SOUTH AFRICAN SCHOOLS ACT
NO. 84 OF 1996

[View Regulation]

[ASSENTED TO 6 NOVEMBER, 1996]
[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 34620 dated 19 September, 2011.

as amended by

Education Laws Amendment Act, No. 100 of 1997

Education Laws Amendment Act, No. 48 of 1999

Education Laws Amendment Act, No. 53 of 2000

Education Laws Amendment Act, No. 57 of 2001

Education Laws Amendment Act, No. 50 of 2002

Education Laws Amendment Act, No. 1 of 2004

Education Laws Amendment Act, No. 24 of 2005

Education Laws Amendment Act, No. 31 of 2007

Basic Education Laws Amendment Act, No. 15 of 2011

ACT

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

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

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

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

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CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT

1. Definitions.—(1) In *this Act*, unless the context indicates otherwise—

"*Constitution*" means the *Constitution* of the Republic of South Africa, 1996 (Act No. 108 of 1996);

[Definition of "*Constitution*" substituted by s. 1 (*b*) of Act No. 100 of 1997.]

Wording of Sections

"*Council of Education Ministers*" means the *Council of Education Ministers* established by the National Education Policy Act, 1996 (Act No. 27 of 1996);

"dangerous object" means—

(*a*) any explosive material or device;

(*b*) any firearm or gas weapon;

(*c*) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or

(*d*) any object that the *Minister* may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;

[Definition of "dangerous object" inserted by s. 4 (*a*) of Act No. 31 of 2007.]

"*education department*" means the department established by section 7 (2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a *province*;

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

[Definition of "*educator*" substituted by s. 6 (*a*) of Act No. 48 of 1999.]

Wording of Sections

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

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

"*Head of Department*" means the head of an *education department*;

"illegal drug" means—

(*a*) any unlawful substance that has a psychological or physiological effect; or

(*b*) any substance having such effect that is possessed unlawfully;

[Definition of "illegal drug" inserted by s. 4 (*b*) of Act No. 31 of 2007.]

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

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

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

[Definition of "*loan*" inserted by s. 4 (*a*) of Act No. 15 of 2011.]

"*member of staff*" means a person employed at a *school*;

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

"*Minister*" means the *Minister* of Basic Education;

[Definition of "*Minister*" substituted by s. 4 (*b*) of Act No. 15 of 2011.]

Wording of Sections

"*no fee threshold*" means the level of funding per *learner* contemplated in the *norms and standards* for *school* funding applicable to a *public school* which enables the *Minister* to declare a *school* a no fee *school* in terms of *this Act*;

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

"*norms and standards for school funding*" means the national norms and standards for the funding of *schools* determined by the *Minister* in terms of section 35;

[Definition of "*norms and standards for school funding*" inserted by s. 1 (*a*) of Act No. 24 of 2005.]

"*officer*" means an employee of an *education department* appointed in terms of the *Educators* Employment Act, 1994 (Proclamation No. 138 of 1994), or the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"*parent*" means—

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

[Para. (*a*) substituted by s. 4 (*c*) of Act No. 15 of 2011.]

Wording of Sections

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

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

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

"*province*" means a *province* established by section 124 of the *Constitution*;

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

"*public school*" means a *school* contemplated in Chapter 3;

"*Registrar of deeds*" means the *registrar of deeds* referred to in section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[Definition of "Registrar of deeds" inserted by s. 1 (*a*) of Act No. 100 of 1997.]

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

[Definition of "*school*" substituted by s. 1 (*c*) of Act No. 100 of 1997 and by s. 6 (*b*) of Act No. 48 of 1999.]

Wording of Sections

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

[Definition of "school activity" inserted by s. 4 (*c*) of Act No. 31 of 2007.]

"*school fees*" means *school fees* contemplated in section 39 and includes any form of contribution of a monetary nature made or paid by a person or body in relation to the attendance or participation by a *learner* in any programme of a *public school*;

[Definition of "*school fees*" inserted by s. 1 (*b*) of Act No. 24 of 2005.]

"*this Act*" means *this Act* and all regulations promulgated under *this Act*.

[Sub-s. (1), previously s. 1, amended by s. 1 of Act No. 50 of 2002.]

Wording of Sections

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

[Sub-s. (2) added by s. 1 of Act No. 50 of 2002.]

Wording of Sections

def: Constitution of Act 84 of 1996 prior to amendment by Act 100 of 1997

Wording of Sections

def: educator of Act 84 of 1996 prior to amendment by Act 48 of 1999

Wording of Sections

def: Minister of Act 84 of 1996 prior to amendment by Act 15 of 2011

Repealed Act

P 138 of 1994 has been repealed by s 137(1) of Act 76 of 1998

Wording of Sections

def: parent par(a) of Act 84 of 1996 prior to amendment by Act 15 of 2011

Wording of Sections

def: school of Act 84 of 1996 prior to amendment by Act 100 of 1997
def: school of Act 84 of 1996 prior to amendment by Act 48 of 1999

Wording of Sections

s 1(1), s 1 of Act 84 of 1996 prior to amendment by Act 50 of 2002

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

(2) A *Member of the Executive Council* and a *Head of Department* must exercise any power conferred upon them by or under *this Act*, after taking full account of the applicable policy determined in terms of the National Education Policy Act, 1996 (Act No. 27 of 1996).

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

[Sub-s. (3) amended by s. 2 of Act No. 100 of 1997.]

Wording of Sections

CHAPTER 2
LEARNERS

Wording of Sections

s 2(3) of Act 84 of 1996 prior to amendment by Act 100 of 1997

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

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

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

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

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

(*a*) investigate the circumstances of the *learner's* absence from *school*;

(*b*) take appropriate measures to remedy the situation; and

(*c*) failing such a remedy, issue a written notice to the *parent* of the *learner* requiring compliance with subsection (1).

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

(*a*) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or

(*b*) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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

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

5. Admission to public schools.—(1) A *public school* must admit *learners* and serve their educational requirements without unfairly discriminating in any way.

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

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

(*a*) is unable to pay or has not paid the *school* fees determined by the *governing body* under section 39;

(*b*) does not subscribe to the mission statement of the *school*; or

(*c*) has refused to enter into a contract in terms of which the *parent* waives any claim for damages arising out of the education of the *learner*.

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

(i) *grade* R is age four turning five by 30 June in the year of admission;

(ii) *grade* 1 is age five turning six by 30 June in the year of admission.

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

(i) is under the age contemplated in paragraph (*a*) if good cause is shown; and

(ii) complies with the criteria contemplated in paragraph (*c*).

(*c*) The *Minister* may, by regulation, prescribe—

(i) criteria for the admission to a *public school*, at an age lower than the admission age, of an underage *learner* who complies with the criteria[1];

(ii) age requirements for different *grades* at a public school.

