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**GENERAL NOTICE**

**NOTICE 61 OF 1996**

**THE PROVINCE OF THE NORTHERN CAPE**

**SCHOOL EDUCATION BILL**

**13 NOVEMBER 1996 DRAFT**

**To provide for the provision and control of education in schools, and matters connected therewith**

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## CHAPTER 1

### INTERPRETATION

#### Definition and application

1. In this Act, unless the context indicates otherwise—

“**centres of learning**” include centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education;

“**commencement date**” means the date fixed under section 104;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act No. 200 of 1993);

“**Council**” means the Education and Training Council established in terms of section 32;

“**department**” means the department in the administration of the Province responsible for education;

“**district council**” means a district education and training council established in terms of section 44(1);

“**district director**” means the officer of the department responsible for the administration of education in a particular educational district;

“**education**” means instruction, teaching or training provided to learners in terms of this Act;

“**educational auxiliary service**” includes any service necessary—

- (i) to provide for the health and welfare of learners;
- (ii) to have learners transported;
- (iii) to supplement educational programmes; or
- (iv) to continue the activities of schools or centres of learning;
- (v) to provide services for learners with special education needs.

“**educational district**” means an educational district contemplated in section 6;

“**educational region**” means an educational region contemplated in section 6;

“**educator**” means a principal or any person who teaches, educates or trains learners or provides professional therapy at any school or centre of learning;

“**Executive Council**” means the Executive Council of the Province;

“**farm school**” means a state-aided school situated on a farm as contemplated in section 8(9) of the Education and Training Act, 1979 (Act No. 90 of 1979);

“**financial head**” means the member of the Executive Council of the Province who is responsible for financial affairs;

“**first level**” means that level which may be completed in the first year of school attendance contemplated in section 10(1);

“**governing body**” means a governing body for a public school, established under section 26(1);

“**government department**” means a department in the national government or in any provincial government;

“**Head of Department**” means the most senior official in the department;

“**language policy**” of a public school, as contemplated in section 16, includes matters relating to—

- (i) the language or languages in which learning and teaching take place;
- (ii) the language or languages which may be studied at the school;
- (iii) the language or languages in which the school communicates with educators, learners and parents of learners;
- (iv) the support the school offers to learners whose language of choice is not one in which learning and teaching take place at the school;

“**learner**” means any person receiving education in a school in terms of this Act;

“**learners with special education needs**” means learners who for whatever reason cannot benefit from learning opportunities of the ordinary public school programme;

“**level**” means that part of an educational programme in a school, or of any other educational programme which the Member of the Executive Council may deem to be equivalent, which a learner may complete in one school year;

“**Member of the Executive Council**” means the member of the Executive Council of the Province who is responsible for matters relating to education;

“**Minister**” means the National Minister of Education;

“**model C school**” means a state-aided school as defined in the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988);

“**negotiating forum**” means the centralised negotiating forum established under section 97(1);

“**notice**” means a notice in the *Provincial Gazette*;

“**official**” means an employee of the education department;

“**official language**” means a language referred to in section 3(1) of the Constitution or a sign language recognised under section 18(1);

“**ordinary school**” means a school other than a school for specialised education;

“**parent**” includes guardian;

“**prescribed**” means prescribed by regulation;

**"primary school"** means a school which provides education up to, but not including the eighth level;

**"principal"** means the person appointed to the post of principal at a school, or a person acting in that post;

**"Provincial"** means the Province of the Northern Cape;

**"independent school"** means a school other than a public school;

**"Provincial Legislature"** means the Provincial Legislature of the Province;

**"public school"** means a State school, a State-aided school, or a farm school;

**"regional council"** means a regional education and training council established in terms of section 39(1);

**"regional director"** means the officer of the department responsible for the administration of education in a particular educational region;

**"religious policy"** of a public school, as contemplated in section 19(1), includes matters relating to—

- (i) the amount, form and content of religious instruction classes offered at the school; and
- (ii) the religious practices which are conducted at the school.

**"school"** means any institution for the education of learners;

**"school attendance officer"** means a school attendance officer appointed under section 11(1) or deemed so to have been appointed under section 88;

**"school for special education"** means a school providing primarily for learners with recognised special education needs;

**"special education"** means education of a special nature provided to address the needs of learners who—

- (i) cannot benefit sufficiently from the teaching provided in the ordinary course of education;
- (ii) require special education to facilitate their adaptation in the community; or
- (iii) should not attend an ordinary class in an ordinary school, because such attendance is not in their best interests or not in the best interest of the other learners in such class,

and includes—

- (a) the psychological, medical, dental, paramedical and therapeutic treatment of, including the performance of operations on, such learners;
- (b) the provision of artificial medical aids and apparatus to such learners;
- (c) the care of such learners in hospital, hostel or other institution;
- (d) the provision of transport, escort and such other services as the Member of the Executive Council may deem necessary for such learners; and
- (e) the provision of guidance to the parents of such learners including the parent of such learners who are not yet subject to compulsory school attendance, with a view to the instruction, teaching, training or treatment of such learners;

“**specialist council**” means a specialist advisory council established under section 45(1);

“**this Act**” includes regulations made under this Act and regulations contemplated in section 102(1);

“**treasury**” means the authority responsible for the financial affairs of the Province.

#### **Application**

2. Subject to the Constitution, this Act shall apply in relation to school education in the Province.

## **CHAPTER 2**

### **MEMBER OF THE EXECUTIVE COUNCIL AND DEPARTMENT**

#### **Control of school education in the Province**

3. As from the commencement date, school education in the Province shall be controlled by the department, acting in accordance with the policy determined by the Member of the Executive Council.

#### **Directive principles of school education policy**

4. (1) The Member of the Executive Council shall determine school education policy in the Province within the framework of the following principles:

- (a) Every person shall have the right to basic education and to equal access to school and centres of learning.
- (b) Every learner shall have the right to instruction in the language of his or her choice where this is reasonably practicable.
- (c) No learner or educator shall be unfairly discriminated against by the department, a public school or an independent school which receives a subsidy in terms of section 61.
- (d) There shall be a duty on the department to foster the advancement of persons or groups or categories of persons previously disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of educational rights.
- (e) There shall be a duty on the department to combat sexual harassment at schools and centres of learning.
- (f) Every learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance.
- (g) Every learner and educator shall have the right to peaceful assembly and demonstration and shall have the right to freedom of association.
- (h) Every person shall have the right of access to all information held by the department or the governing body of a school in so far as such information is required for the exercise or protection of his or her rights.
- (i) There shall be democratic and decentralised governance of public schools and school education.

- (j) The structures of democratic governance in school education should be constituted with due regard to the racial and gender demographics of the Province.
- (k) Education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption.
- (l) Educational policy shall be aimed at improving the quality and availability of educational opportunities and resources to the people of the Province.
- (m) The education process shall be aimed at fostering independent and critical thought.

(2) The principles set out in subsection (1) may be referred to by a court of law when interpreting any provision of this Act.

(3) The Member of the Executive Council shall by notice in the *Provincial Gazette* publish details of any steps he or she intends to take in terms of subsection (1).

(4) The Head of Department shall take such steps as may be necessary to implement the policy determined by the Member of the Executive Council.

#### **General powers of Member of Executive Council**

5. In addition to the other powers assigned to him or her by this Act, the Member of the Executive Council shall have the following powers:

- (a) The Member of the Executive Council may out of money appropriated by the Provincial Legislature for this purpose and in order to further the objects of this Act—
  - (i) establish and maintain centres of learning;
  - (ii) establish and maintain hostels, clinics, educators' quarters and other accessories in connection with schools;
  - (iii) provide such equipment and erect such buildings as he or she may deem necessary or expedient for the administration of this Act;
  - (iv) make provision for such educational auxiliary services as he or she may deem necessary; and
  - (v) provide, on such basis and subject to such condition as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted to a public school.
- (b) Subject to the provisions of this Act, the Member of the Executive Council may, after giving reasonable notice and furnishing reasons to all interested parties, close any public centre of learning, hostel, clinic, educators' quarters or other accessory in connection with public schools or discontinue any educational auxiliary service referred to in paragraph (a).
- (c) In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organisations, but no agreement placing financial obligations on the department shall be entered into without the concurrence of the financial head.

