



## GAUTENG SCHOOL EDUCATION ACT 6 of 1995

as amended by

General Notice 3284 of 2011 (PG 301 of 28 December 2011)

**SECTION A :  
INTERPRETATION OF THE  
ACT**

## **1. The Schools Education Act, 1995 (Act 6 of 1995), as amended.**

The School Education Act was passed by the Provincial Legislature in 1995 to provide for a unified system of school education in the Province and to promote the values and principles of the fundamental rights contained in the Constitution of the Republic of South Africa Act 108 of 1996. The promulgation of this Act in 1995 preceded the promulgation of the South African Schools Act, 1996.

The Act was amended in 2011, through the Gauteng Education Laws Amendment Act 5 of 2011, mainly to align with National Legislation and is now known as “The Gauteng Schools Education Act.”

An overview of each chapter is provided, below:

### **CHAPTER 1: INTERPRETATION**

Chapter 1 relates to **the Interpretation** of the Act and therefore covers the definition of terms used in the Act and the application of the Act, which describes the applicability of the Act to schools, the powers of the MEC and Head Of Department and the power of the Provincial Legislation in enacting school education in the Province.

#### **IMPLICATION/S TO SCHOOLS:**

Section 1 implies that schools need to review and align school policies to the definitions, while section 2, requires schools to be aware of the powers of the legislature, MEC and Head of Department regarding school education in the Province.

### **CHAPTER 2: MEMBER OF THE EXECUTIVE COUNCIL AND DEPARTMENT**

Chapter 2 deals with the **Member of the Executive Council and the Department** and provides for the MEC to exercise control over school education in the Province within the parameters of the Constitution, National Education legislation and Provincial Education legislation. This chapter further provides for the principles of school education policy, the general powers of the MEC, temporary closure of schools in cases of emergency, educational districts and region, inquiries commissioned by the MEC and the submission of information as directed by the Head of Department.

#### **IMPLICATION TO SCHOOLS**

Sections 3 and 4, requires schools to be aware that the powers of the MEC can be exercised within the parameters of legislation and the powers therefore may be exercised at anytime in the Province. The provisions in section 5 on the directive principles of school education capture the spirit of the Constitution and require schools to ensure that their policies and procedures reflect the same spirit. In so doing some of the policies developed by the governing bodies must ensure the following :

- Admission policy to be in line with Section 5(1)(a)
- Language policy to be in line with Section 5(1)(b)
- All school policy to avoid all sort of discrimination (Section 5(1)(c) and (d).

- School policies to emphasize the issue of school safety, sexual harassment and avoid all form of violence in public and independent institutions (Section 5(1)(e) to (f)).
- School policies to consider the rights and limitations of all stakeholders (Section 5(1)(g) to (j)).
- Schools to have sound and instrumental governance structures that will be functional in the implementation of governance issues (Section 5(1)(k) to (o)).
- Schools to understand the negative impact that might be caused by the policies, implementation that is not in line with Legislation documents (Section 5 (3) to (4)).

Section 6 of this Act provides for the general powers of the MEC and requires that schools be aware of these, while section 7 requires schools to be aware that in cases of emergency, only the Head of Department, is authorised to close a school temporarily and if such emergency situations arise the Head Of Department should be informed.

Sections 8 and 9 pertain to the authority of the MEC to divide the Province into, educational regions and districts and the appointment of appropriate persons to conduct and inquiry respectively. Schools need to be aware of these sections and comply with these provisions.

Section 10 requires schools to provide the Head Of Department (or any person authorised by him/her) with any information that he/she may require within specified timeframes and to give the same respect to the Head Of Department (a person delegated by him) that would be given to a person appointed by the MEC for the purpose of an inquiry.

### **CHAPTER 3: SCHOOLING**

Chapter 3 deals with **Schooling** and covers aspects such as admissions to public schools, compulsory school attendance and related offences, the prohibition of discrimination and victimization of learners whose parents have not paid school fees, Language Policy, Religious Policy, Management of Expulsion, Suspension and Discipline of Learners and the liability for damage or loss to school or departmental property.

Section 11 requires schools to comply with the Admissions Regulations that might be made by the MEC and clearly articulates that the admission requirements of a school shall not unfairly discriminate on any grounds. Section 12 requires schools to give preference to learners of the compulsory school going age and to assist the Head of Department to ensure that all learners of school going age are placed at schools. This section also allows the Head of Department to exempt learners that of compulsory school going age from attending, while section 13 and 14, have been repealed.

The provisions of section 15, requires schools to report to the Head of Department if they are aware of any parent/person who prevents a learner from compulsory school attendance and what action will be taken against that person, while section 16 is repealed.

Section 17, clearly prohibits schools from victimizing learners whose parents have not paid their school fees by way of : suspension from classes, verbal or non –verbal abuse, denial of access to sport or cultural activities or the nutrition programme of the school' denial of school reports or transfers and the right to write tests or exams, while section 18 has been repealed.

The insertion of section 18A provides for the SGB to determine and submit to the MEC the Language policy that will be in line with the expectations of National and Provincial Legislation. In section 19, schools are discouraged from conducting language competency test/s for admission purposes and are encouraged to promote the usage of more than one language as determined by the language policy. Section 20 requires schools to make provisions for any sign language recognized by the MEC, while section 21 has been repealed.

The insertion of section 21A requires the SGB to determine and submit to the MEC the Religious policy that will be in line with the expectations of National and Provincial Legislations. Section 22 requires schools to ensure that STAFF members are not indoctrinating learners into any particular belief or religion, while promoting the Freedom of religion for all stakeholders.

Section 23, requires schools to implement the management of expulsion, suspension and discipline of learners within the prescript, failure to do so will result in negative legal implications, while section 24 has been repealed.