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

(i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in his or her best interest; and

(ii) the refusal to admit that *learner* would be severely detrimental to his or her development.

[Sub-s. (4) substituted by s. 2 of Act No. 50 of 2002 with effect from 1 January, 2004.]

Wording of Sections

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

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

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

(8) If an application in terms of subsection (7) is refused, the *Head of Department* must inform the *parent* in writing of such refusal and the reason therefor.

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

Footnotes

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

(*a*) learners are admitted on an equitable basis;

(*b*) there is no unfair discrimination to learners;

(*c*) the admission is fair to the individual learner as well as other learners in the classroom;

(*d*) recognition is given to the diversity of language, culture and economic background;

(*e*) notice is taken of the differences between urban and rural environments; and

(*f*) the physical, psychological and mental development of the child is taken into account.

Footnote

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

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Wording of Sections

s 5(4) of Act 84 of 1996 prior to amendment by Act 50 of 2002

5A. Norms and standards for basic infrastructure and capacity in public schools.—(1) The *Minister* may, after consultation with the Minister of Finance and the *Council of Education Ministers*, by regulation prescribe minimum uniform norms and standards for—

(*a*) *school* infrastructure;

(*b*) capacity of a *school* in respect of the number of *learners* a *school* can admit; and

(*c*) the provision of learning and teaching support material.

[Sub-s. (1) amended by s. 5 of Act No. 15 of 2011.]

Wording of Sections

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

(*a*) In respect of *school* infrastructure, the availability of—

(i) classrooms;

(ii) electricity;

(iii) water;

(iv) sanitation;

(v) a library;

(vi) laboratories for science, technology, mathematics and life sciences;

(vii) sport and recreational facilities;

(viii) electronic connectivity at a *school;* and

(ix) perimeter security;

(*b*) in respect of the capacity of a *school*—

(i) the number of teachers and the class size;

(ii) quality of performance of a school;

(iii) curriculum and extra-curricular choices;

(iv) classroom size; and

(v) utilisation of available classrooms of a school;

(*c*) in respect of provision of learning and teaching support material, the availability of—

(i) stationery and supplies;

(ii) learning material;

(iii) teaching material and equipment;

(iv) science, technology, mathematics and life sciences apparatus;

(v) electronic equipment; and

(vi) school furniture and other school equipment.

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

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

[S. 5A inserted by s. 5 of Act No. 31 of 2007.]

Wording of Sections

s 5A(1) of Act 84 of 1996 prior to amendment by Act 15 of 2011

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

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

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

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

6A. Curriculum and assessment.—(1) The *Minister* must, by notice in the Government Gazette, determine—

(*a*) a national curriculum statement indicating the minimum outcomes or standards; and

(*b*) a national process and procedures for the assessment of *learner* achievement.

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

[S. 6A inserted by s. 3 of Act No. 50 of 2002.]

6B. Non-discrimination in respect of official languages.—The *governing body* of a *public school* must ensure that—

(*a*) there is no unfair discrimination in respect of any official languages that are offered as subject options contemplated in section 21 (1) (*b*); and

(*b*)

the first additional language and any other official language offered, as provided for in the curriculum, are offered on the same level.

[S. 6B inserted by s. 6 of Act No. 15 of 2011.]

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

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

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

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

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

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

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

[Sub-s. (5) substituted by s. 6 of Act No. 31 of 2007.]

Wording of Sections

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

[Sub-s. (6) added by s. 4 of Act No. 50 of 2002.]

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

[Sub-s. (7) added by s. 4 of Act No. 50 of 2002.]

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

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

[Sub-s. (8) added by s. 4 of Act No. 50 of 2002.]

(9) If a *governing body* appoints an intermediary under subsection (7), the *governing body* may direct that the relevant witness must give his or her evidence at any place which—

(*a*) is informally arranged to put that witness at ease;

(*b*)

is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(*c*) enables the *governing body* and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-s. (9) added by s. 4 of Act No. 50 of 2002.]

Wording of Sections

s 8(5) of Act 84 of 1996 prior to amendment by Act 31 of 2007

8A. Random search and seizure and drug testing at schools.—(1) Unless authorised by the *principal* for legitimate educational purposes, no person may bring a *dangerous object* or *illegal drug* onto *school* premises or have such object or drug in his or her possession on *school* premises or during any *school activity*.

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

(*a*) that a *dangerous object* or an *illegal drug* may be found on *school* premises or during a *school activity*; or

(*b*) that one or more *learners* on *school* premises or during a *school activity* are in possession of *dangerous objects* or *illegal drugs*.

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

(i) the best interest of the *learners* in question or of any other *learner* at the *school*;

(ii) the safety and health of the *learners* in question or of any other *learner* at the *school*;

(iii) reasonable evidence of illegal activity; and

(iv) all relevant evidence received.

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

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

(*a*) be conducted by—

(i) the *principal*, if he or she is of the same gender as the *learner*; or

(ii) by the *principal's* delegate, who must be of the same gender as the *learner*;

(*b*) be done in a private area, and not in view of another *learner*;

(*c*) be done if one adult witness, of the same gender as the learner, is present; and

(*d*) be done if it does not extend to a search of a body cavity of the learner.

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

(*a*) clearly and correctly labelled with full particulars, including—

(i) the name of *learner* in whose possession it was found;

(ii) the time and date of search and seizure;

(iii) an incident reference number;

(iv) the name of person who searched the *learner*;

(v) the name of the witness; and

(vi) any other details that may be necessary to identify the item and incident;

(*b*) recorded in the school record book; and

(*c*) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

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

(*a*) take the *dangerous object* or *illegal drug* to the nearest police station; and

(*b*) hand the *dangerous object* or *illegal drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

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

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

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

(*a*) the test is conducted by a person of the same gender;

(*b*) it is done in a private area and not in view of another *learner*;

(*c*) one adult witness, of the same gender as the *learner*, is present;

(*d*) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and

(*e*) a device contemplated in subsection (11) is used.

(10) The *principal* or his or her delegate must—

(*a*) within one working day, if practicable, inform the *parent* that a random test or search and seizure was done in respect of his or her child; and

(*b*) inform the *learner* and his or her *parent* of the result of the test immediately after it becomes available.

(11) The *Minister* must—

(*a*) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and

(*b*) publish the name of this device, and any other relevant information about it, in the *Gazette*.

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

(*a*) a *dangerous object* or *illegal drug* is found in his or her possession; or

(*b*) his or her sample tested positive for an *illegal drug*.

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

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

(*a*) a search contemplated in subsection (2) was conducted and a *dangerous object* or *illegal drug* was found; or

(*b*) a test contemplated in subsection (8) was conducted, which proved to be positive.

[S. 8A inserted by s. 7 of Act No. 31 of 2007.]

9. Suspension and expulsion from public school.—(1) The *governing body* may, on reasonable grounds and as a precautionary measure, suspend a *learner* who is suspected of serious misconduct from attending *school*, but may only enforce such suspension after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension.