- (d) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may certify, or withdraw the certification of—
  - (i) the syllabi of, and conditions for admission to, courses at any school or centre of learning; and
  - (ii) the content of, and conditions for admission to, educational and training programmes at any school or centre of learning.
- (e) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may accredit institutions providing courses and programmes for the training of educators and may withdraw the accreditation of any such institution.
- (f) The member of the Executive Council may determine the school calendar, school holidays, school religious holidays and the minimum length of the school day.
- (g) Different syllabi, conditions for admission, contents of educational and training programmes, school calendars, school holidays, school religious holidays and lengths of the school day may be certified or determined, as the case may be, in respect of different schools and centres of learning.

#### **Educational districts and regions**

6. (1) The Member of the Executive Council may divide the area of the Province into educational regions, and each such region into educational districts for the purpose of the administration of matters relating to education in the Province.

(2) The Member of the Executive Council may amend the boundaries of any educational region or of any educational district.

#### **Inquiry at Instance of Member of Executive Council**

7. (1) If it is in the interest of education in the Province, the Member of the Executive Council may appoint any person with the necessary expertise to conduct an inquiry within written terms of reference.

(2) A person who conducts an inquiry in terms of subsection (1) may—

- (a) enter the grounds of any school or centre of learning at any reasonable time as long as he or she has given to the person in charge of such school or centre of learning reasonable prior notice of his or her intention to enter the grounds;
- (b) if he or she has reason to believe that any person is able to give evidence on any matter relevant to the inquiry, direct that person to appear before him or her at a stated time and place to answer his or her questions;
- (c) question, under oath or otherwise, any person referred to in paragraph (b);
- (d) if he or she has reason to believe that any person is able to produce any article, document, book, video or audio recording relevant to the inquiry, order that person to deliver to him or her that article, document, book, video or audio recording;
- (e) examine and make copies of any document, book, video or audio recording referred to in paragraph (d); and

- (f) attach any article, document, book, video or audio recording referred to in paragraph (d) if, in his or her opinion, it may provide evidence of any offence or irregularity.

(3) A person appointed under subsection (1) who is not in the fulltime employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(4) Any person who without just cause—

- (a) hinders or obstructs a person conducting an inquiry in the performance of his or her functions under this section;
- (b) fails to appear in accordance with a direction issued under subsection (2)(b), at the time and place in question;
- (c) refuses to answer a question put to him or her under subsection 2(c);
- (d) deliberately gives a false answer to a question put to him or her under subsection (2)(c);
- (e) fails to produce any article, document, book, video or audio recording as ordered under subsection (2)(d); or
- (f) prevents any other person from appearing in accordance with a direction issued under subsection (2)(b), at the time and place in question; shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

#### **Submission of information**

8. (1) The Head of Department may direct any person employed at any school or centre of learning in writing to submit to him or her, within the period mentioned in the direction, such information at the disposal of such person as he or she may reasonably require in connection with the affairs of the school or centre of learning.

(2) For purposes of collating information in connection with education in the province, the Heads of Departments and any person authorized by him or her in writing, shall have the same powers as a person conducting an inquiry in terms of section 7.

### **CHAPTER 3**

#### **SCHOOLING**

##### **Admission to public schools**

9. (1) Subject to the South African Schools Act and to this Act, the admission policy of a public school shall be made by the governing body of the school concerned after consultation with the department and subject to the approval of the Member of the Executive Council: Provided that the governing body 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.

(2) Admission requirements for public schools shall not discriminate on grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

(3) The admission policy of a public school shall be developed within the framework of the following principles—

- (a) No learner shall be refused admission to a public school on the grounds that his or her parent—
  - (i) is unable to pay or has not paid the school fees determined by the governing body under section 48 for which the parent is liable;
  - (ii) does not subscribe to the mission, goals or objectives of the school; or
  - (iii) has refused to enter into a contract with the school which excludes the liability of the school to the parent arising out of circumstances relating to the education of the learner.

(4) An application for the admission of a learner to a public school shall be made to the Department, in a manner determined by the Head of Department.

(5) If an application under subsection (4) is refused, the Head of Department must inform the parent in writing of such refusal and the reason therefor.

(6) The learner or parent of a learner who has been refused admission to a public school shall have the right to appeal against the decision to the Member of the Executive Council.

#### **Compulsory school attendance**

10. (1) Attendance at a school during school hours shall be compulsory for a person from the first school day of the year in which he or she reaches the age of seven years, until—

- (a) in the case of a person with special education needs—
  - (i) the last school day of the year in which he or she reaches the age of 18 years;
  - (ii) he or she has completed the specialised education programme he or she is following; or
  - (iii) he or she, in the opinion of the Head of the Department, is ready to leave school; and
- (b) in the case of any other person—
  - (i) the last school day of the year in which he or she reaches the age of 15 years; or
  - (ii) the day on which he or she completes the ninth level, whichever is the earlier.

(2) (a) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may, if the department lacks the material or administrative resources to provide for compulsory school attendance in accordance with subsection (1), by notice in the *Provincial Gazette* provide that in the calendar year, compulsory school attendance shall not apply to learners who fall within age-groups which are specified in the notice.

(b) No notice referred to in paragraph (a) shall be valid unless it has been ratified by resolution of the Provincial Legislature;

(c) If the Member of the Executive Council acts in terms of paragraph (a), he or she must take the necessary steps to remedy the lack of capacity in the Department and must make an annual report to the Minister on the progress achieved in doing so.

(3) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may require that attendance at a school for special education during school hours shall be compulsory for any person with special educational needs whose age is greater than seven years, if he or she has reason to believe that it would be in the best interest of the child concerned.

(4) Notwithstanding the provisions of subsection (1), the 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.

(5) The Head of Department shall maintain a register of all learners exempted from compulsory school attendance.

#### **Appointment of school attendance officers**

11. (1) The Head of Department may appoint school attendance officers and terminate the appointment of school attendance officers.

(2) A school attendance officer shall be provided with a certificate, signed by the Head of Department, declaring that he or she has been appointed as a school attendance officer under this section.

(3) A certificate provided under subsection (2) shall be in the form prescribed.

#### **Functions of school attendance officers**

12. (1) In order to ensure that compulsory school attendance is being complied with, a school attendance officer may, subject to subsections (2), (3), (4) and (5)—

- (a) at any reasonable time during school hours enter upon and search any premises if he or she has reasonable grounds to believe that a person who is subject to compulsory school attendance is on those premises; and
- (b) question any person who in his or her opinion may be able to give information regarding the absence from school of a person who is subject to compulsory school attendance.

(2) Save as provided in subsection (4), a search referred to in subsection (1)(a) shall be conducted only under a search warrant issued by a magistrate, if it appears to such magistrate from information on oath that there are reasonable grounds for believing that a person who is subject to compulsory school attendance is present during school hours on any premises within his or her area of jurisdiction.

(3) A search warrant issued under subsection (2) shall authorize a school attendance officer to enter and to search any premises referred to in the search warrant during school hours:

(4) A school attendance officer shall not perform a function under this section, unless he or she, while he or she is performing that function, in possession of his or her certificate referred to in section 11(2) which shall be produced by him or her to any person effected by the performance of that function.

### **Duties of principals relating to school attendance**

13. (1) Where a learner is repeatedly absent from school without reasonable cause, the principal or an educator designated by him or her shall consult jointly with the learner, his or her parents and an appropriate officer of the Provincial department responsible for Welfare, in order to reach an agreement on the appropriate measures to remedy the problem.

(2) Where it is impossible to reach an agreement contemplated in subsection (1) or where after reaching such an agreement there is no material improvement in the school attendance of the learner, the principal shall report the matter to the Head of Department.

### **Offences relating to compulsory school attendance**

14. (1) If a parent of any person who is subject to compulsory school attendance in terms of section 10(1) fails, without reasonable cause and after a written warning by the Head of Department, to cause such person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(2) Any person who, during school hours, employs a person who is subject to compulsory school attendance in terms of section 10(1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(3) Any person who hinders or obstructs a school attendance officer in the performance of his or her functions under section 12 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

### **Age requirements**

15. (1) The Member of the Executive Council may make regulations prescribing the age requirements in respect of different categories of schools and different levels of education.

(2) Notwithstanding the provisions of any regulations made under subsection (1), the Member of the Executive Council shall have the power to allow a learner to attend a school even if he or she does not satisfy the age requirements prescribed in respect of the school concerned.

(3) No regulation made under subsection (1) may reduce below 21 years the age at which learners cease to be entitled to attend a school.

### **Language policy of public schools**

16. (1) The governing body of a public school may determine the language policy of the school after consultation with the Department, subject to the Constitution, the S.A. Schools Act, and the approval of the Member of the Executive Council.

