in whole or in part and vary or set aside the finding;

- (b) dismiss the appeal and confirm the finding; or
- (c) send the matter back to the school board to hold a further inquiry and to make a finding in terms of subsection (6).

- (10) A parent may, within 14 days from the date of receipt of the Permanent Secretary's decision under subsection (9)(b), appeal to the Minister against the decision of the Permanent Secretary, and the Minister may within 20 days of receipt of an appeal by the parent -
- (a) allow the appeal in whole or in part and vary or set aside the decision; or
 - (b) dismiss the appeal and confirm the decision.

Expulsion of learner from state school or hostel

58. (1) The Permanent Secretary, within 14 days of receipt of the recommendation of the school board and all documents submitted to the Permanent Secretary in terms of section 57(7)(c) and after consideration of such recommendation and documents, may expel a learner from the state school or hostel.

- (2) The Permanent Secretary must -
- (a) in writing notify the parent of the Permanent Secretary's decision to expel the learner from the state school or hostel; or
 - (b) at the request of the parent made within seven days of receipt of the notification referred to in paragraph (a), furnish the parent with-
 - (i) a copy of the record of proceedings, documentary evidence, reasons and recommendation submitted to the Permanent Secretary in terms of section 57(7)(c); and
 - (ii) the Permanent Secretary's reasons.
- (3) A parent may, within 14 days from the date of receipt of the record of proceedings, documentary evidence, reasons and recommendation referred to in subsection (2)(b), appeal in writing to the Minister against-
- (a) the finding of the school board or the decision of the Permanent Secretary to expel the learner from the state school or hostel; or
 - (b) both the finding of the school board and the decision of the Permanent Secretary to expel the learner from school or hostel.
- (4) The Minister, within 20 days from the date of receipt of an appeal referred to in subsection (3) and after consideration of the documents referred to in that subsection, may-
- (a) allow the appeal in whole or in part and vary or set aside the finding of the school board, or the decision of the Permanent Secretary, or both; or
 - (b) dismiss the appeal and confirm the finding of the school board, and the decision of the Permanent Secretary.

Learner school reports

- 59.** (1) The principal of a state school must ensure that the parent of each learner is provided with regular reports in writing on the academic progress, general behaviour and conduct of the learner.
- (2) Non-payment of the school development fund contribution contemplated in section 25(9)(a) in respect of any learner is not sufficient reason for withholding a report to be issued under subsection (1).

Learners' Representative Council

- 60.** (1) Every state secondary school must establish a body of learners to be known as the Learners' Representative Council in accordance with the prescribed guidelines which must determine the composition and duties and functions of such a council.
- (2) The Minister, in the prescribed manner and form, may exempt a special school from complying with subsection (1), if it is not practically possible for a Learners' Representative Council to be established at the school.