Section 25 encourages schools to maintain proper records for the loan of school property to learners and such records should be extended to provide for parents to acknowledge and monitor that proper care is taken of all school property, on a regular basis, and that parents may be liable for any losses incurred due to the loss or damage of school property.

#### **CHAPTER 4: PUBLIC SCHOOL GOVERNANCE**

Chapter 4 provides for **Public School Governance** and covers aspects such as governing bodies of public schools and hostels, the composition of governing bodies, the enhancement of capacity of governing bodies, failure by governing bodies to perform its functions and regulations relating to governing bodies.

Sections 26 and 27 require schools to have a governance structure in place, the composition of which should be aligned to the requirements, failing which it will be considered to be illegitimate, while section 28 has been repealed.

Section 29 encourages schools to ensure that SGB members attend training sessions arranged by the HoD to avoid fruitless expenditure and to promote effective governance. Section 30, makes SGB members aware that if they fail to carry out the duties and functions as expected of them the Head Of Department may take action against them, including their removal , while section empowers the MEC to make any regulations regarding governance in the province to which Governing Bodies should comply

## **CHAPTER 5: DEMOCRATIC GOVERNANCE OF EDUCATION**

Chapter 5 has been repealed by the Education Policy Act 12 of 1998.

## **CHAPTER 6: PUBLIC SCHOOLS**

Chapter 6 deals with **Public Schools** and covers the closure and merger of public schools, schools funds and assets of public schools and public schools on private property.

Sections 47 and 47A requires schools to be aware that the MEC can close or merge schools, based on sound reasons and in accordance with the steps set out. Schools will be allowed to make representations if they do not agree with the MEC's decision, while section 48 has been repealed.

Section 49 has clear implication for the management of school funds, this section requires schools to:

- Open only one bank account (cheque) must be opened and maintained by the SGB
- Ensure that money from the school fund may not be transferred into a trust account (No trust account may be opened with the exception of those opened prior 1 January 2002)
- apply to the MEC to invest surplus money in another account
- declare donation/s.
- maintain and update assets registers to be on a regular basis

The insertion of section 49A provides for a Public school that is on private property, this provision allows the MEC to be the only person that will sign the agreement with the owner of the private property in accordance with the steps set out, this means that neither the school principal nor the SGB can enter into agreements with the owner of the property.

## **CHAPTER 7: STATE –AIDED SCHOOLS**

Chapter 7 has been repealed by the Gauteng Education Laws Amendment Act 5 of 2011.

## **CHAPTER 8: INDEPENDENT SCHOOLS**

Chapter 8 provides for **Independent schools**, their registration, lapsing or withdrawal of legislation, discrimination, subsidies to independent schools, financial statements of independent schools, and the declaration of independent schools as public schools and the consequences thereof and regulations related to registered independent schools.

Section 66, requires all independent school to be registered with the Department for it to operate legally, while section 67, provides for the lapsing or withdrawal of registration of independent schools.

Section 68, requires all independent schools to be aware that no form of unfair discrimination is allowed at any time.

Section 69 provides for independent schools that wish to apply for a subsidy, such schools are required to apply within the prescribed timeframes and with the prescribed requirements, failing which a subsidy may not be granted.

Section 70 requires all Independent schools to comply with the financial requirements as set out in this section, failing to do so may lead to the withdrawal of registration of the independent school.

Section 71 and 72, informs those independent schools that wish to be declared as public schools require an agreement between the owner and the MEC after which owner will not have any authority over the school, while section 73 sets out that the MEC may make regulations on any matter related to independent schools.

## **CHAPTER 9: SPECIALISED EDUCATION**

Chapter 9 covers **Specialised Education**, through sections on the accommodation of learners with specialised education needs in ordinary schools, admission of learners to schools for specialised education, assessments to identify learners with specialised education needs, action in case of learners with specialised education needs and their placement, additional powers of children's court, the transfer of learners with special education needs and exemption from attendance of school for specialised education.

Section 74 requires schools to admit learners with special educational needs, as far as reasonable possible and place them into specialized institution after admission process and consultation with parents, while section 75 only authorises the Head Of Department to place a learner at a special school, requiring schools to apply for such consent.

Section 76 provides for an assessment test to be done on learners with special education needs subject to the approval of the Head Of Department after consultation with the parents, thus requiring schools to apply for such assessments to the Head Of Department, while section 77, allows for a parent of a learner to appeal the findings of an assessment test to the MEC and therefore requires schools to inform parents about this, where necessary.

Section 78 requires the parent of a learner with special needs to comply with the decision of the Head of Department, failing which it may be enforced, while section 79 creates awareness of the powers of children courts and other legislation relating to children.

Section 80 makes it abundantly clear to schools that the Head Of Department is the only authority that can transfer a learner with special educational needs from one public school to another and therefore schools should not take their own decision regarding this matter, while section 81 needs schools to be aware that only the Head Of Department can exempt a learner with special educational needs from attendance at school, and where necessary school should inform parents about this.

## **CHAPTER 10: EDUCATORS**

Chapter 10 has been repealed by the Education Policy Act 12 of 1998(partially) and the Gauteng Education Laws Amendment Act 5 of 2011.

## **CHAPTER 11: RURAL EDUCATION**

Chapter 11 has been repealed by the Gauteng Education Laws Amendment Act 5 of 2011.

## **CHAPTER 12: TRANSITIONAL PROVISIONS**

Chapter 12 entails **Transitional Provisions** relating to centres of learning and accessories, governing bodies, public schools and independent schools.

Sections 95, 97-99, make provision for the recognition of centres of learning, governing bodies, public schools and independent schools that existed prior to the promulgation of the Act and have implications for the relevant body, centre or school.

Sections 100 to 102 have been repealed.