(2) The language policy of a public school shall be developed within the framework of the following principles:

- (a) The education process should aim at the development of a national democratic culture of respect for the country's diverse language communities.

- (b) Within practical limits, a learner shall have the right to language choice in education.
- (c) School language policy should be designed to facilitate the maximum participation of learners in the learning process.
- (d) Special measures should be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the language of learning of his or her school.
- (e) School language policies should be co-ordinated at a regional level and should take into account the availability of human and material resources.
- (f) On completion of the ninth level of education a learner should have acquired satisfactory standards of competence in at least two of the official languages of the Province.
- (g) Special measures should be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities in the Province.
- (h) There shall be a duty on all public schools and on the department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.
- (i) No form of racial discrimination shall be practised by the governing body of a public school in exercising its language policy.

If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

#### **Language and discrimination**

**17.** (1) Language competence testing shall not be used as an admission requirement to a public school.

(2) Learners at public schools shall be encouraged to make use of the range of official languages.

(3) No learner at a public school or an independent school which receives a subsidy in terms of section 61(1) shall be disciplined for expressing himself or herself in a language which is not a language of learning of the school concerned.

(4) (a) Every learner at a public school, or at an independent school which receives a subsidy in terms of section 61(1), shall have the right not to be penalised for expressing himself or herself in a language which is not a language of learning of the school concerned.

(b) The right contemplated in paragraph (a) may be limited in circumstances where such limitation is reasonable and justifiable in an open and democratic society based on freedom and equality and committed to multilingualism.

### **Recognition of sign languages**

18. (1) The Member of the Executive Council may by notice in the *Provincial Gazette* recognise any sign language which in his or her opinion is used by a significant proportion of people communicating in a sign language in the Province.

(2) For the purposes of any matter related to school education in the Province, any sign language recognised under subsection (1) shall have the status of an official language.

### **Religious policy of public schools**

19. (1) The religious policy of a public school shall be made by the governing body of the school concerned after consultation with the department, and subject to the approval of the Member of the Executive Council.

(2) The religious policy of a public school shall be developed within the framework of the following principles:

- (a) The education process should aim at the development of a national democratic culture of respect for our country's diverse cultural and religious traditions.
- (b) Freedom of conscience and of religion shall be respected at all public schools.
- (c) Religious observances shall be conducted on an equitable basis and attendance at them by learners and members of staff shall be free and voluntary.

(3) If, at any time, the Member of the Executive Council has reason to believe that the religious policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the religious policy of the school shall be reformulated in accordance with subsections (1) and (2).

### **Freedom of conscience**

20. (1) No person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion.

(2) No person employed at any public school or independent school shall in the course of his or her employment denigrate any religion.

(3) (a) Every learner at a public school, or at an independent school which receives a subsidy in terms of section 61(1), shall have the right not to attend religious education classes and religious practices at that school.

(b) The right conferred by paragraph (a) on a learner at an independent school which receives a subsidy in terms of section 61(1), may be limited where such limitation is justifiable in an open and democratic society based on freedom and equality and is necessary to preserve the religious character of the independent school concerned.

(c) Except as is provided for in paragraph (b) no person employed at a public school, or at an independent school which receives a subsidy in terms of section 61(1), shall in any way discourage a learner from choosing not to attend religious education classes or religious practices at that school.

(4) No person employed at a public school shall be obliged or in any way unduly influenced to participate in any of the religious education classes or religious practices at that school.

#### **Code of conduct for learners**

21. (1) 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) shall be aimed at establishing a disciplined and purposeful school environment, dedicated to the improvement and maintenance of the quality of the learning process.

(3) In determining the code of conduct, a governing body shall have due regard to the guidelines which the Minister may lay down.

(4) Nothing contained in the South African Schools Act and 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 code of conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

#### **Control, expulsion, suspension and discipline of learners**

22. (1) No person shall administer corporal punishment to a learner at any public school or independent school.

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

(3) Subject to the South African Schools Act and this Act, the governing body of a public school may, after a fair hearing, suspend a learner from attending the school—

- (a) as a correctional measure for a period not exceeding one week; or
- (b) pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

(4) A learner at a public school may be expelled only—

- (a) by the Head of Department; and
- (b) if found guilty of serious misconduct after a fair hearing.

(5) 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.
- (d) 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 the Department to the Member of the Executive Council.

(6) If a learner who is subject to compulsory attendance in terms of section 10(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.

#### **Rights of parents to information**

23. (1) Every parent shall have the right of access to any information held by the department, a public school or an independent school if such information concerns a learner who is his or her child.

(2) The right contemplated in subsection (1) shall not apply in circumstances where withholding access to the relevant information is reasonable and justifiable in an open and democratic society based on freedom and equality.

#### **Duties of learners with respect to public school property**

24. (1) Every learner at a public school shall take good care of the property of the school or of the department which is placed at his or her disposal, and shall return it to his or her school at the end of the school year.

(2) The parents of a learner at a public school shall be liable for any damage to or loss of school or departmental property in respect of which the learner concerned is liable to the department or to the school concerned.

#### **Representative council of learners**

25. (1) A representative council of learners at the school must be established at every public school which enrolls learners in the eighth level and higher.

(2) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine guidelines for the establishment, election and functions of representative councils of learners.

(3) A 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 4**

### **PUBLIC SCHOOL GOVERNANCE**

#### **Governing bodies of public schools and hostels**

26. (1) For the purpose of promoting the participation of the people of the Province in the governance of public schools, the Member of the Executive Council shall establish a governing body for every such school.

(2) The Member of the Executive Council may, instead of establishing a governing body for each of two or more public schools, establish one governing body for such schools, provided that the Member of the Executive Council 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.

(3) If, in the opinion of the Member of the Executive Council, it is not expedient to place a hostel under the supervision of the governing body of a particular school, the Member of the Executive Council may establish a governing body for one or more of such hostels.

(4) Subject to the South African Schools Act and this Act, 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*.

(5) A Constitution contemplated in subsection (4) 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;
- (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.

(6) The governing body shall submit a copy of its Constitution to the Head of Department within 90 days of its election.

#### **Composition of governing bodies**

27. (1) The principal of a public school in his official capacity shall be a member of the governing body of that school.

(2) A majority of members of a governing body of a public school shall be parents of learners at that school, provided that a parent who is employed at the school may not represent parents on the governing body.

(3) Members of the community may be co-opted by the governing body of a public school.

(4) Educators at a public school shall be represented on the governing body of that school.

(5) Learners may be represented only on the governing body of a public school which provides education at a level higher than the seventh level; such learners must be elected by the representative council of learners referred to in section 25.

(6) Staff at a public school who are not educators shall be represented on the governing body of that school.

(7) (a) The Member of the Executive Council may make regulations as to the further composition of the governing bodies of public schools and hostels including public schools and hostels for learners with special needs.

(b) Regulations may exclude certain categories of representatives on the governing body of a public school from participation in certain categories of school business as long as there is a reasonable basis for such exclusion.

(c) The Member of the Executive Council may approve the composition of a governing body at a public school which differs from the composition contemplated in this section if—

- (i) the governing body at the school has applied in writing for such different composition, providing reasons therefor; and
- (ii) the Member of the Executive Council is satisfied that such composition is in the interest of education at the school.

### **Powers and functions of governing bodies**

**28.** (1) The governing body of a public school shall be the official mouthpiece of the parents of learners, the educators and the learners of the school on matters other than those relating to the professional administration of the school.

(2) A governing body may describe itself as a governing body, a school board, a parents' teachers' association or a parents' teachers' students' association.

(3) The governing body of a public school shall—

- (a) promote the best interests of the school and strive to ensure its development through 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;
- (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, if applicable;
- (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 Educators Employment Act, 1944 (Proclamation No. 130 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (j) recommend to the Head of Department the appointment of non-educators staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (k) at the request of the Head of Department, allow the reasonable use under fair conditions of the facilities of the school for educational programmes not conducted by the school;
- (l) discharge all other functions imposed upon the governing body by or under the South African Schools Act and this Act; and
- (m) discharge other functions consistent with the South African Schools Act and 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*.

1. The governing body may allow the reasonable use of the facilities of the school for fundraising purposes, subject to such reasonable and such conditions as the governing body may determine, which may include the payment of a fee or rent which accrues to the school.

2. A governing body may join a voluntary association representing governing bodies.

3. Subject to the South African Schools Act and 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 ground included 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; or
- (e) other functions consistent with the South African Schools Act and this Act.

4. The Head of Department may refuse an application contemplated in subsection (3) if the governing body concerned does not have the capacity to perform such functions.