[Sub-s. (1) amended by s. 7 of Act No. 48 of 1999 and substituted by s. 2 (*a*) of Act No. 24 of 2005.]

Wording of Sections

(1A) A *governing body* must conduct disciplinary proceedings in the manner contemplated in section 8 against a *learner* within seven *school* days after the suspension of such *learner*.

[Sub-s. (1A) inserted by s. 2 (*a*) of Act No. 24 of 2005.]

(1B) If disciplinary proceedings are not conducted within seven *school* days after the suspension of a *learner*, the *governing body* must obtain the approval of the *Head of Department* for the continuation of the suspension of such *learner*.

[Sub-s. (1B) inserted by s. 2 (*a*) of Act No. 24 of 2005.]

(1C) A *governing body* may, if a *learner* is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8—

(*a*) impose the suspension of such *learner* for a period not longer than seven *school* days or any other sanction contemplated in the code of conduct of the *public school*; or

(*b*) make a recommendation to the *Head of Department* to expel such *learner* from the *public school*.

[Sub-s. (1C) inserted by s. 2 (*a*) of Act No. 24 of 2005.]

(1D) A *Head of Department* must consider the recommendation by the *governing body* referred to in subsection (1C) (*b*) and must decide whether or not to expel a *learner* within 14 days of receiving such recommendation.

[Sub-s. (1D) inserted by s. 2 (*a*) of Act No. 24 of 2005.]

(1E) A *governing body* may suspend or extend the suspension of a *learner* for a period not longer than 14 days pending the decision by the *Head of Department* whether or not to expel such *learner* from the *public school*.

[Sub-s. (1E) inserted by s. 2 (*a*) of Act No. 24 of 2005.]

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

(*a*) by the *Head of Department*; and

(*b*) if found guilty of serious misconduct after disciplinary proceedings contemplated in section 8 were conducted.

[Sub-s. 2 substituted by s. 2 (*b*) of Act No. 24 of 2005.]

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

(*a*) the behaviour by a *learner* at a *public school* which may constitute serious misconduct;

(*b*) disciplinary proceedings to be followed in such cases;

(*c*) provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(4) A *learner* or the *parent* of a *learner* who has been expelled from a *public school* may appeal against the decision of the *Head of Department* to the *Member of the Executive Council* within 14 days of receiving the notice of expulsion.

[Sub-s. 4 substituted by s. 2 (*c*) of Act No. 24 of 2005.]

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

(6) A *learner* who has appealed in the manner contemplated in subsection (4), must, pending the outcome of the appeal, be given access to education in the manner determined by the *Head of Department.*

[Sub-s. 6 added by s. 2 (*d*) of Act No. 24 of 2005.]

(7) The *Head of Department*, in determining the manner of attendance contemplated in subsection (6)—

(*a*) must take reasonable measures to protect the rights of other *learners* at the *public school*; and

(*b*) may consider an alternative method of providing education to the *learner* contemplated in subsection (6).

[Sub-s. 7 added by s. 2 (*d*) of Act No. 24 of 2005.]

(8) If the *Head of Department* decides not to expel a *learner* as contemplated in subsection (2), the *Head of Department* may, after consultation with the *governing body*, impose a suitable sanction on the *learner.*

[Sub-s. 8 added by s. 2 (*d*) of Act No. 24 of 2005.]

(9) If the *Head of Department* decides not to impose a sanction on the *learner*, the *Head of Department* must refer the matter back to the *governing body* for an alternative sanction in terms of the code of conduct contemplated in section 8, other than expulsion.

[Sub-s. 9 added by s. 2 (*d*) of Act No. 24 of 2005.]

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

[Sub-s. 10 added by s. 2 (*d*) of Act No. 24 of 2005.]

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

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

[Sub-s. (11) added by s. 7 of Act No. 15 of 2011.]

Wording of Sections

s 9(1) of Act 84 of 1996 prior to amendment by Act 48 of 1999
s 9(1) of Act 84 of 1996 prior to amendment by Act 24 of 2005

10. Prohibition of corporal punishment.—(1) No person may administer corporal punishment at a *school* to a *learner*.

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

10A. Prohibition of initiation practices.—(1) A person may not conduct or participate in any initiation practices against a *learner* at a *school* or in a hostel accommodating *learners* of a *school.*

(2) (*a*) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of *this Act* and Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998).

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

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

(*a*) endangers the mental or physical health or safety of a person;

(*b*) undermines the intrinsic worth of human beings by treating some as inferior to others;

(*c*) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;

(*d*) undermines the fundamental rights and values that underpin the *Constitution*;

(*e*) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or

(*f*) destroys public or private property.

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

[S. 10A inserted by s. 5 of Act No. 50 of 2002.]

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

[Sub-s. (1) substituted by s. 3 of Act No. 100 of 1997 and by s. 1 (*a*) of Act No. 57 of 2001.]

Wording of Sections

(2) Subject to policy made in terms of section 3 (4) (*g*) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Member of the Executive Council must, by notice in the Provincial Gazette, determine the functions and the procedures for the establishment and election of representative councils of *learners*.

[Sub-s. (2) substituted by s. 1 (*b*) of Act No. 57 of 2001.]

Wording of Sections

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

CHAPTER 3
PUBLIC SCHOOLS

Wording of Sections

s 11(1) of Act 84 of 1996 prior to amendment by Act 100 of 1997
s 11(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001

Wording of Sections

s 11(2) of Act 84 of 1996 prior to amendment by Act 57 of 2001

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

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

(3) (*a*) A *public school* may be—

(i) an ordinary *public school*;

(ii) a *public school* for *learners* with special education needs; or

(iii) a *public school* that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

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

[Sub-s. (3) substituted by s. 8 of Act No. 15 of 2011.]

Wording of Sections

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

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

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

Wording of Sections

s 12(3) of Act 84 of 1996 prior to amendment by Act 15 of 2011

12A. Merger of public schools.—(1) Subject to subsection (2), the *Member of the Executive Council* may, by notice in the *Provincial Gazette*, merge two or more *public schools* into a single *school*.

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

(*a*) give written notice to the *schools* in question of the intention to merge them;

(*b*) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;

(*c*) give the *governing bodies* of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (*b*);

(*d*) consider such representations; and

(*e*)

be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.

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

(*a*) notify the owner of the private property of his or her intention to merge the *schools* in question;

(*b*) consider his or her contractual obligations in terms of the agreement contemplated in section 14;

(*c*) renegotiate his or her obligations in terms of the existing agreement if necessary; and

(*d*) negotiate a new agreement in terms of section 14 if the single *school* contemplated in subsection (1) is to be situated on private property.

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

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

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

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

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

[S. 12A inserted by s. 8 of Act No. 48 of 1999.]

