

# THE SPECIAL EDUCATION NEEDS AUTHORITY ACT

No. 18 of 2018 – 19 December 2018

P 35/18

Amended 7/2020 (cio 7/8/2020);

## ARRANGEMENT OF SECTIONS

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### PART I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Special Education Needs Authority Act 2018.

#### 2. Interpretation

In this Act –

“Authority” means the Special Education Needs Authority established under section 3;

“Board” means the Board referred to in section 7;

“Chairperson” means the Chairperson of the Board;

“Director” means the Director of the Authority;

“disability” means a long-term physical, intellectual or sensory impairment of a person which substantially hinders his ability to carry out normal day to day activities;

“member” –

- (a) means a member of the Board; and
- (b) includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of education is assigned;

“Ministry” means the Ministry responsible for the subject of education;

“special education needs” means the needs of a person with disability which makes learning harder for him than another person of the same age;

“special education needs institution” –

- (a) means an institution, whether private or public; and
- (b) includes a resource and development centre or a special education needs unit,

which provides specialised education to a person with disability.

## **PART II – SPECIAL EDUCATION NEEDS AUTHORITY**

### **3. Establishment of Authority**

(1) There is established for the purposes of this Act the Special Education Needs Authority.

(2) The Authority shall be a body corporate.

### **4. Objects of Authority**

The Authority shall be responsible for –

- (a) monitoring and facilitating the implementation of special education needs policies of the Government;
- (b) advising the Minister on the formulation of policies and on the criteria for the registration of –
  - (i) special education needs institutions;

- (ii) the teaching and non-teaching staff, and any other resource person, of special education needs institutions;
- (c) providing guidelines for the design and development of curriculum for special education needs;
- (d) the harmonisation and promotion of programmes and policies for the education and holistic development of persons with special education needs in line with the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

## **5. Functions of Authority**

The Authority shall have such functions as are necessary to further its objects most effectively and shall, in particular –

- (a) advise the Minister on the formulation of policies relating to special education needs and update the Ministry on any matter relating to special education needs;
- (b) register special education needs institutions, their teaching and non-teaching staff and any other resource person;
- (c) make rules, issue guidelines and directives, and set standards and conditions –
  - (i) for promoting and enhancing quality education in special education needs institutions;
  - (ii) for ensuring efficiency and transparency in the manner in which grants are used by special education needs institutions;
  - (iii) for the admission, transfer and discipline of students of special education needs institutions; or
  - (iv) that are incidental or conducive to the attainment of its objects;
- (d) take appropriate action to ensure that special education needs institutions are managed in accordance with relevant laws, rules, guidelines, directives and standards;
- (e) carry out enquiries into complaints regarding special education needs institutions and take necessary action or refer such complaints to appropriate authorities, as the case may be;

- (f) suspend or cancel the registration of special education needs institutions, their teaching and non-teaching staff and any other resource person;
- (g) develop a Quality Assurance Framework for special education needs;
- (h) conduct pedagogical and quality assurance inspection of, and quality audits in special education needs institutions;
- (i) regulate such matters, as may be necessary, pertaining to special education needs institutions;
- (j) promote inclusive practices to facilitate inclusive learning environment;
- (k) administer payment of any form of grants to special education needs institutions and ensure that the grants are being used for the intended purposes;
- (l) devise and implement plans to facilitate the early identification and assessment of persons with special education needs;
- (m) facilitate the conduct of need assessment exercises and profiling of persons in special education needs institutions to ensure the provision of customised learning opportunities, therapeutic intervention and advocacy;
- (n) set up and maintain a database of all special education needs institutions and persons with special education needs;
- (o) develop network and facilitate collaboration among Ministries and other relevant stakeholders at local, regional and international levels;
- (p) establish and sustain the strong home-school community linkages;
- (q) carry out training needs analysis and organise professional development programmes for the teaching and non-teaching staff, and any other resource persons of special education needs institutions;
- (r) conduct and promote research in the field of special education needs;
- (s) take such actions, as may be necessary, in collaboration with relevant Ministries, authorities or stakeholders to ensure good governance, including ethical conduct, in special education needs institutions;
- (t) encourage the use of innovative pedagogies and disseminate good teaching and learning practices;
- (u) advise on design and development of curriculum for special education needs;

- (v) discharge such other functions as may be necessary regarding special education needs.

## **6. Powers of Authority**

(1) The Authority shall have such powers as may be necessary to attain its objects and discharge its functions most effectively and may, in particular –

- (a) with or without notice, visit and inspect any special education needs institution to ascertain whether it is being run in accordance with this Act;
- (b) require the head of a special education needs institution to –
  - (i) submit duly acquitted pay sheets or other similar documents pertaining to the emoluments of the teaching and non-teaching staff, and any other resource person;
  - (ii) furnish information relating to the administration and the teaching thereat; and
  - (iii) produce books of account and attendance registers for inspection;
- (c) set up such committees as may be necessary;
- (d) collect or receive any fee or any other sum which may lawfully accrue to it;
- (e) carry out such other actions as may be necessary for the purposes of this Act.