5. The Head of Department may approve such application unconditionally or subject to conditions.

6. The decision of the Head of Department on such applications must be communicated to the governing body concerned, furnishing reasons.

7. An appeal may be lodged by a decision of the Head of Department in terms of this Act to the Member of the Executive Council.

8. The Member of the Executive Council may, by notice in the *Provincial Gazette*, authorise governing bodies to exercise one or more functions without regard to the provisions of subsection (6), if—

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

#### Provision of training for governing bodies

9. (1) For the purpose of promoting efficiency, active participation in decision-making and good governance and the accountability of governing bodies, the Member of the Executive Council may institute courses and training programmes for the training of members of governing bodies out of funds appropriated for this purpose by the provincial legislature.

(2) The Head of Department may recommend that any governing body send members on particular courses or training programmes established in terms of subsection (1) and may, with the concurrence of the financial head, approve that the subsistence and travelling expenses of any such members relating to the attendance at such course or training programmes shall be paid by the department.

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

**Inability of governing body to perform its functions**

30. (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.

(6) If a governing body has ceased to perform its functions, the Head of Department must appoint sufficient persons to perform those functions for a period not exceeding three months.

(7) 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.

(8) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

**Regulations relating to governing bodies**

31. The Member of the Executive Council may make regulations as to—

- (a) the qualifications for election of, the terms of office of, and the vacation of office by members of governing bodies, and the filling of incidental vacancies in governing bodies;
- (b) the manner of election, and the powers and functions of officers of governing bodies;
- (c) the convening of, procedure and rules at, and quorum for, meetings of governing bodies and the keeping of minutes of such meetings;

(4) This 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.

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

(6) Subject to the South African Schools Act and 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 ground 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; or
- (e) other functions consistent with the South African Schools Act and this Act.

(7) The Head of Department may refuse an application contemplated in subsection (6) only if the governing body concerned does not have the capacity to perform such function effectively.

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

(9) The decision of the Head of Department on such applications must be conveyed in writing to the governing body concerned, furnishing reasons.

(10) 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.

(11) 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 (6), if—

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

#### **Capacity building of governing bodies**

**29.** (1) For the purpose of promoting efficiency, active participation in decentralised school and hostel governance and the accountability of governing bodies, the Head of Department may institute courses and training programmes for the training of members of governing bodies out of funds appropriated for this purpose by the Provincial Legislature.

(2) The Head of Department may recommend that any governing body send members on particular courses or training programmes established in terms of subsection (1) and may, with the concurrence of the financial head, approve that the subsistence and travelling expenses of any such members relating to the attendance at such course or training programmes shall be paid by the department.

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

#### **Inability of governing body to perform its functions**

**30.** (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.

(6) If a governing body has ceased to perform its functions, the Head of Department must appoint sufficient persons to perform those functions for a period not exceeding three months.

(7) 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.

(8) The Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

#### **Regulations relating to governing bodies**

**31.** The Member of the Executive Council may make regulations as to—

- (a) the qualifications for election of, the terms of office of, and the vacation of office by members of governing bodies, and the filling of incidental vacancies in governing bodies;
- (b) the manner of election, and the powers and functions of officers of governing bodies;
- (c) the convening of, procedure and rules at, and quorum for, meetings of governing bodies and the keeping of minutes of such meetings;

- (d) the reconstitution of governing bodies;
- (e) the designation of persons employed by the department to perform the work relating to the performance of the functions of governing bodies; and
- (f) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

## CHAPTER 5

### DEMOCRATIC GOVERNANCE OF EDUCATION

#### Establishment of Education and Training Council

32. (1) The Member of the Executive Council shall, within six month of the commencement date, establish a body to be known as the Education and Training Council.

(2) Every regional council established under section 39(1) shall be represented on the Council.

(3) Every specialist council established under section 43(1) shall be represented on the Council.

(4) At the first meeting of the Council, the Council shall elect one of its members as the chairperson of the Council.

(5) The administrative functions of the Council shall be performed by a person or persons employed by the department.

(6) A member of the Council, or a member of a committee established by the Council under section 37(1), who is not in the full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(7) Subject to the provisions of this Act, the Member of the Executive Council may make regulations as to—

- (a) the composition of the Council;
- (b) the qualification and terms of office of, and the vacation of office by members of the Council, and the filling of vacancies; and
- (c) the appointment and functions of an executive committee for the Council.

#### Head of Department reports to Council

33. (1) The Head of Department shall report quarterly, in writing, on the state of education in the Province, to the executive committee of the Council.

(2) The executive committee of the Council shall table every report of the Head of Department at the first meeting of the Council after the report was received.

#### General functions of Council

34. (1) The Council shall make recommendations to the Member of the Executive Council concerning the provision of legislation relating to education in the Province.

(2) The Council shall make recommendations to the Member of the Executive Council on any matter regarding education in the Province referred to it by the Member of the Executive Council or which the Council wishes to bring to the attention of the Member of the Executive Council.

(3) The Council shall perform such other functions as may be assigned to it by or under this Act, or any other law.

(4) The Council shall determine its own rules regulating its meetings and procedures at such meetings.

(5) No act of the Council shall be invalid merely on account of a vacancy on the Council.

#### **Recommendations of Council**

**35.** (1) If the Member of the Executive Council decides not to implement a recommendation made by the Council in terms of section 34(1) or 34(2), he or she shall provide the Council with written reasons for his or her decision.

(2) The Council shall have the right to appeal against the decision of the Member of the Executive Council to the Executive Council.

#### **Functions of Council with respect to legislation**

**36.** (1) No Bill relating to education in the Province shall be introduced in the Provincial Legislature unless it has been submitted to the Council at least 30 days before such introduction.

(2) No regulations may be made by the member of the Executive Council under this Act unless a draft of such regulations has been submitted to the Council for its comments, and the Member of the Executive Council has given consideration to the comments of the Council on such draft and has submitted to the Council his or her written response to such comments.

(3) The provisions of subsections (1) and (2) shall not apply until the Council has been established under section 32(1).

(4) The Council may delegate the power to comment contemplated in subsection (2), either generally or in specific cases, to a committee of the Council established under section 37(1).

(5) For the purposes of satisfying the requirements of subsection (2), the Member of the Executive Council may direct the relevant administrative officer of the Council to convene, on 10 day's notice, a special meeting of the Council, or of any committee of the Council to which the Council has delegated its powers over the regulations in question.

(6) Unless the comments contemplated in subsection (2) are forwarded to the Member of the Executive Council within seven days of the meeting at which the Council or its committee considered the draft regulations, the Member of the Executive Council may make the regulations concerned without considering or responding to such comments.

(7) The Provisions of subsection (2) shall not apply—

- (a) to any amendments to draft regulations made by the Member of the Executive Council after considering the comments of the Council or its committee on such draft regulations; or

- (b) in cases where the Member of the Executive Council certifies, by notice in the *Provincial Gazette* in which the regulations are published, that he or she has reason to believe that there is so urgent a need for the regulations to be put in effect that the delay occasioned by the procedures of that subsection cannot be justified.

(8) The Member of the Executive Council may not issue a notice under subsection (7)(b) unless he or she has informed the chairperson of the Council of his or her intention to do so.

#### **Committees of Council**

37. (1) The Council may, with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions.

(2) The composition of committees established under subsection (1) shall provide for adequate representation of educational districts within the Province.

(3) The Council may assign any of its functions to such a committee, but shall not be divested of such functions and may amend or rescind any decision of such a committee.

(4) The Council may dissolve any committee established under subsection (1).

#### **Annual report of Council**

38. (1) The Council shall, before the 31st of March of each year, present the Member of the Executive Council with a report on its activities of the previous calendar year.

(2) After receiving the annual report of the Council, the Member of the Executive Council shall table it in the Provincial Legislature within 14 days of the next day on which the Provincial Legislature is sitting.

#### **Establishment of regional education and training councils**

39. (1) The Member of the Executive Council shall establish a regional education and training council for each educational region in the Province.

(2) At the first meeting of a regional council it shall elect one of its members as chairperson.

(3) The administrative functions of a regional council shall be performed by a person or persons employed by the department.

(4) A member of a regional council, or a member of a committee established by a regional council under section 43(1) who is not in a full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(5) Subject to the provisions of this Act, the Member of the Executive Council may make regulations as to—

- (a) the composition of a regional council; and
- (b) the qualifications and terms of office of, and the vacation of office by members of a regional council, and the filling of vacancies.