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

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

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

(*a*) by the *Member of the Executive Council*; and

(*b*) if the immovable property is not utilised by the *school* in the interests of education.

(4) The *Member of the Executive Council* may not act under subsection (3) unless he or she has—

(*a*) informed the *governing body* of the *school* of his or her intention so to act and the reasons therefor;

(*b*)

granted the *governing body* of the *school* a reasonable opportunity to make representations to him or her in relation to such action;

(*c*) duly considered any such representations received.

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

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

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

[Sub-s. (7) substituted by s. 4 (*a*) of Act No. 100 of 1997.]

Wording of Sections

(8) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (2).

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

[Sub-s. (9) added by s. 4 (*c*) of Act No. 100 of 1997.]

Wording of Sections

s 13(7) of Act 84 of 1996 prior to amendment by Act 100 of 1997

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

[Sub-s. (1) substituted by s. 2 of Act No. 53 of 2000.]

Wording of Sections

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

(*a*) the provision of education and the performance of the normal functions of a *public school*;

(*b*) governance of the *school*, including the relationship between the *governing body* of the *school* and the owner;

(*c*) access by all interested parties to the property on which the *school* stands;

(*d*) security of occupation and use of the property by the *school*;

(*e*) maintenance and improvement of the *school* buildings and the property on which the *school* stands and the supply of necessary services;

(*f*)

protection of the owner's rights in respect of the property occupied, affected or used by the *school*.

(3) The provisions of the Deeds Registries Act, 1937 (Act No. 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.

[Sub-s. (5) amended by s. 5 (*a*) of Act No. 100 of 1997 (English only).]

Wording of Sections

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

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

[Sub-s. (7) inserted by s. 5 (*b*) of Act No. 100 of 1997.]

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

[Sub-s. (8), previously sub-s. (7), renumbered by s. 5 (*b*) of Act No. 100 of 1997.]

Wording of Sections

Wording of Sections ✖

s 14(1) of Act 84 of 1996 prior to amendment by Act 53 of 2000

Wording of Sections ✖

s 14(5) of Act 84 of 1996 prior to amendment by Act 100 of 1997

Wording of Sections ✖

s 14(8), (7) of Act 84 of 1996 prior to amendment by Act 100 of 1997

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

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

[Sub-s. (1) substituted by s. 2 of Act No. 57 of 2001.]

Wording of Sections

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

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

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

[Sub-s. (4) added by s. 9 of Act No. 48 of 1999.]

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

[Sub-s. (5) added by s. 9 of Act No. 48 of 1999.]

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

[Sub-s. (6) added by s. 9 of Act No. 48 of 1999.]

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

[Sub-s. (7) added by s. 3 of Act No. 53 of 2000.]

Wording of Sections

s 16(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001

16A. Functions and responsibilities of principal of public school.—(1) (*a*) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23 (1) (*b*) and 24 (1) (*j*).

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

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

(ii) the effective use of available resources.

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

(ii) The academic performance improvement plan must be—

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

(*bb*) tabled at a *governing body* meeting.

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

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

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

(2) The *principal* must—

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

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

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

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

(iv) the performance of functions delegated to him or her by the Head of Department in terms of this Act;

(v) the safekeeping of all school records; and

(vi) the implementation of policy and legislation;

(*b*) attend and participate in all meetings of the *governing body*;

(*c*) provide the *governing body* with a report about the professional management relating to the *public school*;

(*d*) assist the *governing body* in handling disciplinary matters pertaining to *learners*;

(*e*) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;

(*f*) inform the *governing body* about policy and legislation;

[Para. (*f*) amended by s. 9 of Act No. 15 of 2011.]

Wording of Sections

(*g*) provide accurate data to the *Head of Department* when requested to do so; and;

[Para. (*g*) amended by s. 9 of Act No. 15 of 2011.]

Wording of Sections

(*h*) assist the *governing body* with the management of the *school's* funds, which assistance must include—

(i)

the provision of information relating to any conditions imposed or directions issued by the *Minister*, the *Member of the Executive Council* or the *Head of Department* in respect of all financial matters of the *school* contemplated in Chapter 4; and

(ii)
the giving of advice to the *governing body* on the financial implications of decisions relating to the financial matters of the *school*;

[Para. (*h*) added by s. 9 of Act No. 15 of 2011.]

(*h*)
take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the *governing body* of the *school*;

[Para. (*i*) added by s. 9 of Act No. 15 of 2011.]

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

[Para. (*j*) added by s. 9 of Act No. 15 of 2011.]

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

[Para. (*k*) added by s. 9 of Act No. 15 of 2011.]

Wording of Sections
s 16A(2)(f) of Act 84 of 1996 prior to amendment by Act 15 of 2011

Wording of Sections
s 16A(2)(g) of Act 84 of 1996 prior to amendment by Act 15 of 2011

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

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

(*a*)
given notice in the Provincial Gazette of his or her intention so to act;

(*b*)
given interested parties an opportunity to make written submissions within a period of not less than 30 days; and

(*c*)
considered all such submissions.

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

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

(*a*)

a meeting of the *governing body* at least once every *school* term;

(*b*) meetings of the *governing body* with *parents*, *learners*, *educators* and other staff at the *school*, respectively, at least once a year;

(*c*) recording and keeping of minutes of *governing body* meetings;

(*d*) making available such minutes for inspection by the *Head of Department*; and

(*e*) rendering a report on its activities to *parents*, *learners*, *educators* and other staff of the *school* at least once a year.

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

18A. Code of conduct of governing body.—(1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine a code of conduct for the members of the *governing body* of a *public school* after consultation with associations of *governing bodies* in that province, if applicable.

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

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

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

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

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

[S. 18A inserted by s. 6 of Act No. 50 of 2002.]

19. Enhancement of capacity of governing bodies.—(1) Out of funds appropriated for this purpose by the *provincial legislature*, the *Head of Department* must establish a programme to—

(*a*) provide introductory training for newly elected *governing bodies* to enable them to perform their functions; and

(*b*) provide continuing training to *governing bodies* to promote the effective performance of their functions or to enable them to assume additional functions.

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

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

(*a*)

criteria for authorising a *governing body* association to perform the functions contemplated in subsection (4);

(*b*) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the *Head of Department* in relation to the performance of the functions contemplated in subsection (4);

(*c*) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and

(*d*) criteria for granting a *governing body* an allocation for contribution towards membership of a recognised *governing body* association.

[Sub s. (3) added by s. 10 of Act No. 15 of 2011.]

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

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

(i) must enter into an agreement with the *governing body* association;

(ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and

(iii) may include a request for the training of members of a *governing body* of a *school* that is not a member of the *governing body* association requested to conduct the training in the agreement contemplated in subparagraph (ii).

[Sub s. (4) added by s. 10 of Act No. 15 of 2011.]

