

SIKKIM EDUCATION ACT,2002

GOVERNMENT SIKKIM EXTRAORDINARY GAZETTE PUBLISHED BY AUTHORITY Gangtok No. IO/LD/2002. Saturday, 21 th September, 2002 No. 310 GOVERNMENT OF SIKKIM LAW DEPARTMENT, GANGTOK. Dated : 5th August, 2002. NOTIFICATION The following Act of the Sikkim Legislative Assembly having received the assent of the President on 5th day of July, 2002 is hereby published for general information:- THE SIKKIM EDUCATION ACT, 2002 (ACT NO. 11 OF 2002) AN ACT to provide for establishment of educational institutions in Sikkim and matters connected therewith or incidental thereto. Be it enacted by the Legislature of Sikkim in the Fifty-third Year of the Republic of India as follows . Short title, extent, 1. application and commencement. Definitions. 2. (1) This Act may be called the Sikkim Education Act, 2002. (2) It extends to the whole of Sikkim. (3) It applies to all educational institutions and tutorial institutions in the State except (a) the institutions financed by the Central Government and/or declared by Parliament by law to be institutions of National importance and (b) the colleges and institutions in so far as the matters pertinent to them are dealt with in the enactments relating to the establishment of Universities or the terms and conditions under which affiliation is given by such Universities in the State or outside the State. It shall come into force on such date as the State Government may, by (4) notification in the Official Gazette, appoint. In this Act, unless the context otherwise requires,- (a) 'academic year' means the period of the working days commencing from February to December of every year; (b) 'attendance' means the presence for instructions on all days in the academic year during the hours notified by the State Government (c) (d) (g) (h) (j) (k) (m) (o) (p) (q) 'Director' means the Director of Education appointed by the Government and includes any person discharging the duties and functions of the Director; 'District Education Officer' means the officer appointed as such and includes Joint Director, Deputy Director or any other officer authorised in his behalf in the Government to exercise the powers and perform the functions of a District Education Officer; 'district' means a revenue district; 'education' means general education, technical education, adult education (including non-formal) oriental education and any branch of education which the Government may, by notification, specify; 'educational institution' means a school, college, special institution or any other institution by whatever name called where the activity of imparting education, art or culture is carried on and includes an orphanage, boarding home, hostel, workshop, laboratory and every premises attached thereto but does not include a tutorial institution having less than five pupils; 'Government' means Government of Sikkim; 'Grant or grant-in-aid' means any sum of money paid as aid by the State Government to any educational institution; 'Manager' means - in relation to a government educational institution, the officer or the authority to whom the power of immediate control over the institution has been entrusted and includes principal or headmaster; in relation to any other institution the person nominated to manage the affairs of the institution and includes principal or headmaster; 'minority educational institution' means an educational institution established and administered by a minority whether based on religion or language having the right to do so under clause (1) of article 30 of the Constitution of India; 'Notification' means notification published in the Official Gazette; 'Prescribed' means prescribed by rules made by the Government under this Act; 'private institution' means an institution imparting education or training established and administered or maintained by any person or body of persons and recognised as educational institution by the Government and includes a college, a special institution and a minority educational institution but does not include - an educational institution established by the Central Government or the State Government; an institution established by any University; 'special institution' means reformatory school, school for physically handicapped or mentally retarded or other disabled or defective pupils, institution imparting religious education or any other institution which may be notified by the Government as special institution; 'student' means a person who is admitted to any educational institution for learning or training and whose name is lawfully borne on the attendance register of the institution; 'teacher' means any member of the teaching staff. in an educational institution appointed to give instruction in that institution. 2 Appointment of Director of Education, etc. District Education Officer. 4. Classification. Permission for establishment of Private educational Institutions. (2) (3) (2) (3) CHAPTER - 11 ADMINISTRATIVE MACHINERY The Government may appoint for the State a Director of Education for the purpose of exercising control, supervision and regulating the proper functioning of the educational institutions. The Government may

also appoint such number of Additional Directors, Joint Directors, Deputy Directors and such other officers as it thinks fit to assist the Director in the discharge of his duties. Subject to the general or special orders of the Government made in this behalf, the Director shall be the Chief Controlling authority in all matters connected with the establishment, administration and functioning of educational institutions in the State. The Government may appoint for each district one or more District Education Officer and every such District Education Officer shall exercise powers of control and supervision over the educational Officers and other institutions in the district subject to the control of the Director. The Government may sanction the appointment of such number of Officers and staff as may be necessary to assist the District Education Officer; All the officers and staff shall exercise such powers and functions as may be entrusted by the District Education Officer.

