

SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

[ASSENTED TO 6 NOVEMBER 1996]

[DATE OF COMMENCEMENT: 1 JANUARY 1997]

(English text signea by the President)

as amended by

Education Laws Amendment Act 100 of 1997
Education Laws Amendment Act 48 of 1999
Education Laws Amendment Act 53 of 2000
Education Laws Amendment Act 57 of 2001
Education Laws Amendment Act 50 of 2002
Education Laws Amendment Act 1 of 2004
Education Laws Amendment Act 24 of 2005
Education Laws Amendment Act 31 of 2007
Basic Education Laws Amendment Act 15 of 2011

Regulations under this Act

ACT

To provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.

Preamble

WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

WHEREAS this country requires a new national system for schools which will redress past injustices in educational provision, provide an education of progressively high quality for all learners and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organisation, governance and funding of schools in partnership with the State; and

WHEREAS it is necessary to set uniform norms and standards for the education of learners at schools and the organisation, governance and funding of schools throughout the Republic of South Africa;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: -

CHAPTER 1 DEFINITIONS AND APPLICATION OF ACT (ss 1-2)

1 Definitions

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(1) In this Act, unless the context indicates otherwise-

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' substituted by s. 1 (b) of Act 100 of 1997.]

'Council of Education Ministers' means the Council of Education Ministers established by the National Education Policy Act, 1996 (Act 27 of 1996);

'dangerous object' means-

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that the Minister may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;

[Definition of 'dangerous object' inserted by s. 4 (a) of Act 31 of 2007.]

'education department' means the department established by section 7 (2) of the Public Service Act, 1994 (Proclamation 103 of 1994), which is responsible for education in a province;

'educator' means any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school;

[Definition of 'educator' substituted by s. 6 (a) of Act 48 of 1999.]

'governing body' means a governing body contemplated in section 16 (1);

'grade' means that part of an educational programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem to be equivalent thereto;

'Head of Department' means the head of an education department;

'illegal drug' means-

- (a) any unlawful substance that has a psychological or physiological effect; or
- (b) any substance having such effect that is possessed unlawfully;

[Definition of 'illegal drug' inserted by s. 4 (b) of Act 31 of 2007.]

'independent school' means a school registered or deemed to be registered in terms of section 46;

'learner' means any person receiving education or obliged to receive education in terms of this Act;

'loan' means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the governing body in terms of section 20 (4) or (5);

[Definition of 'loan' inserted by s. 4 (a) of Act 15 of 2011.]

'member of staff' means a person employed at a school;

'Member of the Executive Council' means the Member of the Executive Council of a province who is responsible for education in that province;

'Minister' means the Minister of Basic Education;

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[Definition of 'Minister' substituted by s. 4 (b) of Act 15 of 2011.]

'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;

[Definition of 'no fee threshold' inserted by s. 1 (a) of Act 24 of 2005.]

'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;

[Definition of 'norms and standards for school funding' inserted by s. 1 (a) of Act 24 of 2005.]

'officer' means an employee of an education department appointed in terms of the Educators Employment Act, 1994 (Proclamation 138 of 1994), or the Public Service Act, 1994 (Proclamation 103 of 1994);

'parent' means-

(a) the biological or adoptive parent or legal guardian of a learner;

[Para. (a) substituted by s. 4 (c) of Act 15 of 2011.]

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school;

'principal' means an educator appointed or acting as the head of a school;

'province' means a province established by section 124 of the Constitution;

'provincial legislature' means a provincial legislature contemplated in section 125 of the Constitution;

'public school' means a school contemplated in Chapter 3;

'Registrar of deeds' means the registrar of deeds referred to in section 2 of the Deeds Registries Act, 1937 (Act 47 of 1937);

[Definition of 'Registrar of deeds' inserted by s. 1 (a) of Act 100 of 1997.]

'school' means a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve;

[Definition of 'school' substituted by s. 1 (c) of Act 100 of 1997 and by s. 6 (b) of Act 48 of 1999.]

'school activity' means any official educational, cultural, recreational or social activity of the school within or outside the school premises;

[Definition of 'school activity' inserted by s. 4 (c) of Act 31 of 2007.]

'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;

[Definition of 'school fees' inserted by s. 1 (b) of Act 24 of 2005.]

'this Act' means this Act and all regulations promulgated under this Act.

(2) Footnotes appearing in this Act must not be used in the interpretation of any provision of this Act.

[Sub-s. (2) added by s. 1 of Act 50 of 2002.]

2 Application of Act

(1) This Act applies to school education in the Republic of South Africa.

(2) A Member of the Executive Council and a Head of Department must exercise any

power conferred upon them by or under this Act, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act 27 of 1996).

(3) Nothing in this Act prevents a provincial legislature from enacting legislation for school education in a province in accordance with the Constitution and this Act.

[Sub-s. (3) amended by s. 2 of Act 100 of 1997.]

CHAPTER 2 **LEARNERS (ss 3-11)**

3 Compulsory attendance

(1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom he or she is responsible to attend a school from the first school day of the year in which such learner reaches the age of seven years until the last school day of the year in which such learner reaches the age of fifteen years or the ninth grade, whichever occurs first.

(2) The Minister must, by notice in the *Government Gazette*, determine the ages of compulsory attendance at school for learners with special education needs.

(3) Every Member of the Executive Council must ensure that there are enough school places so that every child who lives in his or her province can attend school as required by subsections (1) and (2).

(4) If a Member of the Executive Council cannot comply with subsection (3) because of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

(5) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may-

- (a) investigate the circumstances of the learner's absence from school;
- (b) take appropriate measures to remedy the situation; and
- (c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

(6) Subject to this Act and any other applicable law-

- (a) any parent who, without just cause and after a written notice from the Head of Department, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or
- (b) any other person who, without just cause, prevents a learner who is subject to compulsory attendance from attending a school, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

4 Exemption from compulsory attendance

(1) A Head of Department may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

(2) Every Head of Department must maintain a register of all learners exempted from compulsory school attendance.

5 Admission to public schools

(1) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

(2) The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct or authorise the principal of the school or any other person to administer such test.

(3) No learner may be refused admission to a public school on the grounds that his or her parent-

- (a) is unable to pay or has not paid the school fees determined by the governing body under section 39;
- (b) does not subscribe to the mission statement of the school; or
- (c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

(4) (a) The admission age of a learner to a public school to-

- (i) grade R is age four turning five by 30 June in the year of admission;
- (ii) grade 1 is age five turning six by 30 June in the year of admission.

(b) Subject to the availability of suitable school places and other educational resources, the Head of Department may admit a learner who-

- (i) is under the age contemplated in paragraph (a) if good cause is shown; and
- (ii) complies with the criteria contemplated in paragraph (c).

(c) The Minister may, by regulation, prescribe-

- (i) criteria for the admission to a public school, at an age lower than the admission age, of an underage learner who complies with the criteria; ¹
- (ii) age requirements for different grades at a public school.

(d) For the purpose of paragraph (b) (i), good cause shown means that-

- (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in his or her best interest; and
- (ii) the refusal to admit that learner would be severely detrimental to his or her development.

[Sub-s. (4) substituted by s. 2 of Act 50 of 2002.]

(5) Subject to this Act and any applicable provincial law, the admission policy of a public school is determined by the governing body of such school.

(6) In determining the placement of a learner with special education needs, the Head of Department and principal must take into account the rights and wishes of the parents of such learner.

(7) An application for the admission of a learner to a public school must be made to the education department in a manner determined by the Head of Department.

(8) If an application in terms of subsection (7) is refused, the Head of Department

must inform the parent in writing of such refusal and the reason therefor.

(9) Any learner or parent of a learner who has been refused admission to a public school may appeal against the decision to the Member of the Executive Council.

- ¹ It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that-
- (a) learners are admitted on an equitable basis;
 - (b) there is no unfair discrimination to learners;
 - (c) the admission is fair to the individual learner as well as other learners in the classroom;
 - (d) recognition is given to the diversity of language, culture and economic background;
 - (e) notice is taken of the differences between urban and rural environments; and
 - (f) the physical, psychological and mental development of the child is taken into account.

5A Norms and standards for basic infrastructure and capacity in public schools

(1) The Minister may, after consultation with the Minister of Finance and the Council of Education Ministers, by regulation prescribe minimum uniform norms and standards for-

- (a) school infrastructure;
- (b) capacity of a school in respect of the number of learners a school can admit; and
- (c) the provision of learning and teaching support material.

[Sub-s. (1) amended by s. 5 of Act 15 of 2011.]