20. Functions of all governing bodies.—(1) Subject to *this Act*, the *governing body* of a *public school* must—

(*a*) promote the best interests of the *school* and strive to ensure its development through the provision of quality education for all *learners* at the *school*;

(*b*) adopt a constitution;

(*c*) develop the mission statement of the *school*;

(*d*) adopt a code of conduct for *learners* at the *school*;

(*e*) support the *principal*, *educators* and other staff of the *school* in the performance of their professional functions;

(*e*A)

adhere to any actions taken by the Head of Department in terms of section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), to address the incapacity of a *principal* or *educator* to carry out his or her duties effectively;

[Para. (*e*A) inserted by s. 9 (*a*) of Act No. 31 of 2007.]

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

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

[Para. (*g*) substituted by s. 9 (*b*) of Act No. 31 of 2007.]

Wording of Sections

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

(*i*) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

[Para. (*i*) substituted by s. 3 of Act No. 57 of 2001.]

Wording of Sections

(*j*) recommend to the *Head of Department* the appointment of non-educator 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);

(*j*A) make the recommendation contemplated in paragraph (*j*) within the time frames contemplated in section 6 (3) (*l*) of the Employment of Educators Act, 1998 (Act No. 76 of 1998).

[Para. (*j*A) inserted by s. 9 (*c*) of Act No. 31 of 2007.]

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

[Para. (*k*) substituted by s. 4 of Act No. 53 of 2000.]

Wording of Sections

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

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

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

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

(4) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Member of the Executive Council* in terms of section 3 (1) of the Educators' Employment Act, 1994.

[Sub-s. (4) added by s. 6 of Act No. 100 of 1997.]

(5) Subject to *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

[Sub-s. (5) added by s. 6 of Act No. 100 of 1997.]

(6) An *educator* and a non-*educator* employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.

[Sub-s. (6) added by s. 6 of Act No. 100 of 1997.]

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

[Sub-s. (7) added by s. 6 of Act No. 100 of 1997.]

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

(*a*) the ability of the candidate;

(*b*) the principle of equity;

(*c*) the need to redress past injustices; and

(*d*) the need for representivity.

[Sub-s. (8) added by s. 6 of Act No. 100 of 1997.]

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

[Sub-s. (9) added by s. 6 of Act No. 100 of 1997.]

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

[Sub-s. (10) added by s. 6 of Act No. 100 of 1997.]

(11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Minister* may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

[Sub-s. (11) added by s. 6 of Act No. 100 of 1997.]

Wording of Sections

s 20(1)(g) of Act 84 of 1996 prior to amendment by Act 31 of 2007

Wording of Sections
s 20(1)(j) of Act 84 of 1996 prior to amendment by Act 57 of 2001

Wording of Sections
s 20(1)(k) of Act 84 of 1996 prior to amendment by Act 53 of 2000

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

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

(*b*) to determine the extra-mural curriculum of the *school* and the choice of subject options in terms of provincial curriculum policy;

(*c*) to purchase textbooks, educational materials or equipment for the *school*;

(*d*) to pay for services to the *school*;

(*d*A) to provide an adult basic education and training class or centre subject to any applicable law; or

[Para. (*d*A) inserted by s. 10 (*b*) of Act No. 48 of 1999.]

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

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

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

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

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

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

(*a*) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and

(*b*) there is a reasonable and equitable basis for doing so.

22. Withdrawal of functions from governing bodies.—(1) The *Head of Department* may, on reasonable grounds, withdraw a function of a *governing body*.

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

(*a*) informed the *governing body* of his or her intention so to act and the reasons therefor;

(*b*) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; and

(*c*) given due consideration to any such representations received.

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

(*a*) furnishes the *governing body* with reasons for his or her actions;

(*b*) gives the *governing body* a reasonable opportunity to make representations relating to such actions; and

(*c*) duly considers any such representations received.

(4) The *Head of Department* may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).

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

23. Membership of governing body of ordinary public school.—(1) Subject to *this Act*, the membership of the *governing body* of an ordinary *public school* comprises—

(*a*) elected members;

(*b*) the *principal*, in his or her official capacity;

(*c*) co-opted members.

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

(*a*) *Parents* of *learners* at the *school*;

(*b*) *educators* at the *school*;

(*c*) members of staff at the *school* who are not *educators*; and

(*d*) *learners* in the eighth *grade* or higher at the *school*.

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

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

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

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

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

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

[Sub-s. (8) substituted by s. 11 (*a*) of Act No. 48 of 1999.]

Wording of Sections

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

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

[Sub-s. (10) added by s. 11 (*b*) of Act No. 48 of 1999.]

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

[Sub-s. (11) added by s. 11 (*b*) of Act No. 48 of 1999.]

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

[Sub-s. (12) added by s. 11 (*b*) of Act No. 48 of 1999.]

Wording of Sections

s 23(8) of Act 84 of 1996 prior to amendment by Act 48 of 1999

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

(*a*) *Parents* of *learners* at the *school*, if reasonably practicable;

(*b*) *educators* at the *school*;

(*c*) members of staff at the *school* who are not *educators*;

(*d*) *learners* attending the eighth *grade* or higher, if reasonably practicable;

(*e*) representatives of sponsoring bodies, if applicable;

(*f*) representatives of organisations of *parents* of *learners* with special education needs, if applicable;

(*g*)

representatives of organisations of disabled persons, if applicable;

(*h*) disabled persons, if applicable; and

(*i*) experts in appropriate fields of special needs education.

(*j*) the *principal* in his or her official capacity.

[Para. (*j*) added by s. 7 of Act No. 100 of 1997.]

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

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

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

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

[Sub-s. (1) substituted by s. 4 (*a*) of Act No. 57 of 2001.]

Wording of Sections

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

(3) If a *governing body* has ceased to perform its functions, the *Head of Department* must ensure that a *governing body* is elected in terms of *this Act* within a year after the appointment of persons contemplated in subsection (1).

[Sub-s. (3) substituted by s. 4 (*b*) of Act No. 57 of 2001.]

Wording of Sections

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

[Sub-s. (4) added by s. 4 (*c*) of Act No. 57 of 2001.]

Wording of Sections
s 25(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001
Wording of Sections
s 25(3) of Act 84 of 1996 prior to amendment by Act 57 of 2001

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

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

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

28. Election of members of governing body.—Subject to *this Act* and any applicable provincial law, the *Member of the Executive Council* must, by notice in the Provincial Gazette, determine—

(*a*) the term of office of members and office-bearers of a *governing body*;

(*b*) the designation of an officer to conduct the process for the nomination and election of members of the *governing body*;

(*c*) the procedure for the disqualification or removal of a member of the *governing body* or the dissolution of a *governing body*, for sufficient reason in each case;

(*d*) the procedure for the filling of a vacancy on the *governing body*;

(*e*) guidelines for the achievement of the highest practicable level of representativity of members of the *governing body*;

(*f*) a formula or formulae for the calculation of the number of members of the *governing body* to be elected in each of the categories referred to in section 23 (2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of *public schools*; and

(*g*) any other matters necessary for the election, appointment or assumption of office of members of the *governing body*.