CHAPTER - III EDUCATIONAL INSTITUTIONS AND THEIR FUNCTIONS

Educational institutions in the State shall be classified as follows -

5. Government institutions
6. Other institutions (whether aided or unaided)

(2) No private educational institution shall, after the commencement of this Act, be established or upgraded except in accordance with the previous permission of the Government. While granting permission the Government shall have due regard to the following matters, namely there is need for such facilities in the locality, financial capacity of the applicants, health and hygiene of the place, provision for adequate buildings, playground and other necessary equipment, availability of able or qualified teaching staff, and any other matter as the Government thinks fit to grant permission.

(3) While granting recognition to the minority managed educational institution, the instruction issued by the Department of Education, Ministry of Human Resource Development will be kept in view as far as practicable depending upon local condition.

institution has applied for recognition within the time specified above and its application has not been finally disposed of by the authority, whichever is later.

(2) No such institution shall be run after the application for recognition is rejected

The Government may, for the purpose of implementing the provisions of this Act, provide adequate facilities for imparting general education, technical education and teacher education in the State of Sikkim by Government institutions.

Appointment and removal of Manager. Duties of Manager. Restriction of alienation of Property.

9. (a) (b) (1) (2) (3) (5) (6) (1) (2) (3) (4) (1) establishing and maintaining educational institutions. and permitting any statutory body or local authority, person or body of persons to establish educational institutions and maintain them according to such standards and specification as may be specified in the Official Gazette. All the educational institutions in the State shall appoint a person as Manager who shall be responsible to the authorities under this Act for implementation of all orders, directions and notifications issued in accordance with the provisions of this Act and rules made thereunder. Such appointment shall be notified to the Director of Education within three months from the date of commencement of this Act. If any institution fails to notify such appointment within the specified period, the District Education Officer shall notify any member of the teaching staff of an institution to be the Manager of that institution, If the Director is satisfied that a Manager is responsible for lapses of implementing the orders, directions and notifications issued under this Act and rules made thereunder, or has become unfit to be continued as a Manager, he shall, after giving him an opportunity for making a representation, disqualify him to be continued as a Manager. Upon receipt of orders from the Director under sub-section (4), the management of said educational institution shall remove such person from the post of Manager and make a fresh appointment in that place. A Manager so disqualified shall not be entitled to be nominated as a Manager for a period of five years from the date of such removal, The Manager appointed under section 10 shall be responsible for managing and conducting the affairs of the educational institution in accordance with the directions, orders, and notifications issued by the authorities under this Act and rules made thereunder and maintaining properties of the said institution in proper and good condition. It shall be the duty of the Manager to maintain registers and records as directed by the Directors. The Manager shall afford all assistance for inspection as and when required by the authorities under this Act. The Manager shall submit a report at the end of every academic year to the Director giving particulars of the movable and immovable properties, income and expenditure and details of the activities of the institution both curricular and extra-curricular during the academic year. Notwithstanding anything contained in any other law for the time being in force, no sale, mortgage, lease, pledge, gift, charge or transfer of possession in respect of property of a private or special institution shall be made

5. Grant or Grant-in-aid. Accounts and Audit. or created without the previous permission in writing of the Director of Education on the application made in

this behalf. (2) The Director, on receipt of such application for permission, shall pass orders within three months and give reasons in case of rejection of the permission. (3) Any sale, mortgage, lease, pledge, gift, charge or transfer of possession in respect of property so made in contravention of the provision of this section shall be null and void.

CHAPTER - IV GRANT OR GRANT-IN-AID 13. (1) The Government shall, within the limits of its economic capacity, set apart a sum of money annually for being given as grant or grant-in-aid to educational institutions other than those run by the Government which are recognised under this Act. (2) The Government may, in cases in which it thinks fit, sanction grant or grant-in-aid to recognised educational institutions and authorise the Director by general or special order for disbursing the grant or grant-in-aid as per the guidelines issued by the Government in this behalf. (3) Every application for sanction of the grant or grant-in-aid shall be made to Government in the prescribed form signed by the Manager alongwith the annual report of the educational institution. (4) The decision of the Government to grant or reject the grant or grant-in-aid shall be final and binding on the educational institution. (5) Notwithstanding anything contained in this Act, the Government may, after such enquiry as it may deem fit, withhold or reduce or withdraw any grant or grant-in-aid payable to the educational institution for reasons to be recorded in writing. An order passed under this sub-section shall be final and binding on the educational institution. (6) On the withdrawal of recognition, the grant-in-aid already paid to the institution shall be recovered from the institution as a public demand in accordance with the provisions of the Sikkim Public Demands Recovery Act, 1988. (7) Every educational institution which has been recognised under this Act shall submit to the Director of Education the educational statistics annually in the form as may be prescribed. Failure on the part of any educational institution to submit the same may lead to withdrawal of recognition under this Act.