### **Regional directors reports to regional council**

40. A regional director shall report quarterly, in writing, on the state of education in his or her region, to the regional council of his or her region.

### **General functions of regional council**

41. (1) A regional council shall make recommendations to the relevant regional director on any matter regarding education in the region referred to it by the regional director or which the regional council wishes to bring to the attention of the regional director.

(2) A regional council shall perform such other functions as may be assigned to it by or under this Act or any other law.

(3) A regional council shall determine its own rules regulating its meetings and procedures at such meetings.

(4) No act of a regional council shall be invalid merely on account of a vacancy on the regional council.

### **Recommendation of regional council**

42. (1) The regional director shall refer the recommendation of a regional council to the appropriate authority within the department.

(2) Where the department decides not to implement the recommendation of a regional council, it shall notify the regional director of the reasons for its decision, and the regional director shall provide the regional council with these reasons in writing.

(3) The regional council shall have the right to appeal against the decision of the department to the Member of the Executive Council.

### **Committees of regional council**

43. (1) A regional council may, with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions.

(2) A regional council may assign any of its functions to such a committee, but shall not be divested of such functions, and may amend or rescind any decision of such a committee.

(3) A regional council may dissolve any committee established under subsection (1).

### **Establishment of district education and training councils**

44. (1) The Member of the Executive Council may establish a district education and training council for each educational district in the Province.

(2) The provision of sections 39 to 43 shall apply *mutatis mutandis* in respect of a district council, save that in any such application references to a regional council and a regional director in such sections shall be construed as references to a district council and a district director, respectively.

### **Establishment of specialist council**

45. (1) The Member of the Executive Council may, after consultation with the Council, establish specialist advisory council to advise him or her on matters within specified terms of reference.

- (2) The Member of the Executive Council may make regulations as to—
- (a) the composition of a specialist council;
  - (b) the qualifications and terms of office of members of a specialist council and the filling of vacancies on a specialist council; and
  - (c) the appointment and functions of an executive committee of a specialist council.

(3) At the first meeting of a specialist council it shall elect one of its members as chairperson.

(4) The administrative functions of a specialist council shall be performed by a person or persons employed by the department.

(5) A member of a specialist council who is not in the full-time employment of the State, may be paid out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

#### **Powers and functions of specialist councils**

46. (1) A specialist council shall make recommendations to the Member of the Executive Council concerning legislation relating to matters falling within its terms of reference.

(2) A specialist council shall make recommendations to the Member of the Executive Council on any matter falling within its terms of reference referred to it by the Member of the Executive Council or which the specialist council wishes to bring to the attention of the Member of the Executive Council.

(3) A specialist council shall perform such other functions as may be assigned to it by or under this Act or any other law.

(4) A specialist council shall determine its own rules regulating its meetings and procedures at such meetings.

(5) No act of a specialist council shall be invalid merely on account of a vacancy on the specialist council.

#### **Recommendations of specialist council**

47. (1) If the Member of the Executive Council decides not to implement a recommendation made by a specialist council in terms of section 46(1) or 46(2), he or she shall provide the specialist council with written reasons for his or her decision.

## **CHAPTER 6**

### **PUBLIC SCHOOLS**

#### **Establishment and maintenance of public schools**

48. (1) The Member of the Executive Council shall, out of moneys appropriated for this purpose by the provincial legislature, establish and maintain public schools for the education of learners, which may include the provision of hostels for the residential accommodation of learners.

(2) A public school established and maintained under subsection (1) may be a special public school or an ordinary public school.

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

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

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

#### **Status and control of a public school**

**49.** (1) A public school shall be a juristic person.

(2) Subject to this Act, the governance of a public school shall be vested in its governing body, which stands in a position of trust towards the school.

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

#### **Funding of public schools**

**50.** (1) The State shall 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 shall, 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.

(3) A governing body of a public school shall 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.

#### **Determination of school fees at public schools**

**51.** Subject to the South African Schools Act and this Act, a governing body may determine school fees payable by a parent of a learner at the school, subject to fair and reasonable guidelines which may be determined and prescribed by the Minister, relating to the payment and exemption of payment of school fees at public schools.

**52.** (1) A governing body may only determine that school fees shall be payable under section 51 if—

(a) the governing body has in terms of the provisions of section 57 presented an income and expenditure budget for the forthcoming year, and such budget has been considered and approved by a majority of parents present and voting at a general meeting of parents of learners at the school;

(b) at a meeting contemplated in subsection (a) of parents of learners of the school a majority of such parents, present and voting at the meeting, agree that school fees shall be payable at the school;

- (c) a majority of parents present and voting at a meeting convened by the governing body has agreed on equitable procedures for the exemption of parents who are unable to pay fees, after taking into account such guidelines referred to in section 51;
- (d) after the agreements referred to in subsections (1)(b) and (c), the governing body has convened a meeting of the parents of learners at the school who are able to pay the fees, and a majority of such parents, present and voting at the meeting, agree to a fee structure according to which school fees shall be payable at the public school, which fee structure shall be annually reviewed.

(2) The governing body of a public school shall convene the meetings contemplated in subsections (1)(b) and (1)(c) on 30 days notice to the parents of learners at the school mentioned in those subsections.

#### **Payment and exemption from payment of school fees at public schools**

53. (1) Subject to the South African Schools Act and this Act, a parent of a learner at a public school who is eligible to pay the school fees agreed in terms of section 51, shall pay such fees.

(2) A parent of a learner at a public school shall not be obliged to pay school fees if he or she is exempt from fee payments in terms of section 52.

(3) The governing body of a public school may by process of law enforce the payment of school fees by parents who are liable for payment thereof.

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

(5) In deciding an appeal referred to in subsection (4), the Head of Department must follow due process which safeguards the interests of the parent and the governing body.

#### **Establishment of school funds at public schools**

54. (1) The governing body of a public school shall 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 shall be paid into the school fund.

(3) A public school shall appropriate money or other goods donated or bequeathed to or received in trust by that school, in accordance with the conditions of the donation, bequest or trust concerned.

(4) The school fund and all proceeds thereof shall only be used for—

- (a) educational purposes at, or in connection with, the school concerned;
- (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 bodies; or
- (d) another educational purpose agreed between the governing body and the Head of Department.

(5) The government body of a public school shall open and maintain a banking account.

#### **Assets of public schools**

**55.** (1) All assets acquired by a public school on or after the commencement of this Act shall be the property of the school.

(2) The assets of the public school shall only be used for—

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

#### **Financial records of a public school**

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

**57.** The governing body of a public school shall—

- (1) prepare an annual income and expenditure budget in accordance with the guidelines determined by the Head of Department, for consideration and approval by a majority of parents present and voting at a general meeting called by the governing body;
- (2) keep records of money received and spent by the public school, and of the assets, liabilities and financial transactions of the school; and
- (3) 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 guidelines determined by the Member of the Executive Council's Department, which indicate, with suitable particulars, money received and expenditure incurred by the public school during, and its assets and liabilities at the end of the financial year concerned.
- (4) Before a budget referred to on 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.

**58.** (1) The records and financial statements referred to in section 57 shall be audited by a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), or if this is not reasonably practicable, examined by a person who is qualified to perform the duties of an accounting officer in terms of section 60 of the Closed Corporations Act, 1984 (Act No. 69 of 1984), or is approved by the Member of the Executive Council, for this purpose, provided that such person shall have no financial interest in the affairs of the school.

(2) A governing body shall, within six (6) months after the end of each financial year, submit a copy of the annual financial statements, audited or examined in terms of subsection (1) to the Head of Department.

(3) 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.

**59.** The governing body shall, on request by the parent of a learner at a public school—

- (1) provide him or her with a copy of the latest audited financial statements of the school; and
- (2) make the records referred to in section 57(2) available for inspection by him or her.

### **Closure of public schools**

**60.** (1) If the Member of the Executive Council considers it necessary, he or she may, by notice in the *Provincial Gazette* declare that the school concerned shall be closed from a date mentioned in such notice.

(2) The notice contemplated in subsection (1) shall set out the reasons of the Member of the Executive Council for deciding to close the public school.

(3) The Member of the Executive Council shall not take action 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.

(4) The governing body of a public school which is aggrieved by the decision of the Member of the Executive Council to close that school may, within 30 days after receiving a notice contemplated in subsection (1), appeal to the Executive Council, in writing, setting out the grounds of the appeal.

(5) The Member of the Executive Council shall not take part in the deliberations of the Executive Council in respect of an appeal brought under subsection (4).