(2) The norms and standards contemplated in subsection (1) must provide for, but not be limited to, the following:

- (a) in respect of school infrastructure, the availability of-
 - (i) classrooms;
 - (ii) electricity;
 - (iii) water;
 - (iv) sanitation;
 - (v) a library;
 - (vi) laboratories for science, technology, mathematics and life sciences;
 - (vii) sport and recreational facilities;
 - (viii) electronic connectivity at a school; and
 - (ix) perimeter security;
- (b) in respect of the capacity of a school-
 - (i) the number of teachers and the class size;
 - (ii) quality of performance of a school;
 - (iii) curriculum and extra-curricular choices;
 - (iv) classroom size; and

- (v) utilisation of available classrooms of a school;
- (c) in respect of provision of learning and teaching support material, the availability of-
 - (i) stationery and supplies;
 - (ii) learning material;
 - (iii) teaching material and equipment;
 - (iv) science, technology, mathematics and life sciences apparatus;
 - (v) electronic equipment; and
 - (vi) school furniture and other school equipment.

(3) When determining policy in terms of sections 5 (5) and 6 (2) a governing body must comply with the norms and standards contemplated in subsection (1).

(4) A governing body must, within a period of 12 months after the Minister has prescribed the norms and standards contemplated in subsection (1), review any policy that it has determined in terms of sections 5 (5) and 6 (2) to ensure that such policy complies with the norms and standards.

[S. 5A inserted by s. 5 of Act 31 of 2007.]

6 Language policy of public schools

(1) Subject to the Constitution and this Act, the Minister may, by notice in the *Government Gazette*, after consultation with the Council of Education Ministers, determine norms and standards for language policy in public schools.

(2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.

(3) No form of racial discrimination may be practised in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

6A Curriculum and assessment

(1) The Minister must, by notice in the *Government Gazette*, determine-

- (a) a national curriculum statement indicating the minimum outcomes or standards; and
- (b) a national process and procedures for the assessment of learner achievement.

(2) The curriculum and the process for the assessment of learner achievement contemplated in subsection (1) must be applicable to public and independent schools.

[S. 6A inserted by s. 3 of Act 50 of 2002.]

6B Non-discrimination in respect of official languages

The governing body of a public school must ensure that-

- (a) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in section 21 (1) (b); and
- (b) the first additional language and any other official language offered, as

provided for in the curriculum, are offered on the same level.
[S. 6B inserted by s. 6 of Act 15 of 2011.]

7 Freedom of conscience and religion at public schools

Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

8 Code of conduct

(1) Subject to any applicable provincial law, a governing body of a public school must adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.

(2) A code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.

(3) The Minister may, after consultation with the Council of Education Ministers, determine guidelines for the consideration of governing bodies in adopting a code of conduct for learners.

(4) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by such learner.

(5) (a) A code of conduct must contain provisions of due process safe-guarding the interests of the learner and any other party involved in disciplinary proceedings.

(b) The code of conduct must also provide for support measures or structures for counselling a learner involved in disciplinary proceedings.

[Sub-s. (5) substituted by s. 6 of Act 31 of 2007.]

(6) A learner must be accompanied by his or her parent or a person designated by the parent at disciplinary proceedings, unless good cause is shown by the governing body for the continuation of the proceedings in the absence of the parent or the person designated by the parent.

[Sub-s. (6) added by s. 4 of Act 50 of 2002.]

(7) Whenever disciplinary proceedings are pending before any governing body, and it appears to such governing body that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the governing body may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

[Sub-s. (7) added by s. 4 of Act 50 of 2002.]

(8) (a) An examination, cross-examination or re-examination of a witness in respect of whom a governing body has appointed an intermediary under subsection (7), except examination by the governing body, must not take place in any manner other than through that intermediary.

(b) Such intermediary may, unless the governing body directs otherwise, convey the general purport of any question to the relevant witness.

[Sub-s. (8) added by s. 4 of Act 50 of 2002.]

(9) If a governing body appoints an intermediary under subsection (7), the governing

body may direct that the relevant witness must give his or her evidence at any place which-

- (a) is informally arranged to put that witness at ease;
- (b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) enables the governing body and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-s. (9) added by s. 4 of Act 50 of 2002.]

8A Random search and seizure and drug testing at schools

(1) Unless authorised by the principal for legitimate educational purposes, no person may bring a dangerous object or illegal drug onto school premises or have such object or drug in his or her possession on school premises or during any school activity.

(2) Subject to subsection (3), the principal or his or her delegate may, at random, search any group of learners, or the property of a group of learners, for any dangerous object or illegal drug, if a fair and reasonable suspicion has been established-

- (a) that a dangerous object or an illegal drug may be found on school premises or during a school activity; or
- (b) that one or more learners on school premises or during a school activity are in possession of dangerous objects or illegal drugs.

(3) (a) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including-

- (i) the best interest of the learners in question or of any other learner at the school;
- (ii) the safety and health of the learners in question or of any other learner at the school;
- (iii) reasonable evidence of illegal activity; and
- (iv) all relevant evidence received.

(b) When conducting a search contemplated in subsection (2), the principal or his or her delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.

(4) Where a search contemplated in subsection (2) entails a body search of the learners in question, such search may only-

- (a) be conducted by-
 - (i) the principal, if he or she is of the same gender as the learner; or
 - (ii) by the principal's delegate, who must be of the same gender as the learner;
- (b) be done in a private area, and not in view of another learner;
- (c) be done if one adult witness, of the same gender as the learner, is present; and
- (d) be done if it does not extend to a search of a body cavity of the learner.

(5) Any dangerous object or illegal drug that has been seized must be-

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- (a) clearly and correctly labelled with full particulars, including-
 - (i) the name of learner in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of person who searched the learner;
 - (v) the name of the witness; and
 - (vi) any other details that may be necessary to identify the item and incident;
- (b) recorded in the school record book; and
- (c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(6) If the police cannot collect the dangerous object or illegal drug from the school immediately, the principal or his or her delegate must-

- (a) take the dangerous object or illegal drug to the nearest police station; and
- (b) hand the dangerous object or illegal drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(7) The police officer who receives the dangerous object or illegal drug must issue an official receipt for it to the principal or to his or her delegate.

(8) The principal or his or her delegate may at random administer a urine or other non-invasive test to any group of learners that is on fair and reasonable grounds suspected of using illegal drugs, after taking into account all relevant factors contemplated in subsection (3).

(9) A learner contemplated in subsection (8) may be subjected to a urine or other non-invasive test for illegal drugs only if-

- (a) the test is conducted by a person of the same gender;
- (b) it is done in a private area and not in view of another learner;
- (c) one adult witness, of the same gender as the learner, is present;
- (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and
- (e) a device contemplated in subsection (11) is used.

(10) The principal or his or her delegate must-

- (a) within one working day, if practicable, inform the parent that a random test or search and seizure was done in respect of his or her child; and
- (b) inform the learner and his or her parent of the result of the test immediately after it becomes available.

(11) The Minister must-

- (a) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and
- (b) publish the name of this device, and any other relevant information about it, in the *Gazette*.

(12) A learner may be subjected to disciplinary proceedings if-

- (a) a dangerous object or illegal drug is found in his or her possession; or
- (b) his or her sample tested positive for an illegal drug.

(13) Any disciplinary proceedings in respect of a learner must be conducted in terms of the code of conduct contemplated in section 8.

(14) No criminal proceedings may be instituted by the school against a learner in respect of whom-

- (a) a search contemplated in subsection (2) was conducted and a dangerous object or illegal drug was found; or
- (b) a test contemplated in subsection (8) was conducted, which proved to be positive.

[S. 8A inserted by s. 7 of Act 31 of 2007.]

9 Suspension and expulsion from public school

(1) The governing body may, on reasonable grounds and as a precautionary measure, suspend a learner who is suspected of serious misconduct from attending school, 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.

[Sub-s. (1) amended by s. 7 of Act 48 of 1999 and substituted by s. 2 (a) of Act 24 of 2005.]

(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.

[Sub-s. (1A) inserted by s. 2 (a) of Act 24 of 2005.]

(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.

[Sub-s. (1B) inserted by s. 2 (a) of Act 24 of 2005.]

(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.

[Sub-s. (1C) inserted by s. 2 (a) of Act 24 of 2005.]

(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.

[Sub-s. (1D) inserted by s. 2 (a) of Act 24 of 2005.]

(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.

[Sub-s. (1E) inserted by s. 2 (a) of Act 24 of 2005.]

(2) 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 disciplinary proceedings contemplated in section 8 were conducted.

[Sub-s. (2) substituted by s. 2 (b) of Act 24 of 2005.]

(3) The Member of the Executive Council must determine by notice in the *Provincial Gazette*-

- (a) the behaviour by a learner at a public school which may constitute serious misconduct;
- (b) disciplinary proceedings to be followed in such cases;
- (c) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

(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.

[Sub-s. (4) substituted by s. 2 (c) of Act 24 of 2005.]

(5) If a learner who is subject to compulsory attendance in terms of section 3 (1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

(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.

[Sub-s. (6) added by s. 2 (d) of Act 24 of 2005.]

(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).

[Sub-s. (7) added by s. 2 (d) of Act 24 of 2005.]

(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.

[Sub-s. (8) added by s. 2 (d) of Act 24 of 2005.]

(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.

[Sub-s. (9) added by s. 2 (d) of Act 24 of 2005.]

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

[Sub-s. (10) added by s. 2 (d) of Act 24 of 2005.]