(2) Where, in respect of a special education needs institution, the Authority has reason to believe that –

- (a) a directive is necessary or desirable to protect the interests, welfare, safety and health of the staff and students of the institution;
- (b) industrial relations are becoming strained;
- (c) grants are not being used for the intended purposes;
- (d) the institution has contravened or is likely to contravene a relevant law,

it may give to the institution such written directive as it may, in the circumstances, determine.

(3) Without prejudice to the generality of subsection (2), the Authority may direct a special education needs institution –

- (a) in the case of a contravention of a relevant law, to do a specified act, or refrain from doing a specified act, for the purpose of –
  - (i) remedying the effects of the contravention; or
  - (ii) taking such measures as may be necessary to ensure that no contravention occurs,to comply with the law;
- (b) to comply with any policy, rule, guideline, directive, standard or other similar instrument issued by the Authority; or
- (c) to comply with a directive within such time as it may determine.

(4) A special education needs institution which is given a directive shall comply with the directive notwithstanding any contract or arrangement it has entered into with a third party.

## **7. Board**

- (1) The Authority shall be managed and administered by a Board.
- (2) The Board shall consist of –
  - (a) a Chairperson, to be appointed by the Prime Minister;
  - (b) the supervising officer of the Ministry or his representative;
  - (c) a representative of the Ministry responsible for the subject of child development;
  - (d) a representative of the Ministry responsible for the subject of finance;
  - (e) a representative of the Ministry responsible for the subject of health;
  - (f) a representative of the Ministry responsible for the subject of social security;

- (g) a representative of the Mauritius Institute of Education established under the Mauritius Institute of Education Act;
- (h) 4 persons from non-governmental organisations involved in promoting education for persons with special education needs, to be appointed by the Minister; and
- (i) 2 persons having experience in the field of special education needs, to be appointed by the Minister.

(3) (a) The Board may co-opt such persons as it may determine to provide assistance in relation to any matter before it.

(b) A co-opted member shall not have the right to vote at any meeting of the Board.

(4) (g) – A member, other than a member referred to in subsection (2)(b) to

(a) shall hold office for a period of 2 years;

(b) shall be eligible for reappointment;

(c) shall cease to hold office –

(i) on the completion of his term of office;

(ii) on his resignation; or

(iii) where he fails to attend 3 consecutive meetings of the Board without good reasons.

(5) Every member shall be paid such fees and allowances as the Minister may determine.

(6) The Minister shall cause the composition of the Board to be published in the Gazette.

(7) No member shall engage in any activity which may undermine the reputation or integrity of the Authority.

## **8. Meetings of Board**

(1) The Board shall meet as often as is necessary but at least once every month at such place and time as the Chairperson may determine.

(2) At any meeting of the Board, 7 members shall constitute a quorum.

(3) The Board shall regulate its meetings and proceedings in such manner as it may determine.

## **9. Committee**

(1) (a) The Board may set up such committees as may be necessary to assist it in the discharge of its functions under this Act.

(b) A committee set up under paragraph (a) shall consist of not less than 3 members and such other persons as the Board may co-opt.

(2) A committee shall –

(a) meet –

(i) as often as is necessary at such time and place as the chairperson of the committee may determine; or

(ii) as and when required by the Board;

(b) regulate its meetings and proceedings in such manner as it may determine; and

(c) submit a report to the Board within such time as the Board may determine.

## PART III – ADMINISTRATION

### 10. Director

(1) There shall be a Director who shall, with the approval of the Minister, be appointed by the Board on such terms and conditions as it may determine.

(2) The Director shall, subject to this Act, be responsible for the implementation of the decisions of the Board and for carrying out the day to day activities of the Authority.

(3) The Director shall –

(a) attend every meeting of the Board and may take part in its deliberations but shall not have the right to vote;

(b) act in accordance with such directions as he may receive from the Board.

(4) The Director may, with the approval of the Board, delegate any of his functions to such employee as he may determine.

### 11. Staff of Authority

(1) The Board may, on such terms and conditions as the Minister may approve, employ such employees as it considers necessary for the discharge of the functions of the Authority.

(2) Every employee shall be under the administrative control of the Director.

(3) The Board may, subject to any enactment, make provision for policies and procedures relating to –

(a) the appointment, dismissal and discipline of the employees;

(b) appeals by employees against dismissal and other disciplinary measures; and

(c) the establishment and maintenance of a superannuation scheme and the contributions and the benefits payable to, and from, the scheme.

## **12. Protection from liability**

No liability, civil or criminal, shall be incurred by the Authority, a member or an employee in respect of any act done or omitted in good faith in the discharge of its or his functions or exercise of its or his powers under this Act.