## **CHAPTER 13: GENERAL**

Chapter 13 provides for **General** matters such as the delegation of powers and the assignment of duties, the making of regulations, repeal of laws and savings and the short title and commencement.

Sections 103 and 104 have been repealed, while 105 to 108 require schools to :

- acknowledge, understand and comply with the delegation of powers,
- comply with the Regulations approved/proclaimed by the MEC,
- take note of the Repealed laws, and
- be aware that the Act is now called the Gauteng school Education Act so that proper referencing may occur.



**SECTION B:  
THE ACTUAL AMENDED  
GAUTENG SCHOOL  
EDUCATION ACT**

**[Act 6 of 1995] GAUTENG SCHOOL EDUCATION ACT 6 OF 1995**  
[Title amended by s41 of Act 5 of 2011]

[ASSENTED TO 6 DECEMBER 1995] [DATE OF COMMENCEMENT: 8 DECEMBER  
1995]  
(Unless otherwise indicated)

*(English text signed by the Premier)*

**As amended by the Gauteng Education Laws Amendment Act No. 5 of 2011**

**ACT**

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

[Arrangement of sections repealed by s1 of Act 5 of 2011]

**CHAPTER 1**  
**INTERPRETATION (sec 1-2)**

**1 Definitions**

The following definitions were deleted by s2(a) of Act 5 of 2011: Council; district council; farm school; financial head; 'model C school; negotiating forum: school attendance officer; specialist council'; state school; and state-aided school.

In this Act, unless the context indicates otherwise -

**"centres of learning"** means technical schools, schools for focused learning, centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education

[definition of centres of leaning amended by s2(b) of Act 5 of 2011]

**"commencement date"** means the date fixed under section 108;

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

[definition of Constitution amended by s2(c) of Act 5 of 2011]

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

**"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;

**"educational district"** means an educational district contemplated in section 8;

**"educational region"** means an educational region contemplated in section 8;

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

[definition of educator amended by s2(d) of Act 5 of 2011]

**"Executive Council"** means the Executive Council of the Province;

**"first grade"** means that grade which may be completed in the first year of compulsory school attendance contemplated in section 12(1);

[definition of first grade amended by s2(e) of Act 5 of 2011]

**"governing body"** means a governing body for a public school, established under section 26 or deemed to be so established under section 97;

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

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

[definition of grade amended by s2(h) of Act 5 of 2011]

**"Head of Department"** means the Head of the Department responsible for education in the Province;

[definition of Head of Department amended by s2(f) of Act 5 of 2011]

**"independent school"** means a school registered or deemed to be registered in terms of section 66 of this Act;

[definition of independent school amended by s2(l) of Act 5 of 2011]

**"language policy"** of a public school, as contemplated in section 18, 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; and
- (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 or obliged to receive education in terms of this Act;

[definition of learner amended by s2(g) of Act 5 of 2011]

**"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 Minister responsible for the administration of the South African Schools Act, 1996 (Act 84 of 1996);

[definition of Minister inserted by s2(i) of Act 5 of 2011]

**"official language"** means a language referred to in section 3(1) of the Constitution or a sign language recognised under section 20;

**"ordinary school"** means a school other than a school for specialised education;

**"parent"** means—

- (a) the biological or adoptive parent or legal guardian of a learner;
- (b) person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;

[definition of parent amended by s2(j) of Act 5 of 2011]

**"prescribed"** means prescribed by regulation;

**"principal"** means an educator appointed or acting as the head of the school;

[definition of principal amended by s2(k) of Act 5 of 2011]

**"Province"** means the province of Gauteng established by section 103(1)(c) of the Constitution;

[definition of Province inserted by s2(m) of Act 5 of 2011]

**"Provincial Legislature"** means the Provincial Legislature as contemplated in section 104 of the Constitution;

[definition of Provincial Legislature amended by s2(n) of Act 5 of 2011]

**"public school"** may be—

- (i) an ordinary public school or
- (ii) a public school for learners with special education needs, or
- (iii) a public school that provides education with a specialised focus talent, including sport, performing arts or creative arts, or
- (iv) Schools for the development and promotion of particular aptitudes of learners and technical schools;

[definition of public school amended by s2(o) of Act 5 of 2011]

**"religious policy"** of a public school, as contemplated in section 21, 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 a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve;

[definition of school amended by s2(p) of Act 5 of 2011]

**"school fees"** means school fees contemplated in section 39 of the South African Schools Act, 1996 (Act 84 of 1996) and includes any form of contribution of a monetary value made or paid by a person or body in relation to the attendance or participation by a learner in any programme of a public school;

[definition of school fees amended by s2(q) of Act 5 of 2011]

**"school for specialised education"** means a school providing primarily specialised education;

**"specialised education"** means education of a specialised 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 specialised 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 interests 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 a 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 parents 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;

"**this Act**" includes regulations made under this Act and regulations contemplated in section 107(3);

"**Treasury**" means the authority responsible for the financial affairs of the Province.

## **2 Application of the Act**

- (1) This Act applies to school education in the Province.
- (2) The Member of the Executive Council and the Head of Department must exercise any power conferred upon them by or under this Act, after taking full account of the South African Schools Act, 1996 (Act 84 of 1996), the Gauteng Education Policy Act, 1998 (Act 12 of 1998) and the National Education Policy Act, 1996 (Act 27 of 1996).
- (3) Nothing in this Act prevents the Provincial Legislature from enacting legislation for school education in the Province in accordance with the Constitution and this Act."

[s2(1) to 2(3) amended s3 of Act 5 of 2011]

## **CHAPTER 2 MEMBER OF THE EXECUTIVE COUNCIL AND DEPARTMENT (sections 3-10)**

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

The Member of the Executive Council must exercise control over school education in the province subject to this Act; the Constitution, the National Education Policy Act, 1996 (Act 27 of 1996); the South African Schools Act, 1996 (Act 84 of 1996) and the Gauteng Education Policy Act, 1998 (Act 12 of 1998)."