(11) (a) If an appeal in terms of subsection (4) by a learner who has been expelled from a public school is upheld by the Member of the Executive Council, the Member of the Executive Council must ensure that a suitable sanction is then imposed on the learner within 14 days of the date on which the appeal was upheld.

(b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of subsections (8) and (9) apply with the changes required by the context.

[Sub-s. (11) added by s. 7 of Act 15 of 2011.]

10 Prohibition of corporal punishment

(1) No person may administer corporal punishment at a school to a learner.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

10A Prohibition of initiation practices

(1) A person may not conduct or participate in any initiation practices against a learner at a school or in a hostel accommodating learners of a school.

(2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of this Act and Schedule 2 to the Employment of Educators Act, 1998 (Act 76 of 1998).

(b) In addition to paragraph (a), a learner may institute civil action against a person or a group who manipulated and forced that learner to conduct or participate in any initiation practices.

(3) For the purposes of this Act, '**initiation practices**' means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a school, a group, intramural or extramural activities, interschools sports team, or organisation-

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

(4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (3), the relevant disciplinary authority referred to in subsection (2) (a) must take into account the right of the learner not to be subjected to such practices.

[S. 10A inserted by s. 5 of Act 50 of 2002.]

11 Representative council of learners

(1) A representative council of learners at the school must be established at every public school enrolling learners in the eighth grade or higher, and such council is the only recognised and legitimate representative learner body at the school.

[Sub-s. (1) substituted by s. 3 of Act 100 of 1997 and by s. 1 (a) of Act 57 of 2001.]

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(2) Subject to policy made in terms of section 3 (4) (g) of the National Education Policy Act, 1996 (Act 27 of 1996), the Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the functions and the procedures for the establishment and election of representative councils of learners.

[Sub-s. (2) substituted by s. 1 (b) of Act 57 of 2001.]

(3) The Member of the Executive Council may, by notice in the *Provincial Gazette*, exempt a public school for learners with special education needs from complying with subsection (1) if it is not practically possible for a representative council of learners to be established at the school.

CHAPTER 3 PUBLIC SCHOOLS (ss 12-33A)

12 Provision of public schools

(1) The Member of the Executive Council must provide public schools for the education of learners out of funds appropriated for this purpose by the provincial legislature.

(2) The provision of public schools referred to in subsection (1) may include the provision of hostels for the residential accommodation of learners.

(3) (a) A public school may be-

- (i) an ordinary public school;
- (ii) a public school for learners with special education needs; or
- (iii) a public school that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

(b) Subject to the relevant provisions of this Act, the Minister must determine norms and standards for school funding and norms and standards for governance and educator provisioning for public schools contemplated in paragraph (a) (iii).

[Sub-s. (3) substituted by s. 8 of Act 15 of 2011.]

(4) The Member of the Executive Council must, where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.

(5) The Member of the Executive Council must take all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.

(6) Nothing in this Act prohibits the provision of gender-specific public schools.

12A Merger of public schools

(1) Subject to subsection (2), the Member of the Executive Council may, by notice in the *Provincial Gazette*, merge two or more public schools into a single school.

(2) Before merging two or more public schools the Member of the Executive Council must-

- (a) give written notice to the schools in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;

- (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law.

(3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also-

- (a) notify the owner of the private property of his or her intention to merge the schools in question;
- (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
- (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.

(4) The single school contemplated in subsection (1) must be regarded as a public school.

(5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37 (4), vest in the single school.

(6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.

(b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.

(7) The governing body of a public school to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).

[S. 12A inserted by s. 8 of Act 48 of 1999.]

13 Public schools on State property

(1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(2) Subject to section 20 (1) (k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.

(3) The right referred to in subsection (2) may only be restricted-

- (a) by the Member of the Executive Council; and
- (b) if the immovable property is not utilised by the school in the interests of education.

(4) The Member of the Executive Council may not act under subsection (3) unless he

or she has-

- (a) informed the governing body of the school of his or her intention so to act and the reasons therefor;
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
- (c) duly considered any such representations received.

(5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

(6) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 14 has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.

(7) The Registrar of deeds may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the Registrar of deeds with proof of the agreement contemplated in subsection (6).

[Sub-s. (7) substituted by s. 4 (a) of Act 100 of 1997.]

(8) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), do not apply to the right contemplated in subsection (2).

(9) On application by the owner and on production of the owner's copy of the title deed, the Registrar of deeds must endorse on the title deed and in his or her records the fact that a public school has been established on the land in terms of this Act.

[Sub-s. (9) added by s. 4 (c) of Act 100 of 1997.]

14 Public schools on private property

(1) Subject to the Constitution and an expropriation in terms of section 58 of land or a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.

[Sub-s. (1) substituted by s. 2 of Act 53 of 2000.]

(2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for-

- (a) the provision of education and the performance of the normal functions of a public school;
- (b) governance of the school, including the relationship between the governing body of the school and the owner;
- (c) access by all interested parties to the property on which the school stands;
- (d) security of occupation and use of the property by the school;
- (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;
- (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.

(3) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.

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(4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

(5) Despite subsection (3), a Registrar of deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the Registrar of deeds receives-

- (a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
- (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

[Sub-s. (5) amended by s. 5 (a) of Act 100 of 1997.]

(6) The Minister must, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) The Registrar of deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms of section 33.

[Sub-s. (7) inserted by s. 5 (b) of Act 100 of 1997.]

(8) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

[Sub-s. (8), previously sub-s. (7), renumbered by s. 5 (b) of Act 100 of 1997.]

15 Status of public schools

Every public school is a juristic person, with legal capacity to perform its functions in terms of this Act.

16 Governance and professional management of public schools

(1) Subject to this Act, the governance of every public school is vested in its governing body and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.

[Sub-s. (1) substituted by s. 2 of Act 57 of 2001.]

(2) A governing body stands in a position of trust towards the school.

(3) Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the Head of Department.

(4) The Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.

[Sub-s. (4) added by s. 9 of Act 48 of 1999.]

(5) When the Head of Department decides that the school should be reopened, he or

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she must inform the governing body and the principal of the date on which the school must reopen.

[Sub-s. (5) added by s. 9 of Act 48 of 1999.]

(6) The principal or a person designated by the Head of Department must inform the educators and parents of the date contemplated in subsection (5).

[Sub-s. (6) added by s. 9 of Act 48 of 1999.]

(7) If a new public school is provided in terms of section 12, the governance of that school vests in the Head of Department until a governing body has been constituted in terms of this Act.

[Sub-s. (7) added by s. 3 of Act 53 of 2000.]

16A Functions and responsibilities of principal of public school

(1) (a) The principal of a public school represents the Head of Department in the governing body when acting in an official capacity as contemplated in sections 23 (1) (b) and 24 (1) (j).

(b) The principal must prepare and submit to the Head of Department an annual report in respect of-

(i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister in terms of section 6A; and

(ii) the effective use of available resources.

(c) (i) The principal of a public school identified by the Head of Department in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the school will be improved.

(ii) The academic performance improvement plan must be-

(aa) presented to the Head of Department on a date determined by him or her; and

(bb) tabled at a governing body meeting.

(iii) The Head of Department may approve the academic performance improvement plan or return it to the principal with such recommendations as may be necessary in the circumstances.

(iv) If the Head of Department approves the academic performance improvement plan the principal must, by 30 June, report to the Head of Department and the governing body on progress made in implementing that plan.

(v) The Head of Department may extend the date contemplated subparagraph (iv) on good cause shown.

(2) The principal must-

(a) in undertaking the professional management of a public school as contemplated in section 16 (3), carry out duties which include, but are not limited to-

(i) the implementation of all the educational programmes and curriculum activities;

(ii) the management of all educators and support staff;

(iii) the management of the use of learning support material and other equipment;

- (iv) the performance of functions delegated to him or her by the Head of Department in terms of this Act;
- (v) the safekeeping of all school records; and
- (vi) the implementation of policy and legislation;
- (b) attend and participate in all meetings of the governing body;
- (c) provide the governing body with a report about the professional management relating to the public school;
- (d) assist the governing body in handling disciplinary matters pertaining to learners;
- (e) assist the Head of Department in handling disciplinary matters pertaining to educators and support staff employed by the Head of Department;
- (f) inform the governing body about policy and legislation;
- (g) provide accurate data to the Head of Department when requested to do so; and
- (h) assist the governing body with the management of the school's funds, which assistance must include-
 - (i) the provision of information relating to any conditions imposed or directions issued by the Minister, the Member of the Executive Council or the Head of Department in respect of all financial matters of the school contemplated in Chapter 4; and
 - (ii) the giving of advice to the governing body on the financial implications of decisions relating to the financial matters of the school;

[Para. (h) added by s. 9 of Act 15 of 2011.]
- (i) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the governing body of the school;

[Para. (i) added by s. 9 of Act 15 of 2011.]

- (j) be a member of a finance committee or delegation of the governing body in order to manage any matter that has financial implications for the school; and

[Para. (j) added by s. 9 of Act 15 of 2011.]