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

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

(3) In the case of a *public school* for *learners* with special education needs any member of the *governing body* elected from the categories of persons referred to in section 24 (1) (*a*), (*e*), (*f*), (*g*), (*h*) and (*i*) may serve as the chairperson of that *governing body*.

[Sub-s. (3) added by s. 12 of Act No. 48 of 1999.]

30. Committees of governing body.—(1) A *governing body* may—

(*a*) establish committees, including an executive committee; and

(*b*) appoint persons who are not members of the *governing body* to such committees on grounds of expertise, but a member of the *governing body* must chair each committee.

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

31. Term of office of members and office-bearers of governing bodies.—(1) The term of office of a member of a *governing body* other than a *learner* may not exceed three years.

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

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

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

32. Status of minors on governing bodies of public schools.—(1) A member of a *governing body* who is a minor may not contract on behalf of a *public school*.

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

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

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

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

(*a*) informed the *governing body* of the *school* of his or her intention so to act and his or her reasons therefor;

(*b*) granted the *governing body* of the *school* a reasonable opportunity to make representations to him or her in relation to such action;

(*c*) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and

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

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

33A. Prohibition of political activities during school time.—(1) No party-political activities may be conducted at a *school* during *school* time determined by the *governing body* of *the school* in terms of section 20 (1) (*f*).

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

(*a*) campaigning;

(*b*) the conducting of rallies;

(*c*) the distribution of pamphlets and fliers; and

(*d*) the hanging or putting up of posters and banners.

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

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

[S. 33A inserted by s. 11 of Act No. 15 of 2011.]

CHAPTER 4
FUNDING OF PUBLIC SCHOOLS

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

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

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

(2) The *norms and standards for school funding* contemplated in subsection (1) must—

(*a*) set out criteria for the distribution of state funding to all *public schools* in a fair and equitable manner;

(*b*) provide for a system in terms of which *learners* at all *public schools* can be placed into quintiles, referred to as national quintiles for *learners*, according to financial means;

(*c*) provide for a system in terms of which all *public schools* in the Republic can be placed into quintiles referred to as national quintiles for *public schools*, according to the distribution of *learners* in the national quintiles for *learners*; and

(*d*)

determine the procedure in terms of which the *Member of the Executive Council* must apply the criteria contemplated in paragraph (*a*).

[S. 35 substituted by s. 3 of Act No. 24 of 2005.]

Wording of Sections

Wording of Sections

s 35 of Act 84 of 1996 prior to amendment by Act 24 of 2005

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

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

[Sub-s. (2) added by s. 5 of Act No. 57 of 2001.]

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

[S. 36 amended by s. 5 of Act No. 57 of 2001. Sub-s. (3) added by s. 5 of Act No. 57 of 2001.]

Wording of Sections

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

(i) lease, burden, convert or alter immovable property of the *school* to provide for *school activities* or to supplement the *school* fund of that *school*; and

(ii) allow any person to conduct any business on *school* property to supplement the *school* fund.

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

[Sub-s. (4) added by s. 12 of Act No. 15 of 2011.]

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

[Sub-s. (5) added by s. 12 of Act No. 15 of 2011.]

Wording of Sections

s 36 of Act 84 of 1996 prior to amendment by Act 57 of 2001

37. School funds and assets of public schools.—(1) The *governing body* of a *public school* must establish a *school* fund and Administer it in accordance with directions issued by the *Head of Department*.

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

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

[Sub-s. (3) substituted by s. 6 (*a*) of Act No. 57 of 2001.]

Wording of Sections

(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*, by agreement with such other *public school* and with the consent of the *Head of Department*;

(*c*) the performance of the functions of the *governing body*; or

(*d*) another educational purpose agreed between the *governing body* and the *Head of Department*.

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

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

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

[Sub-s. (7) inserted by s. 6 (*b*) of Act No. 57 of 2001.]

Wording of Sections

s 37(3) of Act 84 of 1996 prior to amendment by Act 57 of 2001

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

[Sub-s. (1) substituted by s. 7 of Act No. 57 of 2001.]

Wording of Sections

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

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

[Sub-s. (3) added by s. 7 of Act No. 50 of 2002.]

Wording of Sections

s 38(1) of Act 84 of 1996 prior to amendment by Act 57 of 2001

38A. Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees.—(1) Subject to subsection (2), a governing body may not pay or give to a state employee employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), any unauthorised—

(*a*) remuneration;

(*b*) other financial benefit; or

(*c*) benefit in kind.

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

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

(*a*) full details of the nature and extent of the payment;

(*b*) the process and resources that will be used to compensate or remunerate the state employee; and

(*c*) the extent of compliance with section 20 (5) to (9).

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

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

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

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

(*a*) the implications for the employer in terms of the employment contract and labour law;

(*b*) whether the service concerned in the application will interfere with the normal service delivery of the employee;

(*c*) whether the service concerned in the application has already been paid for by the employer; and

(*d*) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school.

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

(9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the employer, the amount of

money paid or benefit given must be recovered by the employer on behalf of the school from members of the governing body who took that decision, excluding a member of the governing body who is a minor.

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

(*a*) the refusal by the employer of an application contemplated in subsection (2); or

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

[S. 38A inserted by s. 2 of Act No. 1 of 2004.]

39. School fees at public schools.—(1) Subject to *this Act*, *school* fees may be determined and charged at a *public school* only if a resolution to do so has been adopted by a majority of *parents* attending the meeting referred to in section 38 (2).

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

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

(*b*) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school fees*; and

(*c*) a *school* budget that reflects the estimated cumulative effect of—

(i) the established trends of non-payment of *school fees*; and

(ii) the total, partial or conditional exemptions granted to *parents* in terms of the regulations contemplated in subsection (4).

[Sub-s. (2) substituted by s. 4 (*a*) of Act No. 24 of 2005.]

Wording of Sections

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

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

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

[Sub-s. (5) added by s. 4 (*b*) of Act No. 24 of 2005.]

(6) A *public school* may not charge a *parent* of a *learner* at that *school* different *school fees* based on curriculum or extramural curriculum within the same *grade*

[Sub-s. (6) added by s. 4 (*b*) of Act No. 24 of 2005.]

(7) Despite subsection (1), the *Minister* must by notice in the Government Gazette annually determine the national quintiles for *public schools* or part of such quintiles which must be used by the *Member of the Executive Council* to identify *schools* that may not charge *school fees.*

[Sub-s. (7) added by s. 4 (*b*) of Act No. 24 of 2005.]