[s3 amended by s4 of Act 5 of 2011]

### **4 Exercise of powers under this Act**

No power conferred by this Act shall be exercised in a manner which is unreasonable and unjustifiable.

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

- (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 schools 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 state-aided school or an independent school which receives a subsidy in terms of section 69.
- (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 protect learners and educators from all forms of physical and mental violence at schools and centres of learning.
- (f) There shall be a duty on the department to combat sexual harassment at schools and centres of learning.
- (g) 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.
- (h) The department shall respect the rights and duties of parents to provide direction to their children regarding the rights referred to in subsection (g), in the exercise of their rights as learners, in a manner consistent with the evolving capacity of the children concerned.
- (i) Every learner and educator shall have the right to freedom of association and to assemble, demonstrate and present petitions, peacefully and unarmed.
- (j) 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.
- (k) There shall be democratic and decentralised governance of public schools and school education.
- (l) The structures of democratic governance in school education should be constituted with due regard to the racial and gender demographics of the Province.
- (m) Education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption.
- (n) Educational policy shall be aimed at improving the quality and availability of educational opportunities and resources to the people of the Province.

- (o) 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.

## **6 General Powers of Member of Executive Council**

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 conditions 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) 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 organizations ; and
  - [sub-s 6(b) amended by s5(a) of Act 5 of 2011]
  - [sub-s 6(c) to 6(f) amended by s5(b) of Act 5 of 2011]

## **7 Temporary closure of public schools in case of emergency**

- (1) The Head of Department may close a public school in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff



are endangered or that there is a real danger of bodily injury to them or of damage to property.

- (2) When the Head of Department decides that the school should be reopened, he or she must inform the school governing body and the principal of the date on which the school must reopen.

[Sub-s7(1) to 7(6) amended by s6 of Act 5 of 2011]

## **8 Educational districts and regions**

- (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.

## **9 Inquiry at instance of Member of Executive Council**

- (1) If it is in the interests of education in the Province, the Member of the Executive Council may appoint any appropriate person 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 evidence, including any article, document, book, video or audio recording or anything relevant to the inquiry, order that person to deliver to him or her that evidence  
[sub-s 9(2)(d) amended by s7(a) of Act 5 of 2011]
  - (e) examine and make copies of any article, document, book, video or audio recording or any thing referred to in paragraph (d); and

- (f) attach any article, document, book, video or audio recording or any thing 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 determine.  
[sub-s 9(3) amended by s7(b) of Act 5 of 2011]
- (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 evidence, including any article document, book, video or audio recording or anything as ordered under subsection (2)(d).”  
[sub-s 9(4)(e) amended by s7(c) Act 5 of 2011]
  - (f) prevents any other person from appearing in accordance with a directive 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.

## **10 Submission of information**

- (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 the purposes of gathering information in connection with education in the Province, the Head of Department and any person authorised in writing by him or her shall have the same powers as a person who conducts an inquiry under section 9.

## **CHAPTER 3 SCHOOLING (sections 11-25)**

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

- (1) Subject to this Act, the Member of the Executive Council may make regulations as to the admission of learners to public schools.
- (2) Admission requirements for public schools shall not unfairly discriminate on grounds of race, ethnic or social origin, colour, gender, sex, disability, sexual orientation, religion, conscience, belief, culture or language.

## **12 Compulsory school attendance**

- (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 specialised 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 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 reaches the age of fifteen years or completes the ninth grade, whichever occurs first .

[Sub-s 12(1)(b)(ii) amended by s8(a) of Act 5 of 2011]

- (2) The Member of the Executive Council must ensure that there are enough school places so that every child who lives in the province can attend school as required by subsection (1).

[Sub-s 12(2)(b) amended by s8(b) of Act 5 of 2011]

- (3) If a Member of the Executive Council cannot comply with subsection (2) because of lack of capacity existing at the date of the commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the Minister on the progress achieved in doing so.

[Sub-s 12(3) amended by s8(b) of Act 5 of 2011]

- (4) If a learner who is subject to compulsory attendance in terms of subsection (1) is not enrolled at or fails to attend a school, the Head of Department may—
- (a) investigate the circumstances of the learner's absence from school;
  - (b) take appropriate measures to remedy the situation; and
  - (c) failing such remedy, issue a written notice to the parent of the learner requiring compliance with subsection (1).

[Sub-s 12(4) amended by s8(b) of Act 5 of 2011]

- (5) If a parent of any person who is subject to compulsory school attendance in terms of section 12(1) fails, without reasonable cause and after a written warning by the Head of Department, to cause such a person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.

[Sub-s 12(5) amended by s8(c) of Act 5 of 2011]

- (6) 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.

[Sub-s 12(6) amended by s8(c) of Act 5 of 2011]

- (7) The Head of Department must maintain a register of all learners exempted from compulsory school attendance.”

[Sub-s 12(7) amended by s8(c) of Act 5 of 2011]

13 [s13 is repealed by s9 of Act.5 of 2011].

14 [s14 is repealed by s9 of Act 5 of 2011].