- (k) report any maladministration or mismanagement of financial matters to the governing body of the school and to the Head of Department.

[Para. (k) added by s. 9 of Act 15 of 2011.]

(3) The principal must assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with-

- (a) instructions of the Head of Department;
- (b) legislation or policy;
- (c) an obligation that he or she has towards the Head of Department, the Member of the Executive Council or the Minister; or
- (d) a provision of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Personnel Administration Measures determined in terms thereof.

[S. 16A inserted by s. 8 of Act 31 of 2007.]

17 Governing body serving two or more schools

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(1) The Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the best interests of education at the schools in question.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) considered all such submissions.

18 Constitution of governing body

(1) Subject to this Act and any applicable provincial law, the governing body of a public school must function in terms of a constitution which complies with minimum requirements determined by the Member of the Executive Council by notice in the *Provincial Gazette*.

(2) A constitution contemplated in subsection (1) must provide for-

- (a) a meeting of the governing body at least once every school term;
- (b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;
- (c) recording and keeping of minutes of governing body meetings;
- (d) making available such minutes for inspection by the Head of Department; and
- (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.

(3) The governing body must submit a copy of its constitution to the Head of Department within 90 days of its election.

18A Code of conduct of governing body

(1) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine a code of conduct for the members of the governing body of a public school after consultation with associations of governing bodies in that province, if applicable.

(2) The code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at a public school.

(3) All members of a governing body must adhere to the code of conduct.

(4) The code of conduct must contain provisions of due process, safeguarding the interests of the members of the governing body in disciplinary proceedings.

(5) The Head of Department may suspend or terminate the membership of a governing body member for a breach of the code of conduct after due process.

(6) A member of the governing body may appeal to the Member of the Executive Council against a decision of a Head of Department regarding the suspension or termination of his or her membership as a governing body member.

[S. 18A inserted by s. 6 of Act 50 of 2002.]

19 Enhancement of capacity of governing bodies

(1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department must establish a programme to-

- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
- (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

(2) The Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

(3) The norms and standards for school funding must include-

- (a) criteria for authorising a governing body association to perform the functions contemplated in subsection (4);
- (b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the Head of Department in relation to the performance of the functions contemplated in subsection (4);
- (c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and
- (d) criteria for granting a governing body an allocation for contribution towards membership of a recognised governing body association.

[Sub-s. (3) added by s. 10 of Act 15 of 2011.]

(4) (a) The Head of Department may request a recognised governing body association or other appropriate training authority to train members of a governing body of a particular school or group of schools and to build the capacity contemplated in section 25 (4).

(b) For the purposes of paragraph (a), the Head of Department-

- (i) must enter into an agreement with the governing body association;
- (ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and
- (iii) may include a request for the training of members of a governing body of a school that is not a member of the governing body association requested to conduct the training in the agreement contemplated in subparagraph (ii).

[Sub-s. (4) added by s. 10 of Act 15 of 2011.]

20 Functions of all governing bodies

(1) Subject to this Act, the governing body of a public school must-

- (a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;
- (b) adopt a constitution;
- (c) develop the mission statement of the school;
- (d) adopt a code of conduct for learners at the school;
- (e) support the principal, educators and other staff of the school in the

performance of their professional functions;

- (eA) adhere to any actions taken by the Head of Department in terms of section 16 of the Employment of Educators Act, 1998 (Act 76 of 1998), to address the incapacity of a principal or *educator* to carry out his or her duties effectively;

[Para. (eA) inserted by s. 9 (a) of Act 31 of 2007.]

- (f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;

- (g) administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, but the exercise of this power must not in any manner interfere with or otherwise hamper the implementation of a decision made by the Member of the Executive Council or Head of Department in terms of any law or policy;

[Para. (g) substituted by s. 9 (b) of Act 31 of 2007.]

- (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;

- (i) recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act, 1998 (Act 76 of 1998), and the Labour Relations Act, 1995 (Act 66 of 1995);

[Para. (i) substituted by s. 3 of Act 57 of 2001.]

- (j) recommend to the Head of Department the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation 103 of 1994), and the Labour Relations Act, 1995 (Act 66 of 1995);

- (jA) make the recommendation contemplated in paragraph (j) within the time frames contemplated in section 6 (3) (l) of the Employment of Educators Act, 1998 (Act 76 of 1998).

[Para. (jA) inserted by s. 9 (c) of Act 31 of 2007.]

- (k) at the request of the Head of Department, allow the reasonable use under fair conditions determined by the Head of Department of the facilities of the school for educational programmes not conducted by the school;

[Para. (k) substituted by s. 4 of Act 53 of 2000.]

- (l) discharge all other functions imposed upon the governing body by or under this Act; and

- (m) discharge other functions consistent with this Act as determined by the Minister by notice in the *Government Gazette*, or by the Member of the Executive Council by notice in the *Provincial Gazette*.

(2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school.

(3) The governing body may join a voluntary association representing governing bodies of public schools.

(4) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public school may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 3 (1) of the Educators' Employment Act, 1994.

[Sub-s. (4) added by s. 6 of Act 100 of 1997.]

(5) Subject to this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law, a public school may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

[Sub-s. (5) added by s. 6 of Act 100 of 1997.]

(6) An educator and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in public schools in terms of this Act, the Labour Relations Act, 1995 (Act 66 of 1995), and any other applicable law.

[Sub-s. (6) added by s. 6 of Act 100 of 1997.]

(7) A public school may only employ an educator in a post established in terms of subsection (4) if such educator is registered as an educator with the South African Council of Educators.

[Sub-s. (7) added by s. 6 of Act 100 of 1997.]

(8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to-

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

[Sub-s. (8) added by s. 6 of Act 100 of 1997.]

(9) When presenting the annual budget contemplated in section 38, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.

[Sub-s. (9) added by s. 6 of Act 100 of 1997.]

(10) Despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).

[Sub-s. (10) added by s. 6 of Act 100 of 1997.]

(11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act 27 of 1996), the Minister may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

[Sub-s. (11) added by s. 6 of Act 100 of 1997.]

21 Allocated functions of governing bodies

(1) Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:

- (a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;

- (b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;
- (c) to purchase textbooks, educational materials or equipment for the school;
- (d) to pay for services to the school;
- (aA) to provide an adult basic education and training class or centre subject to any applicable law; or

[Para. (aA) inserted by s. 10 (b) of Act 48 of 1999.]

- (e) other functions consistent with this Act and any applicable provincial law.

(2) The Head of Department may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.

(3) The Head of Department may approve such application unconditionally or subject to conditions.

(4) The decision of the Head of Department on such application must be conveyed in writing to the governing body concerned, giving reasons.

(5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal to the Member of the Executive Council.

(6) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if-

- (a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and
- (b) there is a reasonable and equitable basis for doing so.

22 Withdrawal of functions from governing bodies

(1) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.

(2) The Head of Department may not take action under subsection (1) unless he or she has-

- (a) informed the governing body of his or her intention so to act and the reasons therefor;
- (b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
- (c) given due consideration to any such representations received.

(3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter-

- (a) furnishes the governing body with reasons for his or her actions;
- (b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
- (c) duly considers any such representations received.

(4) The Head of Department may for sufficient reasons reverse or suspend his or her

action in terms of subsection (3).

(5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.

23 Membership of governing body of ordinary public school

(1) Subject to this Act, the membership of the governing body of an ordinary public school comprises-

- (a) elected members;
- (b) the principal, in his or her official capacity;
- (c) co-opted members.

(2) Elected members of the governing body shall comprise a member or members of each of the following categories:

- (a) Parents of learners at the school;
- (b) educators at the school;
- (c) members of staff at the school who are not educators; and
- (d) learners in the eighth grade or higher at the school.

(3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2) (a).

(4) The representative council of learners referred to in section 11 (1) must elect the learner or learners referred to in subsection (2) (d).

(5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.

(6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.

(7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.

(8) Subject to subsection (10), co-opted members do not have voting rights on the governing body.

[Sub-s. (8) substituted by s. 11 (a) of Act 48 of 1999.]

(9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.

(10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.

[Sub-s. (10) added by s. 11 (b) of Act 48 of 1999.]

(11) If a parent is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28 (d) within 90 days after the vacancy has occurred.

[Sub-s. (11) added by s. 11 (b) of Act 48 of 1999.]

(12) If a person elected as a member of a governing body as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the governing body.

[Sub-s. (12) added by s. 11 (b) of Act 48 of 1999.]

24 Membership of governing body of public school for learners with special education needs

(1) The following categories of persons must be represented on a governing body of a public school for learners with special education needs, in each case by a member or members of the respective category:

- (a) Parents of learners at the school, if reasonably practicable;
- (b) educators at the school;
- (c) members of staff at the school who are not educators;
- (d) learners attending the eighth grade or higher, if reasonably practicable;
- (e) representatives of sponsoring bodies, if applicable;
- (f) representatives of organisations of parents of learners with special education needs, if applicable;
- (g) representatives of organisations of disabled persons, if applicable;
- (h) disabled persons, if applicable; and
- (i) experts in appropriate fields of special needs education;
- (j) the principal in his or her official capacity.