## **13. Delegation of powers**

The Board may, subject to such conditions as it may determine, delegate to the Director, such of its powers under this Act as may be necessary to assist in the effective management of the Authority.

## **PART IV – MISCELLANEOUS**

## **14. Powers of Minister**

(1) The Minister, may in relation to the exercise of the powers of the Authority, give such written directions of a general nature, not inconsistent with this Act, as he considers necessary in the public interest and the Authority shall comply with such directions.

(2) The Minister may require the Authority to furnish such information in such manner and at such time as he considers necessary with respect to its activities and the Authority shall provide such information.

## **15. Funds of Authority**

- (1) The Authority shall set up a General Fund –
  - (a) into which all the monies received from any source by the Authority shall be paid; and
  - (b) out of which all payments required to be made for the purposes of this Act by the Authority shall be effected.
- (2) The monies referred to in subsection (1) shall consist of –
  - (a) grants from the Government;
  - (b) additional funding from the Government for specific projects;
  - (c) funding obtained from other sources, as the Government may approve, for specific projects; and
  - (d) any other income from any such other source as the Minister may approve.

## **16. Execution of documents**

No deed or other document shall be executed or signed by or on behalf of the Authority, unless it is signed by –

- (a) the Chairperson or, in his absence, any other member designated by the Board; and
- (b) the Director or, in his absence, any other employee designated by the Board.

## **17. Estimates**

(1) The Authority shall submit to the Minister, not later than 31 March in every year, an estimate of the income and expenditure of the Authority for the next financial year for his approval.

(2) Where the Minister gives his approval under subsection (1), he may –

- (a) approve only part of the expenditure under any item; and
- (b) direct the Authority to amend the estimate in respect of any item in such manner as he may determine.

## **18. Legal proceedings**

Service of process by or on the Authority shall be sufficient if made by, on behalf of, the Director.

## **19. Donations**

Article 910 of the Code Civil Mauricien shall not apply to the Authority.

## **20. Annual report**

(1) The Board shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Authority, in respect of every financial year.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and audited accounts of the Authority before the Assembly.

(3) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

## **21. Confidentiality**

No member or employee shall disclose to any unauthorised person any matter which comes to his knowledge in the discharge of his functions.

## **22. Offences**

(1) No institution shall operate as a special education needs institution without being registered with the Authority.

(2) No person shall provide specialised education in a special education needs institution unless he is registered with the Authority.

(3) Any person who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

## **23. Regulations**

(1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.

(2) Any regulations made under subsection (1) may provide –

(a) for the payment of fees and the levying of charges;

(b) for the registration, suspension or cancellation of –

(i) special education needs institutions;

(ii) the teaching and non-teaching staff, and any other resource person, of a special education needs institutions;

(c) for the administration and management of a special education needs institution;

(d) that any person who contravenes the regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

## **24. Consequential amendments**

(1) The Education Act is amended –

(a) in section 2 –

(i) in the definition of “school”, in paragraph (b), by deleting the words “, special education needs school”;

- (ii) by deleting the definition of “special education needs school”;
- (b) in section 3(2) –
  - (i) in paragraph (h), by deleting the words “, including special education needs schools;” and replacing them by a full stop;
  - (ii) by repealing paragraph (i);
- (c) in section 5A(2), by repealing paragraph (c);
- (d) in section 34(1), by deleting the words “special education needs schools and”;
- (e) in section 37(4), in the definition of “school” –
  - (i) in paragraph (a), by deleting the words “including a special education needs school,”;
  - (ii) by inserting, after paragraph (a), the following new paragraph –
    - (aa) “a special education needs institution registered under the Special Education Needs Authority Act 2018”;
- (f) in section 38(1)(a), by deleting the words “, including special education needs schools and special education needs resource and development centres”.
- (2) The Statutory Bodies (Accounts and Audit) Act is amended –
  - (a) in the First Schedule, by inserting, in the appropriate alphabetical order, the following new item and its corresponding entry –
 

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  - (b) in the Second Schedule, in Part I, by inserting, in the appropriate alphabetical order, the following new item and its corresponding entry –
 

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## 25. Transitional provisions

(1) (a) Any special education needs school and any special education needs resource and development centre registered with the Ministry shall, on the commencement of this Act, be deemed to be registered, subject to paragraph (b), as a special education needs institution under this Act.

(b) The registration of the special education needs institution shall be valid until 31 December 2020.

[Amended 7/2020 (cio 7/8/2020).]

(2) (a) The teaching and non-teaching staff, and any other resource person, of a special education needs school or special education needs resource and development centre registered with the Ministry shall, on the commencement of this Act, be deemed to be registered, subject to paragraph (b), under this Act.

(b) The registration of the teaching and non-teaching staff, and any other resource person, shall be valid until 31 December 2020.

[Amended 7/2020 (cio 7/8/2020).]

(3) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for such transition.

[S. 25 amended by s. 61 of Act 7 of 2020 w.e.f. 7 August 2020.]

## **26. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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