(8) The *Minister* may make a determination in terms of subsection (7) only if sufficient funding, not less than the *no fee threshold*, has been secured to fund *learners* at the *schools* affected by the determination.

[Sub-s. (8) added by s. 4 (*b*) of Act No. 24 of 2005.]

(9) The *Member of the Executive Council* must identify and draw a list of all the *schools* contemplated in subsection (7) within his or her *province.*

[Sub-s. (9) added by s. 4 (*b*) of Act No. 24 of 2005.]

(10) The *Minister* must—

(*a*) consider the list of *schools* identified in terms of subsection (9);

(*b*) compare the list with the determination contemplated in section 35 (1); and

(*c*) publish the list per *province*, in the Government Gazette if it complies with the determination.

[Sub-s. (10) added by s. 4 (*b*) of Act No. 24 of 2005.]

(11) The *schools* contemplated in subsection (7) may, despite that subsection, charge *school fees* if they receive less than the *no fee threshold* from the provincial *education department*.

[Sub-s. (11) added by s. 4 (*b*) of Act No. 24 of 2005.]

(12) The right of the *school* to charge *school fees* in terms of subsection (11) is limited to an amount equal to the sum obtained if the actual amount received from the State is deducted from the *no fee threshold*.

[Sub-s. (12) added by s. 4 (*b*) of Act No. 24 of 2005.]

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

[Sub-s. (13) added by s. 13 of Act No. 15 of 2011.]

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

[Sub-s. (14) added by s. 13 of Act No. 15 of 2011.]

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

[Sub-s. (15) added by s. 13 of Act No. 15 of 2011.]

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

[Sub-s. (16) added by s. 13 of Act No. 15 of 2011.]

Wording of Sections

s 39(2) of Act 84 of 1996 prior to amendment by Act 24 of 2005

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

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

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

41. Enforcement of payment of *school fees*.—(1) A *public school* may by process of law enforce the payment of *school fees* by *parents* who are liable to pay in terms of section 40.

(2) The exemption from payment of *school fees* must be calculated according to the regulations contemplated in section 39 (4).

(3) The exemption from payment of *school fees* in terms of *this Act* is calculated retrospectively from the date on which the *parent* qualifies for the exemption.

(4) *A public school* may act in terms of subsection (1) only after it has ascertained that—

(*a*) the *parent* does not qualify for exemption from payment of *school fees* in terms of *this Act*;

(*b*) deductions have been made in terms of regulations contemplated in section 39 (4), for a *parent* who qualifies for partial exemption; and

(*c*) the *parent* has completed and signed the form prescribed in the regulations contemplated in section 39 (4).

(5) Despite subsection (4), *a public school* may act in terms of subsection (1) if—

(*a*) that *school* can provide proof of a written notification to the *parent* delivered by hand or registered post that the *parent* has failed to apply for exemption contemplated in section 39; and

(*b*) despite the notice contemplated in paragraph (*a*), the *parent* fails to pay the *school fees* after a period of three months from the date of notification.

(6) A *public school* may not attach the dwelling in which a *parent* resides.

(7) A *learner* may not be deprived of his or her right to participate in all aspects of the programme of a *public school* despite the non-payment of *school fees* by his or her *parent* and may not be victimised in any manner, including but not limited to the following conduct:

(*a*) Suspension from classes;

(*b*) verbal or non-verbal abuse;

(*c*) denial of access to—

(i) cultural, sporting or social activities of the *school;* or

(ii) the nutrition programme of the school for those *learners* who qualify in terms of the applicable policy; or

(*d*) denial of a *school* report or transfer certificate.

[S. 41 substituted by s. (5) of Act No. 24 of 2005.]
Wording of Sections

Wording of Sections

s 41 of Act 84 of 1996 prior to amendment by Act 24 of 2005

42. Financial records and statements of public schools.—The *governing body* of a *public school* must—

(*a*) keep records of funds received and spent by the *public school* and of its assets, liabilities and financial transactions; and

(*b*) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the guidelines determined by the *Member of the Executive Council*.

43. Audit or examination of financial records and statements.—(1) The *governing body* of a *public school* must appoint a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005), to audit the records and financial statements referred to in section 42.

[Sub-s. (1) substituted by s. 10 of Act No. 31 of 2007.]
Wording of Sections

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

(*a*) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or

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

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

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

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

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

Wording of Sections

s 43(1) of Act 84 of 1996 prior to amendment by Act 31 of 2007

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

CHAPTER 5
INDEPENDENT SCHOOLS

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

45A. Admission age to independent school.—(*a*) The admission age of a *learner* to an *independent school* to—

(i) grade R is age four turning five by 30 June in the year of admission;

(ii) grade 1 is age five turning six by 30 June in the year of admission.

(*b*) An *independent school* may admit a *learner* who—

(i) is under the age contemplated in paragraph (*a*) if good cause is shown; and

(ii) complies with the criteria contemplated in paragraph (*c*).

(*c*) The *Minister* may, by regulation, prescribe—

(i) criteria[2] for the admission to an *independent school* at an age lower than the admission age of an underage *learner* who complies with the criteria;

(ii) age requirements for different *grades* at an *independent* school.

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

(i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in his or her best interest; and

(ii) the refusal to admit that *learner* would be severely detrimental to his or her development.".

[S. 45A inserted by s. 8 of Act No. 50 of 2002 with effect from 1 January, 2004.]

Footnotes

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

(*a*) learners are admitted on an equitable basis;

(*b*) there is no unfair discrimination to learners;

(*c*) the admission is fair to the individual learner as well as other learners in the classroom;

(*d*) recognition is given to the diversity of language, culture and economic background;

(*e*) notice is taken of the differences between urban and rural environments; and

(*f*) the physical, psychological and mental development of the child are taken into account.

Footnote

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

(*a*) learners are admitted on an equitable basis;

(*b*) there is no unfair discrimination to learners;

(*c*) the admission is fair to the individual learner as well as other learners in the classroom;

(*d*) recognition is given to the diversity of language, culture and economic background;

(*e*) notice is taken of the differences between urban and rural environments; and

(*f*) the physical, psychological and mental development of the child are taken into account.

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

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

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

(*a*) the standards to be maintained by such *school* will not be inferior to the standards in comparable *public schools*;

(*b*) the admission policy of the *school* does not discriminate on the grounds of race; and

(*c*) the *school* complies with the grounds for registration contemplated in subsection (2).

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

47. Withdrawal of registration of independent school.—(1) No withdrawal of the registration of an *independent school* is valid unless—

(*a*) the owner of such *independent school* has been furnished by the *Head of Department* with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;

(*b*)

the owner of such *independent school* has been granted an opportunity to make written representations to the *Head of Department* as to why the registration of the *independent school* should not be withdrawn; and

(*c*) any such representations received have been duly considered.

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

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

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

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

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

(*a*) the owner of such *independent school* has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;

(*b*) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and

(*c*) any such representations received have been duly considered.