[Para. (j) added by s. 7 of Act 100 of 1997.]

(2) Subject to this Act, the Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs within his or her province.

(3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.

(4) The Member of the Executive Council must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

25 Failure by governing body to perform functions

(1) If the Head of Department determines on reasonable grounds that a governing body has ceased to perform functions allocated to it in terms of this Act or has failed to perform one or more of such functions, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.

[Sub-s. (1) substituted by s. 4 (a) of Act 57 of 2001.]

(2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.

(3) If a governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the

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appointment of persons contemplated in subsection (1).

[Sub-s. (3) substituted by s. 4 (b) of Act 57 of 2001.]

(4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions.

[Sub-s. (4) added by s. 4 (c) of Act 57 of 2001.]

26 Recusal by members of governing body

A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

27 Reimbursement of members of governing body

(1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

28 Election of members of governing body

Subject to this Act and any applicable provincial law, the Member of the Executive Council must, by notice in the *Provincial Gazette*, determine-

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;
- (f) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 23 (2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public schools; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

29 Office-bearers of governing bodies

(1) A governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.

(3) In the case of a public school for learners with special education needs any member of the governing body elected from the categories of persons referred to in

section 24 (1) (a), (e), (f), (g), (h) and (i) may serve as the chairperson of that governing body.

[Sub-s. (3) added by s. 12 of Act 48 of 1999.]

30 Committees of governing body

(1) A governing body may-

- (a) establish committees, including an executive committee; and
- (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

(2) A governing body of an ordinary public school which provides education to learners with special education needs must establish a committee on special education needs.

31 Term of office of members and office-bearers of governing bodies

(1) The term of office of a member of a governing body other than a learner may not exceed three years.

(2) The term of office of a member of a governing body who is a learner may not exceed one year.

(3) The term of office of an office-bearer of a governing body may not exceed one year.

(4) A member or office-bearer of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

32 Status of minors on governing bodies of public schools

(1) A member of a governing body who is a minor may not contract on behalf of a public school.

(2) A member of a governing body who is a minor may not vote on resolutions of a governing body which impose liabilities on third parties or on the school.

(3) A member of a governing body who is a minor incurs no personal liability for any consequence of his or her membership of the governing body.

33 Closure of public schools

(1) The Member of the Executive Council may, by notice in the *Provincial Gazette*, close a public school.

(2) The Member of the Executive Council may not act under subsection (1) unless he or she has-

- (a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and

(d) given due consideration to any such representations received.

(3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37 (4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

33A Prohibition of political activities during school time

(1) No party-political activities may be conducted at a school during school time determined by the governing body of the school in terms of section 20 (1) (f).

(2) The party-political activities contemplated in subsection (1) include, but are not limited to-

- (a) campaigning;
- (b) the conducting of rallies;
- (c) the distribution of pamphlets and fliers; and
- (d) the hanging or putting up of posters and banners.

(3) A member of a political party may not, for the purposes of conducting party-political activities, encroach on the school time.

(4) A school may not allow the display of material of a party-political nature on its premises unless such party-political material is related to the curriculum at the school.

[S. 33A added by s. 11 of Act 15 of 2011.]

CHAPTER 4 FUNDING OF PUBLIC SCHOOLS (ss 34-44)

34 Responsibility of State

(1) The State must fund public schools from public revenue on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

(2) The State must, on an annual basis, provide sufficient information to public schools regarding the funding referred to in subsection (1) to enable public schools to prepare their budgets for the next financial year.

35 Norms and standards for school funding

(1) Subject to the Constitution and this Act, the Minister must determine national quintiles for public schools and national norms and standards for school funding after consultation with the Council of Education Ministers 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).

[S. 35 substituted by s. 3 of Act 24 of 2005.]

36 Responsibility of governing body

(1) A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

(2) Despite subsection (1), a governing body may not enter into any loan or overdraft agreement so as to supplement the school fund, without the written approval of the Member of the Executive Council.

[Sub-s. (2) added by s. 5 of Act 57 of 2001.]

(3) If a person lends money or grants an overdraft to a public school without the written approval of the Member of the Executive Council, the State and the public school will not be bound by the contract of lending money or an overdraft agreement.

[Sub-s. (3) added by s. 5 of Act 57 of 2001.]

(4) (a) A governing body may, with the approval of the Member of the Executive Council-

- (i) lease, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and
- (ii) allow any person to conduct any business on school property to supplement the school fund.

(b) A governing body may not allow any activity on school property that is hazardous or disruptive to learners or prohibited by this Act.

[Sub-s. (4) added by s. 12 of Act 15 of 2011.]

(5) For the purposes of subsection (4), '**school property**' means immovable property owned by the State, including property contemplated in sections 13 and 55 and any immovable property bought by a school from the school funds or donations to the school.

[Sub-s. (5) added by s. 12 of Act 15 of 2011.]

37 School funds and assets of public schools

(1) The governing body of a public school must establish a school fund and administer it in accordance with directions issued by the Head of Department.

(2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.

(3) The governing body of a public school must open and maintain one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.

[Sub-s. (3) substituted by s. 6 (a) of Act 57 of 2001.]

(4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

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(5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.

(6) The school fund, all proceeds thereof and any other assets of the public school must be used only for-

- (a) educational purposes, at or in connection with such school;
- (b) educational purposes, at or in connection with another public school, by agreement with such other public school and with the consent of the Head of Department;
- (c) the performance of the functions of the governing body; or
- (d) another educational purpose agreed between the governing body and the Head of Department.

(7) (a) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.

(b) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.

(c) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use such money or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.

[Sub-s. (7) added by s. 6 (b) of Act 57 of 2001.]

38 Annual budget of public school

(1) A governing body of a public school must prepare a budget each year according to prescriptions determined by the Member of the Executive Council in a *Provincial Gazette*, which shows the estimated income and expenditure of the school for the following financial year.

[Sub-s. (1) substituted by s. 7 of Act 57 of 2001.]

(2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.

(3) The notice contemplated in subsection (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting.

[Sub-s. (3) added by s. 7 of Act 50 of 2002.]

38A Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees

(1) Subject to subsection (2), a governing body may not pay or give to a state employee employed in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), or the Public Service Act, 1994 (Proclamation 103 of 1994), any unauthorised-

- (a) remuneration;
- (b) other financial benefit; or
- (c) benefit in kind.

(2) A governing body may apply to the employer for approval to pay a state employee any payment contemplated in subsection (1).

(3) Such application must be lodged in writing in the office of the employer and must state-

- (a) full details of the nature and extent of the payment;
- (b) the process and resources that will be used to compensate or remunerate the state employee; and
- (c) the extent of compliance with section 20 (5) to (9).

(4) The governing body must make the application contemplated in subsection (2) at least four months prior to the finalisation of the school's budget.

(5) Despite subsection (1), a governing body may pay travel and subsistence expenses relating to official school activities but such expenses may not be greater than those that would be payable to a public servant in similar circumstances.

(6) An employer must not unreasonably refuse an application contemplated in subsection (2).

(7) In considering the application, the employer must take into account-

- (a) the implications for the employer in terms of the employment contract and labour law;
- (b) whether the service concerned in the application will interfere with the normal service delivery of the employee;
- (c) whether the service concerned in the application has already been paid for by the employer; and
- (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school.

(8) The payment contemplated in subsection (1) must be reflected in the school's budget, as presented to the general meeting of parents as contemplated in section 38 (2).

(9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the employer, the amount of money paid or benefit given must be recovered by the employer on behalf of the school from members of the governing body who took that decision, excluding a member of the governing body who is a minor.

(10) A governing body may appeal to the Member of the Executive Council against-

- (a) the refusal by the employer of an application contemplated in subsection (2); or
- (b) the failure of the employer to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the employer.

[S. 38A inserted by s. 2 of Act 1 of 2004.]

39 School fees at public schools

(1) Subject to this Act, school fees may be determined and charged at a public school only if a resolution to do so has been adopted by a majority of parents attending the

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meeting referred to in section 38 (2).

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

- (a) the amount of school fees to be charged;
- (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).

[Sub-s. (2) substituted by s. 4 (a) of Act 24 of 2005.]

(3) The governing body must implement a resolution adopted at the meeting contemplated in subsection (1).

(4) The Minister must, after consultation with the Council of Education Ministers and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2) (b).

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

[Sub-s. (5) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (6) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (7) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (8) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (9) added by s. 4 (b) of Act 24 of 2005.]

(10) The Minister must-

- (a) consider the list of schools identified in terms of subsection (9);
- (b) compare the list with the determination contemplated in section 35 (1); and
- (c) publish the list ² per province, in the *Government Gazette* if it complies with the determination.

[Sub-s. (10) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (11) added by s. 4 (b) of Act 24 of 2005.]

(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.

[Sub-s. (12) added by s. 4 (b) of Act 24 of 2005.]