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

- (1) If a parent of any learner who is subject to compulsory school attendance in terms of section 12(1), without reasonable cause and after a written warning by the Head of Department, to cause such learner 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 minimum period of three months
- [15(1) amended by s10(a) of Act 5 of 2011]
- (2) Any person who, during school hours, employs a person who is subject to compulsory school attendance in terms of section 12(1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.
- (3) Any person who hinders or obstructs any official of the department in the performance of his or her functions [under section 13] in terms of this Act or

any other applicable law shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

[15(3) amended by s10(b) of Act 5 of 2011]

16 [s16 is repealed by s11 of Act.5 of 2011]

**17 Prohibition against discrimination and victimization of learners whose parents have not paid school fees**

- (1) A learner may not be deprived of his or her right to participate in all aspects of the programme of a public school despite the non-payment of school fees by his or her parent and may not be victimized in any manner, including but not limited to the following conduct:
- (a) suspension from classes;
  - (b) verbal or non-verbal abuse;
  - (c) denial of access to—
    - (i) cultural, sporting or social activities of the school; or
    - (ii) the nutrition programme of the school for those learners who qualify in terms of the applicable policy; and
  - (d) denial of a school report or transfer certificate;
  - (e) denial of the right to write test or examinations.

[s17 is amended by 12 of Act 5 of 2011]

18 [s18 is repealed by s(20)(1) of Act 12 of 1998]

**18A Language policy of public schools**

- (1) The governing body of a public school must determine the language policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), this Act and any norms and standards for language policy in public schools as determined by the Minister in consultation with the Department.
- (2) The governing body of a public school must submit a copy of the school's language policy to the Member of the Executive Council for vetting and noting within 90 days of coming into office and as may be required.
- (3) 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 (1) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the governing body of the school concerned, direct that the language policy of the school be formulated in accordance with subsection (1).

[s18A is inserted by s13 of Act 5 of 2011]

## **19 Language and discrimination**

- (1) Language competence testing shall not be used as an admission requirement to a public school.
- (2) Learners at a public school shall be encouraged to make use of a range of official languages subject to the language policy determined by the governing body of the school.  
[s19 is amended by s14 of Act 5 of 2011]
- (3) No learner at a public school or an independent school which receives a subsidy in terms of section 69 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.

(Date of commencement of sec 19: 9 April 1996.)

## **20 Recognition of sign languages**

- (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.

21 [s21 is repealed by s(20)(1) of Act 12 of 1998]

## **21A Religious policy of public schools**

- (1) The governing body of a public school must determine the religious policy of the school subject to the Constitution, the South African Schools Act, 1996 (Act 84 of 1996), and this Act in consultation with the Department.
- (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 respect of our country's diverse cultural and religious traditions.
  - (b) Freedom of conscience and of religion shall be respected at all public schools.
- (3) The governing body of a public school must submit a copy of the school's religious policy to the Member of the Executive Council for vetting and noting within 90 days of coming into office, and as may be required.
- (4) 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 sub-section (2) above or the requirement of the constitution, the Member of the Executive Council, after consultation with the

governing body of the school concerned, direct that the Religious Policy of the school be formulated in accordance with sub-section (1) and (2).

[s21A is inserted by s15 of Act 5 of 2011]

## **22 Freedom of conscience**

- (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) (i) Every learner at a public school, or at an independent school which receives a subsidy in terms of section 69, shall have the right not to attend religious education classes and religious practices at that school.  
  
(ii) In this regard the department shall respect the rights and duties of parents to provide direction to their children in the exercise of their rights as learners, in a manner consistent with the evolving capacity of the children concerned.  
  
(b) The right conferred by paragraph (a) on a learner at an independent school which receives a subsidy in terms of section 69, may be limited where such limitation 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 69, 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.

(Date of commencement of sec 22: 9 April 1996.)

## **23 Management of expulsion, suspension and discipline of learners**

[Heading amended by s16 (a) of Act 5 of 2011]

- (1) No person shall administer corporal punishment to a learner at any public school or independent school.
- (2) The management of expulsion, suspension and punishment of learners at public schools and hostels shall be in accordance with this Act and any other applicable law.

[s23(2) amended by s16(b) of Act 5 of 2011]

- (3) 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.

[s23(3) amended by s16(b) of Act 5 of 2011]

- (4) The governing body of a school shall comply with the prescripts of the relevant laws, pertaining to the suspension, punishment and expulsion of learners from public schools.

[s23(4) amended by s16(b) of Act 5 of 2011]

24 [s24 is repealed by s17 of Act 5 of 2011]

## **25 Liability for damage to or loss of school or department property**

[Heading amended by s18 of Act 5 of 2011]

- (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 on or before a date specified by any educator employed at the school.
- (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.
- (3) It is the duty of every parent to assist the State and the governing body of a school to promote a culture of respect for school property.
- (4) Every learner shall -
- (a) promote a culture of tolerance and respect for the human rights of others;
  - (b) promote a culture of learning and teaching; and
  - (c) promote respect for school property.

## **CHAPTER 4 PUBLIC SCHOOL GOVERNANCE (sections 26-31)**

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

- (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 provide for the establishment of a governing body for every such school.
- (2) Despite subsection (1):
- (a) the Member of the Executive Council may determine that the governance of two or more public schools must vest in a single governing body if it is in the interests of education at the schools in question; and



- (b) the Member of the Executive Council may place the hostel of a public school under the supervision of the governing body of another school if it is in the interests of education at the school in question.  
[Sub-s 26(2) amended by s19 of Act 5 of 2011]

- (3) The Member of the Executive Council may not act under subsection (2) unless he or she has:—
  - (a) given notice in the Provincial Gazette of his or her intention so to act;
  - (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
  - (c) considered all such submissions.”

[Sub-s 26(3) amended by s19 of Act 5 of 2011]

## **27 Composition of governing bodies**

- (1) The principal of a public school shall be a member of the governing body of that school.
- (2) The number of parent members of a governing body of a public school must comprise one more than the combined total of other members of a governing body who have voting rights.

[s27(2) amended by s20(a) of Act 5 of 2011]

- (3) Representative organisations of the disabled shall be represented on the governing body of any public school for specialised education serving learners whose interests such organisations represent.

- (4) Learners must be represented only on the governing body of a public school, which provides education at a grade higher than the seventh grade.