(6) The Executive Council shall consider an appeal contemplated in subsection (4) and may confirm or set aside the decision of the Member of the Executive Council.

(7) The Executive Council shall as soon as may be practicable—

- (a) notify the appellant governing body of its decision; and
- (b) provide the appellant governing body with written reasons for its decision.

(8) (a) If an appeal under subsection (4) is dismissed by the Executive Council the public school shall be closed 30 days after the date on which the appellant governing body is notified of the decision of the Executive Council.

(b) If no such appeal has been lodged within the 30 days provided for in subsection (4) the public school shall be closed on the expiry of those 30 days.

(9) If a public school is closed in terms of subsection (1), or if an appeal is dismissed in terms of subsection (8), all assets of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 54(3), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

## CHAPTER 7

### INDEPENDENT SCHOOLS

#### Establishment of an independent school

61. Subject to the South African Schools Act and this Act, every person shall have the right, at his or her own cost, to establish and maintain an independent school provided that there shall be no discrimination on the ground of race.

#### Registration of independent schools

62. (1) No person shall establish, conduct or maintain an independent school unless that independent school is registered in terms of this Act.

(2) Any person may apply in writing, in the prescribed form, to the Head of Department for the registration of an independent school which he or she intends to establish, conduct or maintain.

(3) An independent school must be registered by the Head of Department if he or she is satisfied that—

- (a) the standards maintained by such school are not inferior to the standards in comparable public schools.
- (b) the school does not directly or indirectly discriminate on the grounds of race; and
- (c) the school complies with other conditions determined by the Member of the Executive Council by notice in the *Provincial Gazette*.

(4) An applicant for the registration of an independent school shall furnish such particulars in connection with his or her application as the Head of Department may require.

(5) The Head of Department may grant an application contemplated in subsection (2) if he or she is of the opinion that the prescribed requirements have been complied with.

(6) If the Head of Department grants such application, he or she shall register the independent school in question and issue to the applicant a registration certificate in such form as he or she may determine.

(7) If the Head of Department refuses such application, he or she shall notify the applicant in writing of the refusal, and the reasons for the refusal.

(8) An applicant who is aggrieved by the refusal of the Head of Department to grant his or her application brought under subsection (2) may, within 30 days after receiving notice of such refusal, appeal to the Member of the Executive Council, in writing, setting out the grounds of the appeal.

(9) The Member of the Executive Council shall consider an appeal contemplated in subsection (8) and may confirm, vary or set aside the decision of the Head of Department.

(10) The Member of the Executive Council shall as soon as may be practicable—

- (a) notify the appellant of his or her decision; and
- (b) provide the appellant with written reasons for his or her decision.

(11) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period of three months.

#### **Lapsing or withdrawal of registration of independent schools**

**63.** (1) The registration of an independent school shall lapse under the prescribed circumstances.

(2) The registration of an independent school may be withdrawn by the Head of Department under the prescribed circumstances.

(3) No withdrawal of the registration of an independent school shall be 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 giving reasons why the registration of the independent school should not be withdrawn prior to any decision to withdraw the registration of the independent school;
- (c) any such representations received have been duly considered;
- (d) the owner of such independent school has been furnished by the Head of Department with a notice of such withdrawal of registration of the independent school; and
- (e) an appeal under subsection (4) has been dismissed or no such appeal has been lodged within the 30 days provided for.

(4) The owner of an independent school who is aggrieved by the withdrawal of the registration of his or her independent school under subsection (2) may, within 30 days after receiving notice of such withdrawal, appeal to the Member of the Executive Council in writing, setting out the grounds of appeal against the withdrawal.

(5) The Member of the Executive Council shall as soon as may be practicable—

- (a) notify the appellant of his or her decision; and
- (b) provide the appellant with written reasons for his or her decision.

#### **Subsidies to registered independent schools**

**64.** (1) The Member of the Executive Council may, out of money appropriated by the provincial legislature for this purpose, grant a subsidy to a registered independent school in terms of section 68(1)(c).

(2) A registered independent school may annually, on or prior to the prescribed date, apply to the Head of Department in writing for the prescribed subsidy.

(3) The Head of Department may grant or refuse an application referred to in subsection (2) but no subsidy shall be granted to an independent school—

- (a) which does not comply with the prescribed conditions for receiving a subsidy; or
- (b) that is operated for profit unless the Member of the Executive Council has consented to the grant of such subsidy.

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

(5) The Head of Department shall not terminate or reduce a subsidy under subsection (4) unless he or she has—

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

(6) 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.

#### **Financial statements of certain registered independent schools**

65. (1) The financial year of a registered independent school which receives a subsidy from the State in terms of section 64 shall commence on the first day of January and end on the last day of December of each year.

(2) The provisions of sections 57, 58 and 59 shall apply *mutatis mutandis* to all registered independent schools, which receive a subsidy in terms of section 64 and in such application any reference to—

- (a) a public school shall be construed as a reference to a registered independent school which receives a State subsidy; and
- (b) a governing body shall be construed as a reference to the owner of a registered independent school which receives a State subsidy.

#### **Declaration of independent schools as public schools**

66. (1) The Member of the Executive Council may, with the concurrence of the financial head, enter into an agreement with the owner of an independent school in terms of which the school concerned is declared to be a public school.

(2) If an agreement has been entered into under subsection (1), the Member of the Executive Council may by notice in the *Provincial Gazette* declare the independent school concerned to be a public school with effect from a date mentioned in the notice.

#### **Consequences of declaration as public school**

67. (1) As from the date mentioned in the notice contemplated in section 63(2)—

- (a) the school concerned shall be deemed to be a public school established under section 46(1);

- (b) the powers, duties, rights and obligations of the previous owner, in connection with the school concerned, shall vest in the State; and
- (c) the ownership and control of movable and immovable property which immediately prior to the date vested in the owner concerned, and which relates to the school concerned, shall vest in the State, unless otherwise agreed upon in terms of section 63(1).

(2) Immovable property vested in the State in terms of subsection 1(c), shall be transferred to the State without payment of transfer duty, stamp duty or any other money or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property referred to in subsection (2) is registered, shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in the register of deeds as may be required to effect the transfer concerned.

(4) The declaration of an independent school to be a public school shall not affect anything legally done by the owner concerned prior to the declaration.

#### **Regulations relating to registered independent schools**

**68.** (1) The Member of the Executive Council may make regulations as to—

- (a) the admission of learners of a registered independent school to examinations conducted by or under the supervision of the department;
- (b) the keeping of registers or other documents by a registered independent school;
- (c) the criteria of eligibility for subsidy, the conditions of subsidy and the manner in which any subsidy shall be payable to a registered independent school;
- (d) the democratic governance of a registered independent school; and
- (e) any other matter relating to registered independent schools which shall or may be prescribed in terms of this Act.

(2) Different regulations may be made under subsection (1) in respect of different registered 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).

#### **Registration of learner for education at home**

**69.** (1) A parent of a learner may apply to the Head of Department for the registration of the learner to receive education at his or her home.

(2) The Head of Department must register a learner under subsection (1) if he or she is satisfied that—

- (a) the registration is in the interest of the learner;
- (b) the education 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 of the learner will comply with such other conditions determined 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 shall not act under subsection (3) unless he or she has—
  - (a) informed the parent of the learner of his or her intention so to act and the reasons therefor;
  - (b) has granted to 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.

## CHAPTER 8

### LEARNERS WITH SPECIAL NEEDS IN EDUCATION

#### **Provision of education for learners with special education needs**

**70.** (1) The Member of the Executive Council may establish and maintain special public schools under section 48(1) to provide education for learners with special education needs.

(2) The Member of the Executive Council shall, where reasonably practicable, provide education for learners with special education needs at ordinary public schools.

#### **Admission of learners to schools for special education**

**71.** (1) Subject to the provisions of any other law, the Head of Department may, at the request of the parent of a learner, approve that the learner be admitted to a school for special education.

(2) The Head of Department shall not grant his or her approval under subsection (1) unless—

- (a) he or she is of the opinion that the learner concerned has special education needs; and
- (b) those needs cannot be accommodated in an ordinary public school which the learner concerned can attend.

(3) If the special education needs of a learner cannot be accommodated in the school which the learner currently attends, but can be accommodated at another ordinary public school which the learner can attend, the Head of Department may direct that the learner be admitted to that ordinary public school.

#### **Assessments to identify learners with special education needs**

**72.** If the Head of Department believes that a learner who is subject to compulsory school attendance has special education needs which cannot be accommodated at the school which he or she attends, the Head of Department may, after consultation with the parents of the learner, arrange that the learner be assessed in order to determine whether he or she has such needs.