(13) Subject to subsection (7), the Member of the Executive Council may, after consultation with the relevant governing bodies, annually by notice in the *Provincial Gazette* identify additional public schools within his or her province that, although they have not been included in the list of schools contemplated in subsection (10) (c), may not charge school fees.

[Sub-s. (13) added by s. 13 of Act 15 of 2011.]

(14) The schools contemplated in subsection (13) must be the schools that have been ranked as the poorest schools in that province falling outside the list of schools contemplated in subsection (10) (c).

[Sub-s. (14) added by s. 13 of Act 15 of 2011.]

(15) The Member of the Executive Council may act in terms of subsection (13) only if sufficient funding has been secured in the province to fund learners in the schools affected by such action.

[Sub-s. (15) added by s. 13 of Act 15 of 2011.]

(16) For the purposes of subsection (15), **'sufficient funding'** means funding that is not less than the no fee threshold.

[Sub-s. (16) added by s. 13 of Act 15 of 2011.]

² List of no fee schools published under GN 1133 in GG 30524 of 5 December 2007.

40 Parent's liability for payment of school fees

(1) A parent is liable to pay the school fees determined in terms of section 39 unless or to the extent that he or she has been exempted from payment in terms of this Act.

(2) A parent may appeal to the Head of Department against a decision of a governing body regarding the exemption of such parent from payment of school fees.

(3) In deciding an appeal referred to in subsection (2), the Head of Department must follow due process which safeguards the interests of the parent and the governing body.

41 Enforcement of payment of school fees

(1) 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.

[S. 41 substituted by s. 5 of Act 24 of 2005.]

42 Financial records and statements of public schools

The governing body of a public school must-

- (a) keep records of funds received and spent by the public school and of its assets, liabilities and financial transactions; and
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the Member of the Executive Council.

43 Audit or examination of financial records and statements

(1) The governing body of a public school must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act 26 of 2005), to audit the records and financial statements referred to in section 42.

[Sub-s. (1) substituted by s. 10 of Act 31 of 2007.]

(2) If the audit referred to in subsection (1) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements referred to in section 42, who-

- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act 69 of 1984); or

(b) is approved by the Member of the Executive Council for this purpose.

(3) No person who has a financial interest in the affairs of the public school may be appointed under this section.

(4) If the Member of the Executive Council deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a public school.

(5) A governing body must submit to the Head of Department, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.

(6) At the request of an interested person, the governing body must make the records referred to in section 42, and the audited or examined financial statements referred to in this section, available for inspection.

44 Financial year of public school

The financial year of a public school commences on the first day of January and ends on the last day of December of each year.

CHAPTER 5 INDEPENDENT SCHOOLS (ss 45-51)

45 Establishment of independent school

Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school.

45A Admission age to independent school

- (a) The admission age of a learner to an independent school to-
 - (i) grade R is age four turning five by 30 June in the year of admission;
 - (ii) grade 1 is age five turning six by 30 June in the year of admission.
- (b) An independent school may admit a learner who-
 - (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c).
- (c) The Minister may, by regulation, prescribe-
 - (i) criteria³ for the admission to an independent school at an age lower than the admission age of an underage learner who complies with the criteria;
 - (ii) age requirements for different grades at an independent school.
- (d) For the purpose of paragraph (b) (i), good cause shown means that-
 - (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in his or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.

[S. 45A inserted by s. 8 of Act 50 of 2002.]

It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable, effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that-

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child are taken into account.

46 Registration of independent school

(1) No person may establish or maintain an independent school unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register an independent school if he or she is satisfied that-

- (a) the standards to be maintained by such school will not be inferior to the standards in comparable public schools;
- (b) the admission policy of the school does not discriminate on the grounds of race; and
- (c) the school complies with the grounds for registration contemplated in subsection (2).

(4) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

47 Withdrawal of registration of independent school

(1) No withdrawal of the registration of an independent school is valid unless-

- (a) the owner of such independent school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
- (b) the owner of such independent school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school should not be withdrawn; and
- (c) any such representations received have been duly considered.

(2) The owner of an independent school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school.

48 Subsidies to registered independent schools

(1) The Minister may, by notice in the *Government Gazette*, determine norms and minimum standards for the granting of subsidies to independent schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless-

- (a) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
- (c) any such representations received have been duly considered.

(5) The owner of an independent school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school.

49 Declaration of independent school as public school

(1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an independent school in terms whereof such independent school is declared to be a public school.

(2) Notice of the change of status contemplated in subsection (1) must be published in the *Provincial Gazette*.

50 Duties of Member of Executive Council relating to independent schools

(1) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine requirements for-

- (a) the admission of learners of an independent school to examinations conducted by or under the supervision of the education department;
- (b) the keeping of registers and other documents by an independent school;
- (c) criteria of eligibility, conditions and manner of payment of any subsidy to an independent school; and
- (d) any other matter relating to an independent school which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different independent schools.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

51 Registration of learner for education at home

(1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner's home.

(2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that-

- (a) the registration is in the interests of the learner;
- (b) the education likely to be received by the learner at home-
 - (i) will meet the minimum requirements of the curriculum at public schools; and
 - (ii) will be of a standard not inferior to the standard of education provided at public schools; and
- (c) the parent will comply with any other reasonable conditions set by the Head of Department.

(3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The Head of Department may not withdraw the registration until he or she-

- (a) has informed the parent of his or her intention so to act and the reasons therefor;
- (b) has granted the parent an opportunity to make representations to him or her in relation to such action; and
- (c) has duly considered any such representations received.

(5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.

CHAPTER 6 TRANSITIONAL PROVISIONS (ss 52-57)

52 Transitional provisions relating to schools other than private schools

(1) Any school which was established or was deemed to have been established in terms of any law governing school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school referred to in section 53 is deemed to be a public school.

(2) The assets and liabilities which vested in a school contemplated in subsection (1) immediately prior to the commencement of this Act, vest in the public school in question.

(3) Funds and other moveable assets used by, or held for or on behalf of, a public school contemplated in subsection (1) and which in law are the property of the State, remain at the disposal of the school, and devolve on the school on a date and subject to conditions determined by the Minister by notice in the *Government Gazette*, after consultation with the Council of Education Ministers.

(4) Any transaction entered into prior to the commencement of this Act by a school contemplated in subsection (1), which had the effect of transferring funds or other assets of such school to another person or body without value, is invalid.

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53 Transitional provisions relating to private schools

A private school which was registered or deemed to have been registered under the provisions of a law regulating school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, is deemed to be an independent school.

54 Transitional provisions relating to governing bodies

(1) The Minister must, after consultation with the Member of the Executive Council and by notice in the *Government Gazette*, determine dates-

- (a) by which the election of members of governing bodies at all public schools in a province must be finalised in terms of this Act; and
- (b) from which the governing bodies⁴ referred to in subsection (1) (a) must function in terms of this Act.

(2) Different dates may be determined in terms of subsection (1) (b) in respect of governing bodies in the different provinces.

(3) Any governing body, management council or similar authority of a public school, which existed immediately prior to the commencement of this Act, continues to function until the day before the date on which the relevant governing body is elected and must perform all the functions it performed prior to the commencement of this Act which a governing body can lawfully perform in terms of this Act.

(4) Until a governing body begins to function in terms of subsection 1 (b), such governing body of a school deemed to be a public school in terms of section 52 (1) must perform the functions lawfully performed by its predecessor which are capable of being performed by a governing body in terms of this Act.

⁴ 1 January 1999 (GenN 2630 in GG 19389 of 30 October 1998)

55 Transitional provisions relating to immovable property of certain schools

(1) The immovable property of a school which was declared to be a state-aided school under section 29 (2A) of the Education Affairs Act, 1988 (House of Assembly) (Act 70 of 1988), devolves upon the State on a date determined by the Minister by notice in the *Government Gazette*.

(2) The Minister may determine different dates in respect of different schools under subsection (1).

(3) Any notice determining a date or dates referred to in subsection (1) or (2) must grant all interested parties a period of not less than 30 days in which to make written submissions.

(4) The Minister must consider all such submissions received, and thereafter may alter any notice referred to in subsection (1).

(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full

or in part from funds appropriated by Parliament for that purpose.

(6) The Minister may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in subsection (5) be paid in respect of a particular transfer under this section.

(7) The rights of third parties with claims against the school in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and-

- (a) a third party acquires no right of execution against the immovable property as a result of such transfer alone;
- (b) a third party is obliged to excuss the school in question if the school fails to meet its commitments to the third party; and
- (c) the State indemnifies such a third party in its claims against the school which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the school prior to the transfer.

(8) The fact that compensation for any land and real rights in or over land expropriated in terms of subsection (1) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State.

(9) Until the date contemplated in subsection (1), a public school referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the Member of the Executive Council.

(10) Any claim for compensation arising from subsection (1) must be determined as contemplated in the Constitution.

(11) The officer in charge of the deeds office or other office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.