CHAPTER - V ACCOUNTS, AUDITS AND RETURNS 14. (1) Every educational institution receiving grant or grant-in-aid from State funds or from other sources shall maintain accounts in such manner and in such form as directed by the authorities under this Act. (2) The accounts of every educational institution receiving grant or grant-in-aid or moneys from other sources shall be audited at the end of every academic year by persons notified by the Director from time to time. After audit, the statement of accounts shall be submitted to the Director.

6 Inspection and Inquiry, Taking over management/management of educational institutions in public interest. 15. (1) The Director or any officer authorised by the Director shall have the right to inspect or inquire or cause an inspection or inquiry into the affairs of every educational institution and draw up a report of findings of such an inspection or inquiry. (2) The Director shall afford an opportunity to the educational institution to make representation on the findings of the report. (3) The educational institution shall be allowed a period of thirty days for rectification of the defects pointed out in the report after the representation of the educational institution is submitted. (4) If the educational institution fails to comply with the directions given by the Director for rectification, the Director shall take such action as he deems fit in the circumstances to rectify the defects or deficiencies and for this purpose shall have all the powers of the management of the said institution.

CHAPTER - VI TAKING OVER OF MANAGEMENT, REQUISITIONING AND ACQUISITION OF EDUCATIONAL INSTITUTIONS 16. (1) Where the Government is of opinion that the management of any educational institution should either in public interest or in order to secure the proper management of the said educational institution be taken over, it may, after giving an opportunity to the management to make any representation, take over the management of said educational institution by issuing a notification and on and from the date of such notification the management of the said educational institution shall vest in the Government with all its assets, moveable and immovable properties. (2) Upon publication of the notification under sub-section (1), all the liabilities of the educational institution shall stand postponed for a period of five years or till the institution is finally acquired, whichever is earlier. (3) Notwithstanding anything contained in the Limitation Act, 1963, the period of limitation for any claims through Civil Court shall exclude the period covered by sub-section (2) of this section. (4) All persons who are in the management on the date of the notification shall cease to hold any office in the management and shall be deemed to have vacated their office as on that date. (5) The Director either personally or through a body of persons nominated by him, shall assume the management of the said educational institution. (6) All contracts with the management before the notification shall automatically stand terminated. The Director or the new management may renew the contracts upon fresh negotiation and fresh terms mutually agreed between the parties. All contracts of employment shall be in force during the period agreed under the contract of employment. (7) All claims against the management of the said educational institution shall

remain to be the claims against the said institution and the Government shall not be liable to any of those claims or liabilities of the said educational institution. (8) Upon vesting of the management of the educational institution, the Government shall pay an amount equivalent of the net value of the property as assessed by the competent authority in five equal instalments.

Requisitioning of assets of educational institutions. Acquisition of Property. 17. (1) Where recognition or permission granted to an educational institution is withdrawn under this Act, or where an educational institution is closed or mismanaged and, if, in the opinion of the Government, it is necessary to requisition the assets and the property of such an institution, the Government may, after giving an opportunity to the management of the institution to make representation, requisition such assets and property and make such further orders regarding the possession and use of such assets and property of such an educational institution, as may appear necessary or expedient in connection with the purpose of such requisitioning. (2) Where any property is requisitioned under sub-section (1) the Government may (a) use, or deal with such property for any educational purpose, or by order permit any person or body of persons to use or deal with such property for any such purpose subject to the payment of rent or other to the Government. (3) The Director or any person authorised by him shall enter upon the property requisitioned and take possession of the property requisitioned, dispossessing any person remaining in possession of such so requisitioned. (4) Any person who resists Director or any person by him to take possession shall be liable to the Government and the Government may, by notification, release the property from the order or requisition in whole or in part if it is of the opinion that there is no necessity for keeping the property under requisition. (5) On such release, the property shall vest in the person or body of persons from whom it was requisitioned and the Government shall be discharged of the liabilities in respect of that property. (6) During the period of requisition, the Government shall pay rent to the owner of the property at a rate as applicable to similar properties in that area as per rules framed by the Government for fixing rent. 18. (1) Where any property is vested under section 16 in connection with the taking over of the management of the educational institution or is subject to requisition under section 17, the Government may, if it considers it necessary to acquire the property for any public purpose connected with education, acquire at any time such property by publishing a notice in the Official Gazette to the effect that 'The Government has decided to acquire the property in pursuance of this section'. (2) When notice under sub-section (1) is published in the Official Gazette, the said property shall, on and from the date on which the notice is so published, cease to be subject of requisitioning and shall vest absolutely in the Government free from all encumbrances. Provided that no requisition under this section shall be made unless the State Government pay compensation, solatium and interests etc. to the management of educational institution as per the provisions of the Land Acquisition Act, 1894.