[s27(4) amended by s20(b) of Act 5 of 2011]

- (5) (a) The Member of the Executive Council may make regulations as to the further composition of the governing bodies of public schools and hostels.

(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.

28 [s28 repealed by s21 of Act 5 of 2011]

## **29 Enhancement of capacity of governing bodies**

- (1) Out of funds appropriated for this purpose by the provincial legislature, the Head of Department [may] must establish a programme to—
  - (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
  - (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

- (2) The Head of Department [may] 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  
[s29 amended by s22 of Act 5 of 2011]

### **30 Failure by governing body to perform its functions**

- (1) If the Head of Department determines on reasonable grounds that a governing body has:
- (a) ceased to perform functions allocated to it in terms of this Act;
  - (b) has failed to perform one or more of such functions;
  - (c) has acted in a manner that undermines the purpose, roles and responsibilities of the governing body; or
  - (d) has acted in a manner that disrupts the educational programmes of the school
- he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.
- (2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.
- (3) If the governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).
- (4) If a governing body fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the governing body performs its functions.  
[s30 amended by s23 of Act 5 of 2011]

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

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; and
- (e) the designation of persons employed by the department to perform the work relating to the performance of the functions of governing bodies.

**CHAPTER 5**  
**DEMOCRATIC GOVERNANCE OF EDUCATION (sections 32-46)**

32 to 46 [s32 to 46 repealed by s20(1) of Act12 of 1998]

**CHAPTER 6**  
**PUBLIC SCHOOLS (sections 47-49)**

**47 Closure of public schools**

- (1) The Member of the Executive Council may, by notice in the Provincial Gazette, close a public school.
- (2) The Member of the Executive Council may not act under subsection (1) unless he or she has—
  - (a) informed the governing body of the school of his or her intention so to act and his or her reasons thereof;
  - (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;
  - (d) given due consideration to any such representations received;
  - (e) given notice to the governing body of a public school of the intention to close the school.
- (3) The notice contemplated in subsection (1) must set out reasons of the Member of the Executive Council for deciding to close the public school.
- (4) The governing body of a public school which is aggrieved by the decision of the Member of the Executive Council may within thirty days after receipt of the recommendations appeal to the Minister.
- (5) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4) of the South African Schools Act, 1996 (Act No.84 of 1996), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

[s47 amended by s24 of Act 5 of 2011]

**47A Merger of public schools**

- (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public schools into a single school.
- (2) Before merging two or more public schools the Member of the Executive Council must—
  - (a) give written notice to the schools in question of the intention to merge them;
  - (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;

- (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
  - (d) consider such representations;
  - (e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of applicable labour law;
  - (f) give notice to the governing body of a public school of the intention to merge the schools.
- (3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also—
- (a) notify the owner of the private property of his or her intention to merge the schools in question;
  - (b) consider his or her contractual obligations in terms of the agreement concluded with the private owner;
  - (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
  - (d) negotiate a new agreement if the single school contemplated in subsection (1) is to be situated on private property.
- (4) The single school contemplated in subsection (1) must be regarded as a public school.
- (5) All assets and liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust, vest in the single school.
- (6) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single governing body comprising of all members of the governing bodies concerned.
- (7) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of this Act.
- (8) The governing [body] bodies of a public [school] schools which are aggrieved by the decision of the Member of the Executive Council regarding the merger may appeal to the Minister against the decision as contemplated in subsection (1).

[s47A inserted by s25 of Act 5 of 2011]

48 [s48 is repealed by s26 of Act of 2011]

#### **49 School funds and assets of public schools**

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

- (2) Subject to subsection (3), all money received by a public school including school fees and voluntary contributions must be paid into the school fund.
- (3) The governing body of a public school must open and maintain one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.
- (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.
- (5) All assets acquired by a public school on or after the commencement of this Act are the property of the school.
- (6) The school fund, all proceeds thereof and any other assets of the public school must be used only for—
  - (a) educational purposes, at or in connection with such school;
  - (b) educational purposes, at or in connection with another public school and with the consent of the Head of Department;
  - (c) the performance of the functions of the governing body; or
  - (d) another educational purpose agreed between the governing body and the Head of Department.
- (7) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.
- (8) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.
- (9) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use money or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.

[s49 amended by s27 of Act 5 of 2011]

#### **49A Public schools on private property**

- (1) Subject to the Constitution and expropriation of land in terms of section 104 or a real right to use the property on which the public school is situated, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.
- (2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for—
  - (a) the provision of education and the performance of the normal functions of a public school;
  - (b) governance of the school, including the relationship between the

- (c) governing body of the school and the owner;
  - (c) access by all interested parties to the property on which the school stands;
  - (d) security of occupation and use of the property by the school;
  - (e) maintenance and improvement of school buildings and the property on which the school stands and the supply of the necessary services;
  - (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.
- (3) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937) do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.
- (4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.
- (5) Despite subsection (3), a Registrar of Deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the Registrar of Deeds receives—
- (a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
  - (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.
- (6) The Registrar of Deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms section 47.
- (7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the provincial legislature for that purpose, but the public school contemplated in subsection (1) is not responsible for such duties, fees or costs.

[s49A inserted by s28 of Act 5 of 2011]

50 to 65 [s50 to 65 is repealed by s29 of Act 5 of 2011]

**CHAPTER 8**  
**INDEPENDENT SCHOOLS (sections 66-73)**  
 [Heading amended by s42(a) of Act 5 of 2011]

**66 Registration of independent schools**  
 [Title amended by s42(a) of Act 5 of 2011]

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

- (2) No independent school shall be registered unless it complies with the prescribed requirements.
- (3) 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.
- (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 (3) 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 (3) 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 reasonably 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 not exceeding three months.

[s66(11) amended by s30(a) of Act 5 of 2011]
- (12) The owner of an independent school whose application was granted under subsection (5) must establish the independent school within 18 months from the date on which the application was granted by the Head of Department.