**Action in case of learners with special education needs**

**73.** (1) The Head of Department shall make the results of an assessment under section 71 available to, and discuss them with, the parent of the learner.

(2) If the Head of Department, after satisfying the requirements of subsection (1), believes that the learner has special education needs which cannot be accommodated at the school which he or she attends, the Head of Department shall notify the parent of the learner in writing—

- (a) that he or she has found that the learner has special education needs of which he or she should receive specialised education, and of the reasons for this finding; and
- (b) that the parent may within 30 days from the date of receipt of the notification, appeal to the Member of the Executive Council against the finding.

(3) The Member of the Executive Council shall consider an appeal contemplated in subsection (1), and may confirm, vary or set aside the finding of the Head of Department.

**Placement of learners with special education needs**

**74.** (1) The Head of Department may after consultation with the parent, designate a school for specialised education, or an ordinary school capable of accommodating the learner's special education needs, at which the learner shall be placed, provided that—

- (a) the parent of a learner found to have special education needs in terms of section 71, within the period determined by the Head of Department, takes such steps as the Head of Department, after consultation with the parents, determines as adequate to ensure that the learner receives suitable education or treatment; or
- (b) the Head of Department at any time after that period is of the opinion that the learner is receiving suitable education or treatment.

(2) If the Head of Department has designated a school under subsection (1) and the parent concerned fails to send the learner to that school within the period determined by the Head of Department, the Head of Department may cause the learner to be taken to the school concerned.

(3) If a learner is placed in terms of this section, the department shall, from money appropriated for this purpose by the Provincial Legislature, on behalf of the parent of the learner concerned, pay to the school at which the learner has been placed, an amount equal to the increase in the school fees for which the parent becomes liable because of such placement.

**Additional powers of children's court**

**75.** (1) A children's court may, in the case of a learner in respect of whom it has made an order in terms of section 15(1) of the Child Care Act, 1983 (Act No. 74 of 1983), direct that the case be referred to the Head of Department in order to determine whether the learner has special education needs.

(2) If the Head of Department finds that a learner referred to him or her under subsection (1) has special education needs, the Head of Department may approve that the learner be admitted to a public school for special education for the periods during which it provides special education.

### **Transfer of learners with special education needs**

**76.** The Head of Department may, after consultation with the parent of a learner attending a public school for special education, transfer that learner to another public school for special education.

### **Exemption from attendance of school for special education**

**77.** The Head of Department may, after consultation with the parent of a learner attending a public school for special education, exempt such learner from attendance at a school for special education if he or she is of the opinion that it is in the best interests of the learner that he or she should be so exempted.

### **Governing bodies at school providing education for learners with special education needs**

**78.** (1) The governing body of an ordinary public school which provides education to learners with special education needs shall—

- (a) co-opt a person or persons with expertise regarding the special education needs of those learners as a member or members of the governing body; and
- (b) establish a committee to advise the governing body on the provision of education to learners with special education needs at the school.

(2) The governing body of a special public school—

- (a) shall, in addition to those persons referred to in section 27, include an official with expertise regarding the special educational needs of learners at the school; and
- (b) may in addition to those persons referred to in section 27, co-opt any or all of the following persons:
  - (i) A representative of a sponsoring body;
  - (ii) a representative of organisations of parents of learners with special education needs;
  - (iii) a representative of organisations of disabled people; or
  - (iv) a member from the disabled community.

(3) The Member of the Executive Council may by notice in the *Provincial Gazette* exempt a special public school from complying with section 27(5) if it is not practically possible for a students' representative council to be established at the school.

## **CHAPTER 9 EDUCATORS**

### **Equality of educators**

**79.** (1) In the appointment, promotion and remuneration of educators by the department, there shall be no discrimination based on race, age, gender, sex, disability, ethnic or social origin, colour, sexual orientation, religion, conscience, belief, culture or language.

(2) In the appointment, promotion and remuneration of educators by the department, there shall be no discrimination between or among educators who were employed by different departments recognised under laws repealed by this Act.

(3) Subsections (1) and (2) shall not prevent the implementation of measures designed to assist educators who have been previously prejudiced by unfair discrimination in the context of their employment by the State.

#### **Right of educators to information**

**80.** (1) Every educator employed by the department shall have the right of access to all information held by the Department relating to his or her employment.

(2) The right in subsection (1) shall not apply in circumstances where withholding access to the relevant information is reasonable and justifiable in an open and democratic society based on freedom and equality.

#### **Political rights of educators**

**81.** (1) The freedom of association of all educators shall be respected by the department.

(2) Educators shall be entitled to be members of political parties.

(3) A culture of tolerance shall be encouraged at all schools.

(4) No educator shall use his or her position as an educator, to advance or to attempt to advance the interests of any political party.

#### **Responsibilities of educators**

**82.** (1) An educator shall—

(a) try to promote the intellectual and personal development of learners;

(b) try to instil in learners a desire to learn;

(c) try to foster in learners a culture of human rights;

(d) act in a just and impartial manner in his or her dealings with learners; and

(e) take the appropriate measures to attain and maintain a high level of professionalism.

#### **Responsibilities of principals**

**83.** (1) The principal of a school shall ensure that educational services of quality are provided in that school.

(2) The principal, in consultation with his or her staff, shall be responsible for the educational activities at a school, the professional administration of the school and the implementation of the policy by which the school is governed.

#### **Provincial educator policy**

**84.** (1) Within the consultative and negotiating framework provided by law, the Member of the Executive Council shall be responsible for formulating provincial policy on—

(a) employment of educators;

(b) transfer and secondment of educators;

(c) assessment and promotion of educators;

(d) language requirements for entry into the teaching profession;

(e) registration of educators with the department;

- (f) design of educator development programmes;
- (g) contracting for the provision of in-service education and training;
- (h) allocation of funds for educator development;
- (i) collection and publication of data relating to educator policy; and
- (j) all other matters relating to provincial educators.

(2) The provincial policy contemplated in subsection (1) shall be formulated subject to national guidelines and the principles set out in section 4.

## CHAPTER 10

### RURAL EDUCATION

#### Continued existence of certain farm schools

85. Notwithstanding the repeal of the Education and Training Act, 1979 (No. 90 of 1979), by this Act, a farm school which existed immediately prior to the commencement date shall, subject to the provisions of this chapter, continue to exist.

#### Access to farm schools

86. (1) The owner or occupier of land on which a farm school is situated shall not deny access to such school to any official of the department performing duties at the school relating to his or her employment, any educator teaching at the school or any learner studying at the school.

(2) The owner or occupier of land over which access is reasonably required by an official, an educator or a learner for the purpose of travelling to a farm school shall not deny such official, educator or learner such access.

(3) Any person who knowingly contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(4) Any person who as a condition for admission of a learner to a farm school, or as consideration for attending such school, requires such learner or his or her parent at any time to render any service, whether for remuneration or otherwise, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

#### Remuneration of educators at schools in rural areas

87. (1) An educator at a school situated in a rural area or a peri-urban area shall be entitled to the same remuneration and benefits as he or she would earn were he or she employed by the department at a school in an urban area.

(2) The Member of the Executive Council may, with concurrence of the financial head, provide for the payment of supplementary remuneration and benefits to educators employed at schools in rural areas or peri-urban areas.

#### Adjustment of subsidies to farm schools

88. The Member of the Executive Council may, with the concurrence of the financial head, and after hearing the owner of a farm school the governing body of the farm school concerned, adjust, alter or withdraw the aid given to the farm school concerned.

**Declaration of farm schools to be public schools**

89. (1) The Member of the Executive Council may, after consultation with owner of a farm school and the governing body of the farm school concerned, and with the agreement of the financial head, by notice in the *Provincial Gazette* declare any farm school to be a public school.

(2) The owner of any farm school which is the subject of a declaration under subsection (1) shall be paid by the state such compensation as is required by section 28(3) of the Constitution in respect of any movable and immovable property which he or she owned immediately prior to such declaration and which vests in the State by virtue of the declaration.

(3) The provisions of section 67 shall apply *mutatis mutandis* to the declaration of a farm school as a public school under subsection (1).

(4) No transfer of property, whether movable or immovable, in terms of this section shall be regarded as expropriation for the purposes of section 98.

**Closure of farm schools**

90. (1) The Member of the Executive Council may close any farm school if the conditions at such farm school constitute a material threat to the health or welfare of learners or educators at that school.