[Sub-s. (11) added by s. 9 of Act 100 of 1997 and substituted by s. 13 of Act 48 of 1999.]

(12) Any immovable property belonging to the State which was used by a school and not transferred or endorsed into the name of the school contemplated in subsection (1) remains the property of the State.

[Sub-s. (12) added by s. 9 of Act 100 of 1997.]

(13) Any immovable property which was transferred into the name of a school contemplated in subsection (1) must, if such school is subsequently closed in terms of this Act or any other applicable law, devolve upon the State.

[Sub-s. (13) added by s. 9 of Act 100 of 1997.]

56 Transitional provisions relating to public schools on private property

If an agreement contemplated in section 14 does not exist at the commencement of this Act in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52 (1), the Member of the Executive Council must take reasonable measures to conclude such an agreement within six months of the commencement of this Act.

57 Transitional provisions relating to private property owned by religious organisation

If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in section 14 must recognise, in an appropriate manner consistent with this Act, the distinctive religious character of the school.

CHAPTER 7 GENERAL PROVISIONS (ss 58-64)

58 Expropriation

(1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to school education in a province.

(2) The Member of the Executive Council must give notice in the *Provincial Gazette* of his or her intention to expropriate in terms of subsection (1).

(3) A notice contemplated in subsection (2) must-

- (a) identify the land or any real right in or over the land;
- (b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and
- (c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Member of the Executive Council in that regard, and draw attention to the provisions of subsection (5).

(4) The Member of the Executive Council may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in subsection (3) by notice in the *Provincial Gazette*.

(5) Any expropriation contemplated in subsection (4) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

(6) If the Member of the Executive Council and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.

(7) The arbitrator determines the time, venue and procedures which apply in the arbitration.

(8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.

(9) The arbitrator may not make an award of costs.

(10) The arbitrator is paid, out of moneys appropriated for this purpose by the provincial legislature, such fees and allowances as the Member of the Executive Council may determine, with the concurrence of the Member of the Executive Council responsible for finance.

(11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in subsection (1) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

(12) Any claim to compensation arising from the expropriation contemplated in subsection (4) must be determined as contemplated in the Constitution and this section.

58A Alienation of assets of public school

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

(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-

- (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.

[S. 58A inserted by s. 6 of Act 24 of 2005.]

58B Identification of underperforming public schools

(1) The Head of Department must, annually, from the report contemplated in section 16A (1) (b) and from other relevant reports, identify any public school that is underperforming in relation to any matter referred to in subsection (2) (a), (b) or (c).

(2) The Head of Department must issue a written notice to the school contemplated in subsection (1), if he or she is satisfied that-

- (a) the standard of performance of learners is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the Head of Department exercises his or her power in terms of this Act;
- (b) there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or
- (c) the safety of learners or staff is threatened.

(3) The written notice contemplated in subsection (2) must inform the school that it must-

- (a) within 14 days after delivery of the notice, respond to the notice; and
- (b) as soon as possible after that response, provide the Head of Department with a plan for correcting the situation.

(4) The Head of Department must take all reasonable steps to assist a school identified in terms of subsection (1) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), the Head of Department must consider-

- (a) implementing the incapacity code and procedures for poor work performance

referred to in section 16 of the Employment of Educators Act, 1998 (Act 76 of 1998);

- (b) withdrawing the functions of the governing body in terms of section 22; or
- (c) appointing persons in terms of section 25 to perform the functions or specified functions of the governing body.

(6) The counselling of the principal as contemplated in Item 2 (5) (b) (ii) of Schedule 1 to the Employment of Educators Act, 1998 (Act 76 of 1998), may include the appointment of an academic mentor to take over the functions and responsibilities of the principal for the period determined by the Head of Department.

(7) In order to assist the Minister in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act 27 of 1996), the Member of the Executive Council must report to the Minister within three months after the end of a school year on the action taken by the Head of Department in regard to an underperforming public school.

[S. 58B inserted by s. 11 of Act 31 of 2007.]

58C Compliance with norms and standards

(1) The Member of the Executive Council must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), ensure compliance with-

- (a) norms and standards determined in terms of sections 5A, 6 (1), 20 (11), 35 and 48 (1);
- (b) minimum outcomes and standards set in terms of section 6A; and
- (c) performance standards contemplated in Item 2 (2) of Schedule 1 to the Employment of Educators Act, 1998 (Act 76 of 1998),

(in this section jointly referred to as 'norms and standards').

(2) The Member of the Executive Council must ensure that the policy determined by a governing body in terms of sections 5 (5) and 6 (2) complies with the norms and standards.

(3) The Member of the Executive Council must, annually, report to the Minister the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.

(4) Any dispute between the Minister and a Member of the Executive Council in respect of non-compliance with the norms and standards contemplated in subsection (1) must-

- (a) be dealt with in accordance with the principles of co-operative governance referred to in section 41 (1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005); and
- (b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

(5) The Head of Department must comply with all norms and standards contemplated in subsection (1) within a specific public school year by-

- (a) identifying resources with which to comply with such norms and standards;
- (b) identifying the risk areas for compliance;

- (c) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;
 - (d) developing protocols with the schools on how to comply with norms and standards and manage the risk areas; and
 - (e) reporting to the Member of the Executive Council on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.
- (6) The Head of Department must-
- (a) in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a public school in relation to the availability of classrooms and educators, as well as the curriculum programme of such school; and
 - (b) in respect of each public school in the province, communicate such determination to the chairperson of the governing body and the principal, in writing, by not later than 30 September of each year.

[S. 58C inserted by s. 11 of Act 31 of 2007.]

59 Duty of schools to provide information

(1) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights.

(2) Every school must provide such information about the school as is reasonably required by the Head of Department or the Director-General of the national Department of Education in consultation with the Head of Department.

[Sub-s. (2) substituted by s. 10 of Act 100 of 1997.]

60 Liability of State

(1) (a) Subject to paragraph (b), the State is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

[Para. (a) substituted by s. 14 of Act 15 of 2011.]

(b) Where a public school has taken out insurance and the school activity is an eventuality covered by the insurance policy, the liability of the State is limited to the extent that the damage or loss has not been compensated in terms of the policy.

[Sub-s. (1) substituted by s. 12 of Act 31 of 2007.]

(2) The provisions of the State Liability Act, 1957 (Act 20 of 1957), apply to any claim under subsection (1).

(3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned.

[Sub-s. (3) added by s. 14 of Act 48 of 1999.]

(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

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[Sub-s. (4) added by s. 14 of Act 48 of 1999.]

(5) Any legal proceedings against a public school for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20 (10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the Head of Department for his or her information.

[Sub-s. (5) added by s. 14 of Act 48 of 1999.]

61 Regulations

The Minister may make regulations-

- (a) to provide for safety measures at public and independent schools;
- (b) on any matter which must or may be prescribed by regulation under this Act;
- (c) to prescribe a national curriculum statement applicable to public and independent schools;
- (d) to prescribe a national process and procedures for the assessment of learner achievement in public and independent schools;
- (e) to prescribe a national process for the assessment, monitoring and evaluation of education in public and independent schools;
- (f) on initiation practices at public and independent schools;
- (g) to prescribe the age norm per grade in public and independent schools;
- (h) to provide for norms and minimum standards for school funding; and
- (i) on any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

[S. 61 substituted by s. 5 of Act 53 of 2000 and by s. 9 of Act 50 of 2002.]

62 Delegation of powers

(1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Department or an officer, except the power to publish a notice and the power to decide an appeal lodged with him or her in terms of this Act.

(2) The Head of Department may, subject to such conditions as he or she may determine, delegate to an officer any of his or her powers in terms of this Act or delegated to him or her in terms of subsection (1).

(3) A delegation under subsection (1) or (2) does not prevent the Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such duty.

63 Repeal and amendment of laws

(1) The laws listed in the first column of Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.

(2) The Educators' Employment Act, 1994 (Proclamation 138 of 1994), is hereby amended to the extent set out in Schedule 2.

64 Short title and commencement

This Act is the South African Schools Act, 1996, and comes into operation on a date
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fixed by the President by proclamation in the *Government Gazette*.