[s66(12) amended by s30(b) of Act 5 of 2011]
- (13) If the owner of an independent fails to establish the school within the period referred to in subsection (12), the registration shall lapse.”

[s66(13) amended by s30(b) of Act 5 of 2011]

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

[Title amended by s42(a) of Act 5 of 2011]

- (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 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;
  - (b) the owner of such independent school has been furnished by the Head of Department with a notice of such withdrawal together with written reasons for his or her decision to withdraw the registration of the independent school; and
  - (c) 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 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 consider an appeal contemplated in subsection (4) and may confirm, vary or set aside the decision of the Head of Department.
- (6) 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.

## **68 Discrimination at independent schools**

Admission requirements for independent schools shall not directly or indirectly discriminate unfairly on one or more grounds set out in section 9 of the Constitution, or on one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000)

[s68 amended by s31 of Act 5 of 2011]



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

- (1) 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.
- (2) The Head of Department may grant or refuse an application referred to in subsection (1) 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.
- (3) If, in the opinion of the Head of Department, a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.
- (4) The Head of Department shall not terminate or reduce a subsidy under subsection (3) unless he or she has granted the owner of the independent school concerned an opportunity to make written representations to him or her giving reasons why the subsidy should not be reduced or terminated, as the case may be.

## **70 Financial statements of independent schools**

- (1) The financial year of an independent school shall end on the last day of December of each year.
- (2) The provisions of sections 49(3) to (6) shall apply *mutatis mutandis* to all independent schools; and in such application any reference to -
  - (a) a public school shall be construed as a reference to an independent school; and
  - (b) a governing body shall be construed as a reference to the owner of an independent school.

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

- (1) The Member of the Executive Council may 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.  
[s71 amended by 32 of Act 5 of 2011]
- (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.

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

- (1) As from the date mentioned in the notice contemplated in section 71(2) -
  - (a) the school concerned shall be deemed to be a public school established under section 47(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 that 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 71(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.

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

- (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 manner in which any subsidy shall be payable to a registered independent school; and
  - (d) 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.

## **CHAPTER 9 SPECIALISED EDUCATION (sections 74-81)**

### **74 Accommodation of learners with specialised education needs in ordinary schools**

Every public school shall, as far as is reasonably possible, attempt to accommodate the specialised education needs of any learner who attends such school.

#### **75 Admission of learners to schools for specialised education**

- (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 specialised 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 specialised education needs; and
  - (b) those needs cannot be accommodated in an ordinary school which the learner concerned can attend.
- (3) If the specialised education needs of a learner cannot be accommodated in the school which the learner currently attends, but can be accommodated at another ordinary school which the learner can attend, the Head of Department may direct that the learner be admitted to that ordinary school.

#### **76 Assessments to identify learners with specialised education needs**

If the Head of Department believes that a learner who is subject to compulsory school attendance has specialised 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.

#### **77 Action in case of learners with specialised education needs**

- (1) The Head of Department shall make the results of an assessment under section 76 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 specialised 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 specialised education needs for 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.

## **78 Placement of learners with specialised education needs**

- (1) Unless -
  - (a) the parent of a learner found to have specialised education needs in terms of section 76, within the period determined by the Head of Department, takes such steps as the Head of Department, after consultation with the parent, 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 not receiving suitable education or treatment,  
[s78 amended by s33 of Act 5 of 2011]

the Head of Department may after consultation with the parent designate a school for specialized education, or any ordinary school capable of accommodating the learner's specialized education needs, at which the learner shall be placed.

- (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 school fees for which the parent becomes liable because of such placement.

## **79 Additional powers of children's court**

- (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 74 of 1983), direct that the case be referred to the Head of Department in order to determine whether the learner has specialised education needs.
- (2) If the Head of Department finds that a learner referred to him or her under subsection (1) has specialised education needs, the Head of Department may approve that the learner be admitted to a public school for specialised education for the periods during which it provides specialised education.

## **80 Transfer of learners with specialised education needs**

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

## **81 Exemption from attendance of school for specialised education**

The Head of Department may, after consultation with the parent of a learner attending a public school for specialised education, exempt such learner from attendance at a school for specialised 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.

### **CHAPTER 10 EDUCATORS (sections 82-88)**

82 to 87 [s82 to 87 repealed by s34 of Act 5 of 2011]

88 [s88 repealed by s20(1) of Act 12 of 1998]

### **CHAPTER 11 RURAL EDUCATION (sections 89-94)**

89 to 94 [s89 to 94 is repealed by s35 of Act.5 of 2011]

### **CHAPTER 12 TRANSITIONAL PROVISIONS (sections 95-102)**

## **95 Transitional provisions relating to centres of learning and accessories**

Any centre of learning, hostel, educators' quarters or other accessory in connection with schools established, or deemed to have been established, under the provisions of an Act repealed under this Act, and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of section 6(a).

[s95 is amended by s36 of Act 5 of 2011]

96 [s96 is repealed by s37 of Act 5 of 2011]

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

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

[s97(1) is amended by s38 of Act 5 of 2011]

- (2) At the end of the term of office of a body referred to in subsection (1), it shall be replaced with a governing body constituted in terms of sections 26 and 27.
- (3) Notwithstanding any other provision of this Act, but subject to subsections (4) and (5), a body referred to in subsection (1) or a governing body which succeeds it in terms of subsection (2) shall continue to exercise whatever rights, powers and functions the body referred to in subsection (1) exercised on 27 April 1994.
- (4) No right, power or function contemplated in subsection (3) may be exercised in a manner, which is not permitted under Chapter 3 of the Constitution.
- (5) The rights, powers and functions contemplated in subsection (3) may be altered by law  
[s97(5) is amended by s38 of Act 5 of 2011]

#### **98 Transitional provisions relating to public schools**

A public school or a departmental school 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 be a public school established under section 47(1).