(2) Any farm school closed under subsection (1) shall not remain closed unless adequate alternative provision has been made for the education of learners attending such school within a period of two weeks from the date of closure of the school.

(3) The member of the Executive Council may, with the concurrence of the governing body of any farm school, enter into an agreement with the owner of the farm school concerned which provides for the closure of the school on such terms as may be agreed upon.

(4) No farm school shall be closed otherwise than in accordance with subsections (1) or (3).

**CHAPTER 11****TRANSITIONAL PROVISIONS****Transitional provisions relating to centres of learning and accessories**

91. Any centre of learning, hostel, clinic, educators' quarters or other accessory in connection with schools established, or deemed to have been established, under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of section 5(a).

**Transitional provisions relating to school attendance officers**

92. Any school attendance officer appointed or deemed to have been appointed under the provisions of an Act repealed by this Act, and who held an appointment prior to the commencement date, shall be deemed to have been appointed under section 11(1).

### **Transitional provisions relating to governing bodies**

**93.** A governing body, management council or similar authority of a public school, which existed immediately prior to the commencement date of this Act, shall continue to function as before in terms of the provisions of section 54 of the South African Schools Act.

### **Transitional provisions relating to schools other than private schools**

**94.** (1) Any school, other than a private school referred to in section 95 which was established or deemed to have been established in the province, or any other private school, which existed immediately prior to the commencement of this Act, shall be deemed to be a public school established in terms of section 48(1) of this Act.

(2) The assets and liabilities of a school deemed to be a public school under subsection (1) which vested in that school immediately prior to the commencement date of this Act, shall vest in the public school concerned.

**95.** A private school which was registered or deemed to have been registered under the provisions of a law governing school education in the province, and which existed immediately prior to the commencement date of this Act, shall be deemed to be an independent school registered in terms of section 62 of this Act.

### **Transitional provisions relating to the immovable property of certain schools**

**96.** (1) The immovable property of the school which was declared to be a State-aided school under section 29(2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State in terms of the provisions of section 55 of the South African Schools Act.

(2) Until the Minister has by notice in the *Government Gazette* determined a date when such property devolves upon the State, a public school referred to in subsection 1 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.

### **Negotiating forums**

**97.** (1) For the purposes of facilitating negotiations between the department and governing bodies as contemplated in section 247(1) of the Constitution, the Member of the Executive Council shall by notice in the Provincial Gazette establish a centralised negotiating forum at which negotiations over the alteration of the rights, powers and functions of such bodies shall take place.

(2) The notice establishing the negotiating forum may provide that the negotiating forum shall be divided into different chambers.

(3) The notice establishing the negotiating forum shall—

- (a) state a date, not less than 30 days from the date of the notice, on which the first meeting of the negotiating forum, or of each chamber of the negotiating forum, shall take place;
- (b) state the place at which the first meeting of the negotiating forum, or each chamber of the negotiating forum, shall take place;

- (c) if the negotiating forum has been divided into chambers, state which governing bodies or categories of governing bodies will fall within the jurisdiction of each chamber; and
  - (d) state the manner in which governing bodies may be represented at meetings of the negotiating forum or chambers of the negotiating forum.
- (4) The Member of the Executive Council shall by notice in the *Provincial Gazette* make rules regulating meetings of the negotiating forum or chambers of the negotiating forum.
- (5) All governing bodies shall be bound by any decision taken at a meeting of the negotiating forum.
- (6) Any governing body within the jurisdiction of a chamber of the negotiating forum shall be bound by any decision taken at a meeting of that chamber.

## CHAPTER 12

### GENERAL

#### Indemnities

98. (1) No contract shall exclude any liability of—
- (a) the department;
  - (b) the owner of an independent school; or
  - (c) any person employed at any school to any learner or to his or her parent arising out of circumstances related to the education of the learner concerned.
- (2) Any contractual provision contrary to subsection (1) shall be invalid.

#### Expropriation

99. (1) The Member of the Executive Council, may if it is in the public interest to do so, expropriate land and real rights in or over land for any purpose related to school education in the province.
- (2) The Member of the Executive Council shall 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 a Member of the Executive Council in that regard.
- (4) A 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 a *Provincial Gazette*.
- (5) The owner of any land or real rights in or over land expropriated in terms of subsection (1) shall be entitled to payment of such compensation in respect of such land or real rights in or over land as is provided for by section 28(3) of the Constitution.

(6) The provisions of the Expropriation Act 75 (Act No. 63 of 1975), other than those relating to the quantification of compensation, shall apply to any expropriation effected under this section.

(7) If the Member of the Executive Council and an owner contemplated in subsection (2) fail to reach agreement regarding the payment of compensation, either party may refer the matter to a Court for settlement, or they may agree to refer the dispute to an arbitrator for arbitration.

(8) The purpose of such arbitration shall be to resolve the dispute in a cost-effective and expeditious manner.

(9) An arbitrator referred to in subsection (4) shall be appointed by the Premier from a list of arbitrators compiled by the chairpersons of the organised legal profession in the province.

(10) The list of arbitrators referred to in subsection (6) shall be compiled within thirty (30) days of the commencement date of this Act and shall be reviewed each year.

(11) The arbitrator shall determine the time, venue and procedures which shall apply to the arbitration.

(12) The arbitrator shall determine the dispute and make a written award giving reasons for such award within seven (7) days of the arbitration and his or her determination shall be binding.

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

(14) The arbitrator shall be paid, out of moneys appropriated for this purpose by the provincial legislature, such allowances as the Member of the Executive Council may determine, with the concurrence of the financial head.

#### **Delegation of powers and assignment of duties**

**100.** (1) The Member of the Executive Council may, subject to such conditions as he or she may determine—

- (a) delegate any power conferred upon him or her under this Act, except the power to make regulations, publish a notice and the powers to decide an appeal lodged with him or her in terms of this Act; and
- (b) assign any of his or her duties in terms of this Act, to the Head of Department or a person employed by the department.

(2) The Head of Department may, subject to such conditions as he or she may determine—

- (a) delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (1)(a); and
- (b) assign any of his or her duties in terms of this Act or assigned to him or her in terms of subsection (1)(b) to a person employed by the department.

(3) A delegation or assignment under subsection (1) or (2) shall 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, as the case may be, himself or herself.

**Limitation of proceedings**

**101.** No legal proceedings shall be instituted against the State or a body or person in respect of an alleged act in terms of this Act or an alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted within a period of 12 months after the date on which the plaintiff or the applicant became aware of the alleged act or omission, or after the date on which it could reasonably have been expected that the plaintiff or applicant would have become aware of the alleged act or omission, whichever date is the earlier.

**Regulations**

**102.** (1) The Member of the Executive Council may make regulations as to—

- (a) any matter which shall or may be prescribed by regulation under this Act; and
- (b) any matter which the Member of the Executive Council may deem necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Regulations as to any fees or allowances payable by or to any person or relating to the control of money shall not be made without the concurrence of the financial head.

(3) Different regulations may be made under subsection (1) in respect of different schools or different categories of schools, as long as there is a reasonable and equitable basis for such differentiation.

(4) Regulations made under subsection (1) may prescribe in respect of any contravention thereof or failure to comply therewith, a penalty of a fine or imprisonment not exceeding three months.

**Repeal of laws, and savings**

**103.** (1) Subject to the provisions of this section, the laws listed in column one of the Schedule are hereby repealed to the extent set out in column three of that Schedule and to the extent that they are in force in the Province.

(2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1) and which may or shall be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provisions of this Act.

(3) All regulations, notices and directives made or issued under any law repealed by subsection (1) and which were in force immediately prior to the commencement date shall, notwithstanding such repeal, remain in force except in so far as they are inconsistent with the provisions of this Act, until repealed, withdrawn or amended by the Member of the Executive Council by regulation, notice or directive in terms of this Act.

**Short title and commencement**

**104.** This Act shall be called the Northern Cape School Education Act, 1996, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

**SCHEDULE**

**LAWS REPEALED**

Number and year of Act	Short title	Extent of repeal
1. Act No. 47 of 1963 .....	Coloured Persons Education Act, 1963 .....	The whole.
2. Act No. 61 of 1965 .....	Indian Education Act, 1965 .....	The whole.
3. Act No. 90 of 1979 .....	Education and Training .....	The whole.
4. Act No. 104 of 1986 .....	Private Schools Act (House of Assembly), 1986 .....	The whole.
5. Act No. 70 of 1988 .....	Education Affairs Act (House of Assembly), 1988 .....	The whole.

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