CHAPTER - VII STANDARD OF EDUCATION AND DISCIPLINE Education in Sikkim 19. (1) The education in all Government educational institutions in the State shall be free. Standard of Education. Sikkim shall be free to everybody. (2) The fees chargeable in other schools shall be levied subject to the approval of the Government. 20. (1) The standards of education, syllabi, text-book and other requirements shall be such as may be prescribed by the Government. (2) For the purposes of sub-section (1), the Government may set up a Committee for advising the Government on all aspects connected with education from time to time. Discipline amongst 21. The Director shall draw up a Code of Conduct for students and teachers for students. Examinations assessment. Appointment Teachers. Termination of Service. maintaining discipline and fair teacher-student relationship. 22. (1) The examination system whether by internal assessment, external assessment or partly internal and partly external shall be regulated by the Director as to make it a reliable and effective method of student evaluation. (2) The Government may draw up a Scheme for all matters connected with the implementation of examination system and the conduct of examinations.

CHAPTER - TEACHERS AND STAFF OF EDUCATIONAL INSTITUTIONS 23. (1) Teachers shall be appointed - (2) (3) (4) (5) (6) (7) (8) 24. (1) (2) (3) (a) on regular basis or, (b) on contract basis. Any teacher may be initially appointed under a contract for an agreed period. The terms and conditions of the contract in force on the date of commencement of this Act shall continue till they are altered or amended by the Government. No teacher appointed on contract shall be entitled to claim regularisation as a matter of right. Pay and allowances of teaching and other staff may be such as regulated by the orders of the Government issued from time to time. The Government shall have power to lay down the conditions of service of teachers and other staff employed in educational institutions. The members of staff and teachers of all educational

institutions are governed by the conditions of service laid down by the Government from time to time. No educational institution can offer service conditions lesser than those laid down by the Government. Termination of service on the expiry of the contract shall not be construed as termination of service by the employer. The service of an employee including a teacher shall not be terminated without reasonable cause and without one month's notice or payment of one month's salary in lieu of notice. No employee shall be discharged or dismissed for a misconduct unless an enquiry is conducted according to principles of natural justice. 9 (4) No teacher shall be placed under suspension without the prior permission of the District Education Officer. Appeal against, or- 25. (1) Any employee of an educational institution who is suspended, dismissed, or termination, discharged or terminated may prefer an appeal against the order within thirty days to the Director. (2) The Director after hearing both parties may dismiss the appeal or allow the appeal and set aside the order and pass such other order as it deems fit in the circumstances of the case. (3) Against the order of the Director a second appeal shall lie to the Government within thirty days from the date of the order. (4) The Government may dismiss the appeal, allow the appeal or pass such order as it deems fit in the circumstances of the case. Welfare, of the em- 26. (1) The Government may appoint a joint and Consultative Committee consisting of representatives of Government, representatives of management of educational institutions and representatives of employees of educational institutions to deal with matters pertaining to welfare of employees. The recommendations of such a Committee will be directory in nature. (2) The Government may, in consultation with the representatives of employees of educational institutions, prescribe the Code of Conduct and duties of employees. (3) Till new conduct rules are published, all the existing rules shall continue to be in force. CHAPTER - IX PARENT-TEACHER ASSOCIATION 27. (1) The Manager of every educational institution shall constitute a parent - teacher association to discuss and decide the obligations to the cause of the education and student-teacher relationship. (2) It shall consist of not more than ten members comprising five members from the parents and the other five from the teachers. (3) It shall meet at least twice in a year. (4) The minutes of meeting shall be forwarded to the District Education Officers for information and action, if necessary, CHAPTER - X PENALTIES 28. (5) If any educational institution whose application for recognition is refused or whose recognition has been withdrawn under this Act is found running in contravention of this Act shall be punished with fine which may extend to ten thousand rupees and in the case of continuing contravention with an additional fine which may extend to one thousand rupees per day during which such contravention continues after the first conviction. (2) If any person obstructs any authority, officer or person from entering any educational institution in exercise of powers under this Act or the rules made thereunder, he shall be punished with a fine which may extend to rupees two thousand. 10 Offences by companies, etc. Offences to be cognizable. Appeals