Schedule 1

No and year of Act	Short title	Extent of repeal
Act 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20, 26 and 28 to 31
Act 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20, 26, 28, 29, 31 and 33 (1) (g)
Act 90 of 1979	Education and Training Act, 1979	Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44 (1) (h)
Act 104 of 1986	Private Schools Act (House of Assembly), 1986	Section 1A
Act 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

Schedule 2

AMENDMENT OF EDUCATORS' EMPLOYMENT ACT, 1994, BY SECTION 63

1 Amendment of section 1 by-

(a) insertion of the following definitions:

"Department" means a department contemplated in section 7 (2) of the Public Service Act, 1994 (Proclamation 103 of 1994), responsible for education in the national government;

"educational institution" means a public school, college of education, technical college, other college or an office controlling such a school or college or rendering a support service to such a school or college where educators are employed, in regard to which the terms and conditions of employment of such educators are determined by this Act but excludes a university, technikon, independent school or independent college;

"Labour Relations Act" means the Labour Relations Act, 1995 (Act 66 of 1995);

"public educational institution" means an educational institution which is not a state-aided college;

"public school" means a public school as defined in section 1 of the South African Schools Act, 1996;

"state-aided college" means a college of education, technical college or other college which is wholly or partly funded by the State in respect of the remuneration and conditions of service of educators in posts on the establishment created in terms of section 3 (1) and in regard to which the college is the employer of such educators;

"unsubsidised post" means a post at a state-aided college in respect of which no subsidy in terms of a law is paid by the State;';

(b) substitution for the definitions of 'educator', 'employee member' and

'employer' of the following definitions, respectively-

"educator" means any person who teaches, educates or trains other persons or provides professional educational services including professional therapy at any educational institution and whose appointment and terms and conditions of employment are regulated by this Act;

"employee member" means an employee organisation that is a member of the Education Labour Relations Council established in terms of section 37 (3) (b) read with item 20 of Schedule 7 to the Labour Relations Act;

"employer" means-

- (a) in the case of a public educational institution, the head of a department;
 - (b) in the case of a state-aided college, the body which employs an educator;
 - (c) for the purposes of section 5 (1) (a) and (b) the Minister in respect of educators appointed to posts created in terms of sections 3 (1) and (3); and
 - (d) in the case of an unsubsidised post at a public school referred to in section 3A, the body which employs the educator; and
- (c) the deletion of the following definitions, namely-

'departmental educational institution'

'subsidised post'

'state-aided educational institution'

'Executive Council'

'Education Labour Relations Act'.

2 The substitution for section 3 of the following section:

'3 Educator Establishment of educational institutions and Department

(1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act and the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act 76 of 1984), the educator establishment at an educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.

(2) A state-aided college may create unsubsidised posts additional to the educator establishment referred to in subsection (1).

(3) Educators may be appointed additional to the establishment referred to in subsection (1) with the approval of the Member of the Executive Council or the Minister, as the case may be.

(4) A post referred to in subsection (1) may be regraded, redesignated, converted or abolished by the Member of the Executive Council or the Minister, as the case may be.'

3 By the insertion after section 3 of the following section:

'3A Transitional arrangement

(1) The authority to create unsubsidised posts, to employ educators in such posts and

all other matters incidental thereto which, in terms of section 3 (2), vested in a state-aided school prior to the commencement of this Act, shall remain intact for such school until 31 December 1997, and thereafter such authority shall cease.

(2) Contracts of employment of educators appointed to posts referred to in subsection (1) entered into after the commencement of this Act, shall not be valid after 31 December 1997.'

4 The substitution for section 4 of the following section:

'4 Appointment and promotion of educators

(1) The qualifications for appointment and promotion as an educator shall be determined by the Minister.

(2) Subject to the provisions of the Constitution, the Labour Relations Act, 1995 (Act 66 of 1995), and agreements reached in terms thereof posts shall be filled by appointment, transfer or promotion and the power to fill a post created under section 3 shall, subject to the provisions of this Act, vest in the employer, who shall exercise such power with regard to posts referred to in section 3 (1) and (3) subject to the prior approval of the Member of the Executive Council or the Minister, as the case may be.

(3) The authority to fill a post referred to in section 3 (1) and (3) at a public school in terms of subsection (2) is exercised on the recommendation of a public school, as represented by its governing body, and the employer may only deviate from such recommendation if:

- (a) the candidate does not have the required qualifications;
- (b) the candidate has been found guilty of misconduct; or
- (c) sufficient proof exists that the recommendation made by the school was based on improper influence.

(4) An educator may be appointed under this section-

- (a) in a permanent capacity, which shall include an appointment to the permanent relief staff, whether on probation or not; or
- (b) temporarily or on special contract, whether in a full-time or part-time capacity.

(5) An appointment, transfer or promotion referred to in subsection (2) shall be effected in such manner and subject to such conditions as may be determined by the Minister.

(6) An educator appointed in terms of any law repealed by this Act shall be deemed to have been appointed in terms of this Act to the appropriate post on the establishment of the educational institution in question.

(7) An educator appointed in terms of the Public Service Act, 1994, shall be deemed to have been appointed in terms of this Act.

(8) An educator appointed at a public school shall not, by virtue of an amendment of this Act by the South African Schools Act, 1996, be regarded as having changed employers.'

5 The amendment of section 5-

- (a) by the substitution for subsection (1) of the following subsection:

'(1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of the National Policy on the Salaries and Conditions of Employment of Educators Act, 1984 (Act 76 of 1984), and the Labour Relations Act-

- (a) the salaries, salary scales, allowances and other terms and conditions of employment of educators appointed, transferred or promoted to posts referred to in section 3 (1) and (3) shall be determined by the Minister;
- (b) the salaries, salary scales, allowances and other terms and conditions of employment referred to in paragraph (a) with a financial implication shall be determined by the Minister with the concurrence of the Minister responsible for finance at national level; and
- (c) the salaries, salary scales, allowances and other terms and conditions of employment of educators at a state-aided college appointed, transferred or promoted to posts referred to in section 3 (3) shall be determined by the employer.';

(b) by the deletion of subsection (2).

6 The substitution for section 6 of the following section:

'6 Transfer of educators

(1) Subject to the provisions of this section, section 4 (3) and applicable terms and conditions of employment, an educator employed in a public educational institution may be transferred from the post in which he or she serves to any other post-

- (a) at a public educational institution under the control of the same provincial education department by the Member of the Executive Council; or
- (b) at a public educational institution in a different province or the Department at national level by the Member of the Executive Council, or the Minister, as the case may be, with the concurrence of the Member of the Executive Council of such other province or the Minister, as the case may be.

(2) Subject to the provisions of this section, an educator employed at a state-aided college may, be transferred from the post in which he or she serves to any other post at the same or to any other state-aided college or public educational institution-

- (a) in the same province by the Member of the Executive Council, with the concurrence of the employer or employers concerned; or
- (b) in a different province by the Member of the Executive Council, with the concurrence of the Member of the Executive Council of such other province and the employers concerned; or
- (c) at the Department at national level with the concurrence of the Minister.

(3) Subject to the provisions of this section, an educator at a public educational institution may, be transferred from the post in which he or she serves to any other post at a state-aided college, and in such a case the provisions of subsection (2) must apply *mutatis mutandis*.

(4) A transfer provided for in subsections (1), (2) and (3) may be effected irrespective of whether the post to which an educator is transferred is of the same, a lower or higher grade: Provided that-

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- (a) the salary and salary scale of an educator shall not be lowered without his or her consent; and
- (b) paragraph (a) shall not apply in respect of an educator transferred in terms of section 19 (1).

(5) An educator who is employed in a permanent capacity at public educational institution in a post of a lower or higher grading than that appropriate to his or her rank shall, subject to section 4 (5) and (6) be transferred to a post with a grading appropriate to his or her rank as soon as a suitable vacancy arises.'

7

The amendment of section 7 by the substitution for the expression 'state educational institution', wherever it occurs, of the expression 'public educational institution'.

8

The amendment of section 8 by the substitution for the expression 'state educational institution', wherever it occurs, of the expression 'public educational institution'.

9

The amendment of section 10 by the substitution for the expression 'state educational institution', wherever it occurs, of the expression 'public educational institution'.

10 The amendment of section 11 by the substitution for subsection (3) of the following subsection:

'(3) If the name of an educator is struck off a register of educators kept by the South African Council for Educators he or she shall notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the date following immediately upon the day on which his or her name was so struck off.'

11 The substitution for section 22 of the following section:

'22 Transfer of educators on declaration of public educational institution to be state-aided college

(1) An educator who was employed at a public educational institution immediately prior to the date of declaration of such institution to be a state-aided college shall with effect from that date with his or her consent be transferred to and appointed in the service of the state-aided college in question.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to persons in the service of a state-aided college: Provided that-

- (a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;
- (b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the public educational institution shall be deemed to be a period in the service at the state-aided college concerned;
- (c) sick leave or vacation leave credit obtained by him or her as a result of his or her continuous service in a public educational institution shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her service at the state-aided college in

question; and

- (d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct which he or she allegedly committed prior to the date contemplated in subsection (1) shall be disposed of or instituted, as the case may be, in terms of this Act.'

12 The substitution for section 23 of the following section:

'23 Transfer of educators on declaration of state-aided college to be public educational institution

(1) An educator who was employed in a subsidised post at a state-aided college immediately prior to the date of declaration of such institution to be a public educational institution shall with effect from that date with his or her consent be transferred to and appointed in the service of the provincial government concerned.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to educators in the service of the provincial government concerned: Provided that-

- (a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;
 - (b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided college shall be deemed to be a period in the service of the provincial government concerned;
 - (c) sick or vacation leave credit obtained by him or her as a result of his or her continuous service at the state-aided college shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her period in the service of the provincial government concerned; and
 - (d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct allegedly committed prior to the said date shall be disposed of or instituted, as the case may be, in terms of this Act.'
-