#### **99 Transitional provisions relating to independent schools**

An independent school registered or deemed to have been registered under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to be an independent school registered in terms of section 66(6).

100 to 102 [s100 to 102 is repealed by s39 of Act 5 of 2011]

### **CHAPTER 13 GENERAL (sections 103-108)**

103 to 104 [s103 to 104 is repealed by s39 of Act 5 of 2011]

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

- (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 and the power 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.

## **106 Regulations**

- (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.

[s106(2) to 106(4) is deleted by s40 of Act 5 of 2011]

## **107 Repeal of laws, and savings**

- (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 of 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 provision 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.

**[NB.** General Notice 2497 of 1998 (*PG* 535 of 28 September 1998) provides as follows:

### **"2 Repeal of regulations**

Any regulation contemplated in section 107(3) of the Act that is inconsistent with the Regulations relating to the Senior Certificate Examination in terms of the Examinations and Assessment Act, 1997 (Act 7 of 1997), is hereby repealed."]

**108 Short title and commencement**

This Act is called the Gauteng School Education Act, 1995 and comes into operation on a date to be fixed by the Premier by Proclamation in the Provincial Gazette.

[s. 108 is amended by s41 of Act 5 of 2011]

**SCHEDULE OF LAWS TO BE REPEALED**

No, and year of law	Title	Extent of repeal
Act 47 of 1963	Coloured Persons Education Act, 1963	The whole, excluding sections 1A, 26 and 28 to 31, except in so far as it relates to colleges of education.
Act 61 of 1965	Indians Education Act, 1965	The whole, excluding sections 1B, 3B, 26, 28, 29, 31 and 33(1)(g), except in so far as it relates to technical colleges and colleges of education.
Act 60 of 1967	Indians Education Amendment Act, 1967	The Whole
Act 76 of 1967	Coloured Persons Education Amendment Act, 1967	The Whole
Act 92 of 1970	General Law Further Amendment Act, 1970	Section 13
Act 53 of 1973	Coloured Persons Education Amendment Act, 1973	The whole
Act 62 of 1973	General Law Amendment Act, 1973	Section 31.
Act 94 of 1974	Second General Law Amendment Act, 1974	Section 39
Act 29 of 1976	Coloured Persons Education Amendment Act, 1976	The whole.
Act 95 of 1976	Second Coloured Persons Education Amendment Act, 1976	The whole
Act 39 of 1979	Indians Education Amendment Act, 1979	The whole
Act 50 of 1979	Coloured Persons Education Amendment Act, 1979	The whole.
Act 90 of 1979	Education and Training Act, 1979	The whole excluding sections 1A, 3, 4, 31, 32, 43 and 44(1)(h), except in so far as it relates to technical colleges and colleges of education.
Act 15 of 1980	Coloured Persons Education Amendment Act, 1980	The whole.



No, and year of law	Title	Extent of repeal
Act 52 of 1980	Education and Training Amendment Act, 1980	The whole.
Act 9 of 1981	Indians Education Amendment Act, 1981	The whole.
Act 10 of 1981	Education & Training Amendment Act, 1981	The whole.
Act 85 of 1983	Coloured Persons Education Amendment Act, 1983	The whole.
Act 74 of 1984	Indians Education Amendment Act, 1984	The whole.
Act 64 of 1985	Indians Education Amendment Act, 1985	The whole.
Act 71 of 1985	Universities for Blacks, Technikons (Education and Training) and Education and Training Amendment Act, 1985	Section 36
Act 76 of 1985	Coloured Persons Education Amendment Act, 1985	Coloured Persons Education Amendment Act, 1983
Act 3 of 1986	Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training Amendment Act, 1986	Sections 19 to 24
Act 100 of 1986	Education Amendment Act (House of Delegates), 1986	Sections 1 to 7
Act 104 of 1986	Independent schools Act (House of Assembly), 1986	The whole excluding section 1 A
Act 95 of 1987	Education Laws (Education and Training) Amendment Act, 1987	Sections 5 to 13
Act 31 of 1988	Education Laws (Education and Training) Amendment Act, 1988	Sections 9 to 18
Act 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole excluding sections 3 and 65
Act 35 of 1989	Education & Training Amendment Act, 1989	The whole
Act 42 of 1990	Education & Training Amendment Act, 1990	The whole
Act 60 of 1990	Independent schools Amendment Act (House of Assembly), 1990	The whole
Act 88 of 1991	Education Affairs Amendment Act (House of Assembly), 1991	The whole
Act 100 of 1991	Education & Training Amendment Act, 1991	The whole
Act 39 of 1992	Education Affairs Amendment Act (House of Assembly), 1992	The whole
Act 55 of 1992	Education & Training Amendment Act, 1992	The whole
Act 106 of 1992	Education & Training Second Amendment Act, 1992	The whole
Act 112 of 1992	Coloured Persons Education Amendment Act (House of Representatives), 1992	The whole
Act 113 of 1992	Coloured Persons Education Second Amendment Act (House of	The whole

No, and year of law	Title	Extent of repeal
	Representatives), 1992	
Act 114 of 1992	Indians Education Amendment Act (House of Delegates), 1992	The whole
Act 36 of 1993	Education Affairs Amendment Act (House of Assembly), 1993	The whole
Act 50 of 1993	Indians Education Amendment Act (House of Delegates), 1993	The whole
Act 132 of 1993	General Law Fourth Amendment Act, 1993	Section 15
Act 139 of 1993	Education Laws Amendment Act (House of Assemble), 1993	Section 1
Act 162 of 1993	Education Affairs Second Amendment Act (House of Assemble), 1993	The whole