29. Where a body of persons contravenes any provision of this Act or rules made thereunder or notification or order or direction issued under this Act the rules made thereunder, all the persons/persons comprising the body of persons are liable for prosecution unless they establish that they in spite of due care and diligent conduct could not prevent the contravention. In this section, body of persons means a company, a partnership firm or an association whether registered or not.

30. (1) No prosecution for an offence under this Act shall be instituted except or with the written consent of the State Government or a person authorised in this behalf by the State Government. (2) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act. CHAPTER - XI MISCELLANEOUS 31. Save as otherwise provided in this Act (a) Any person aggrieved by an order passed by an officer or authority other than the Director under this Act, may prefer an appeal to the Director within thirty days of the receipt of the order. (b) Any person aggrieved by an order passed by the Director, may prefer an appeal to the Government within thirty days from the receipt of the order. Powers of Revision. 32. (1) The Government may suo-moto or on an application from any interested person, within thirty days, call for and examine the record of an educational institution or any authority or officer or person or body of persons in respect of any order or decision not being a proceeding in arbitration before the District Collector, to satisfy as to the regularity, propriety or legality or correctness of the order in case it appears to the Government that it requires to be modified or cancelled or reversed or remitted for consideration, it may pass order accordingly: Provided that no order shall be passed adversely affecting any party without affording an

opportunity for making a representation. (2) The Government may stay the operation of any order or decision pending revision

33. The Government or the Director may, suo-moto or on an application preferred in this behalf by any persons within three months from the date of the order or decision, review any such order or decision if it was passed by it or him under any mistake of fact or law or in ignorance of any material fact'.34.

(1) The Government may, subject to the other provisions of this Act; by order, direct the Director or any other officer not below the rank of District Education Officer to conduct an enquiry or to initiate appropriate proceedings under this Act in respect of any matter specified in the said order and the Director or other officer, as the case may be; shall report to the Government in writing. - Delegation of Powers. Emergency powers of the Director. Power to enter and inspect, Protection of acts done in good faith. Managers and employees to be public servants. Power to make rules. Existing rules to continue. initiated by him. (2) The Government may give directions to any educational institution as to giving effect to any of the provisions contained in this Act or of any rules, orders, directions or notifications made or issued under this Act and the Manager or the owner of such educational institution shall comply with such direction

35. The State Government may, by notification in the Official Gazette and subject to such conditions if any, as may be specified in the notification, authorise any officer subordinate to it to exercise all or any of the powers conferred on the State Government by or under this Act.

36. (1) If, at any time, it appears to the Director that the Manager of any educational institution has committed default in performing any function relating to maintenance and administration of the educational institution entrusted to him, he may, by order in writing fix a period for the performance of such functions. (2) If the Manager fails to perform the function within such period so fixed, the Director may appoint any officer subordinate to him to perform the function on behalf of the Manager and recover the costs incurred, if any, from the said institution or from the grant-in-aid payable to the institution

37. Every officer not below the rank of Assistant Education Officer in the Education Department shall have power to enter into an educational institution and inspect its register, records, documents and accounts or books of accounts pertaining to property, both movable and immovable.38, No suit, prosecution or other legal proceeding shall be instituted against the Government, Director or any other officer, authority or person for anything which is in good faith done or intended to be done under this Act or the rules, orders or notification made or issued thereunder

39. Every Manager and employees of every educational institution shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 while on duty in connection with the affairs of the educational institution

40. The Government may, by notification, make rules to carry all or any of the provisions of this Act.41. 'All rules, notifications, orders or contracts shall continue to be in force as if they were made under this Act until they are superseded. By Order. K. R. NARAYANAN, PRESIDENT. T. D. RINZING, Secretary to the Govt. of Sikkim, Law Department. [F. No. 02-86(A) Edu-pig./Law/2002] Printed at Sikkim Government Press, Gangtok.