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

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

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

50. Duties of Member of Executive Council relating to independent schools.—(1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine requirements for—

(*a*) the admission of *learners* of an *independent school* to examinations conducted by or under the supervision of the *education department*;

(*b*) the keeping of registers and other documents by an *independent school*;

(*c*) criteria of eligibility, conditions and manner of payment of any subsidy to an *independent school*; and

(*d*) any other matter relating to an *independent school* which must or may be prescribed in terms of *this Act*.

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

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

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

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

(*a*) the registration is in the interests of the *learner*;

(*b*) the education likely to be received by the *learner* at home—

(i) will meet the minimum requirements of the curriculum at *public schools*; and

(ii) will be of a standard not inferior to the standard of education provided at *public schools*; and

(*c*) the *parent* will comply with any other reasonable conditions set by the *Head of Department*.

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

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

(*a*) has informed the *parent* of his or her intention so to act and the reasons therefor;

(*b*) has granted the *parent* an opportunity to make representations to him or her in relation to such action; and

(*c*) has duly considered any such representations received.

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

CHAPTER 6
TRANSITIONAL PROVISIONS

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

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

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

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

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

54. Transitional provisions relating to governing bodies.—(1) The *Minister* must, after consultation with the *Member of the Executive Council* and by notice in the Government Gazette, determine dates—

(*a*) by which the election of members of *governing bodies* at all *public schools* in a *province* must be finalised in terms of *this Act*; and

(*b*) from which the *governing bodies* referred to in subsection (1) (*a*) must function in terms of this Act.

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

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

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

55. Transitional provisions relating to immovable property of certain schools.—(1) The immovable property of a *school* which was declared to be a state-aided *school* under section 29 (2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State on a date determined by the *Minister* by notice in the Government Gazette.

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

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

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

(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full or in part from funds appropriated by Parliament for that purpose.

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

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

(*a*) a third party acquires no right of execution against the immovable property as a result of such transfer alone;

(*b*) a third party is obliged to excuse the *school* in question if the *school* fails to meet its commitments to the third party; and

(*c*) the State indemnifies such a third party in its claims against the *school* which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the *school* prior to the transfer.

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

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

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

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

[Sub-s. (11) added by s. 9 of Act No. 100 of 1997 and substituted by s. 13 of Act No. 48 of 1999.]

Wording of Sections

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

[Sub-s. (12) added by s. 9 of Act No. 100 of 1997.]

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

[Sub-s. (13) added by s. 9 of Act No. 100 of 1997.]

Wording of Sections

s 55(11) of Act 84 of 1996 prior to amendment by Act 48 of 1999

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

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

CHAPTER 7
GENERAL PROVISIONS

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

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

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

(*a*) identify the land or any real right in or over the land;

(*b*) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and

(*c*) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the *Member of the Executive Council* in that regard, and draw attention to the provisions of subsection (5).

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

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

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

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

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

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

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

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

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

58A. Alienation of assets of *public school*.—(1) The *Head of Department* has the right to compile or inspect an inventory of all the assets of a *public school.*

(2) No person may alienate any assets owned by a *public school* to another person or body without the written approval of the *Member of the Executive Council.*

(3) Despite subsection (2), the *Member of the Executive Council* may—

(*a*) determine that certain categories of assets below a certain value may be alienated without his or her written approval; and

(*b*) determine and publish the value contemplated in paragraph (*a*) by notice in the Provincial Gazette.

(4) The assets of a *public school* may not be attached as a result of any legal action taken against the *school*.

[S. 58A inserted by s. 6 of Act No. 24 of 2005.]

58B. Identification of underperforming public schools.—(1) The *Head of Department* must, annually, from the report contemplated in section 16A (1) (*b*) and from other relevant reports, identify any *public school* that is underperforming in relation to any matter referred to in subsection (2) (*a*), (*b*) or (*c*).

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

(*a*) the standard of performance of *learners* is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the *Head of Department* exercises his or her power in terms of *this Act*;

(*b*) there has been a serious breakdown in the way the *school* is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or

(*c*) the safety of *learners* or staff is threatened.

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

(*a*) within 14 days after delivery of the notice, respond to the notice; and

(*b*) as soon as possible after that response, provide the *Head of Department* with a plan for correcting the situation.

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

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

(*a*) implementing the incapacity code and procedures for poor work performance referred to in section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998);

(*b*) withdrawing the functions of the *governing body* in terms of section 22; or

(*c*) appointing persons in terms of section 25 to perform the functions or specified functions of the *governing body*.

(6) The counselling of the *principal* as contemplated in Item 2 (5) (*b*) (ii) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), may include the appointment of an academic mentor to take over the functions and responsibilities of the *principal* for the period determined by the *Head of Department*.

(7) In order to assist the *Minister* in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Member of the Executive Council* must report to the *Minister* within three months after the end of a *school* year on the action taken by the *Head of Department* in regard to an underperforming *public school*.

[S. 58B inserted by s. 11 of Act No. 31 of 2007.]

58C. Compliance with norms and standards.—(1) The *Member of the Executive Council* must, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), ensure compliance with—

(*a*) norms and standards determined in terms of sections 5A, 6 (1), 20 (11), 35 and 48 (1);

(*b*) minimum outcomes and standards set in terms of section 6A; and

(*c*) performance standards contemplated in Item 2 (2) of Schedule 1 to the Employment of Educators Act, 1998 (Act No. 76 of 1998),

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

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

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

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

(*a*) be dealt with in accordance with the principles of co-operative governance referred to in section 41 (1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and

(*b*) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005.

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

(*a*) identifying resources with which to comply with such norms and standards;

(*b*) identifying the risk areas for compliance;

(*c*) developing a compliance plan for the province, in which all norms and standards and the extent of compliance must be reflected;

(*d*) developing protocols with the *schools* on how to comply with norms and standards and manage the risk areas; and

(*e*) reporting to the *Member of the Executive Council* on the state of compliance and on the measures contemplated in paragraphs (*a*) to (*d*), before 30 September of each year.

(6) The *Head of Department* must—

(*a*) in accordance with the norms and standards contemplated in section 5A determine the minimum and maximum capacity of a *public school* in relation to the availability of classrooms and *educators*, as well as the curriculum programme of such *school*; and

(*b*) in respect of each *public school* in the province, communicate such determination to the chairperson of the *governing body* and the *principal*, in writing, by not later than 30 September of each year.

[S. 58C inserted by s. 11 of Act No. 31 of 2007.]

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

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

[Sub-s. (2) substituted by s. 10 of Act No. 100 of 1997.]

Wording of Sections

Wording of Sections

s 59(2) of Act 84 of 1996 prior to amendment by Act 100 of 1997

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

[Para. (*a*) substituted by s. 14 of Act No. 15 of 2011.]

Wording of Sections

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

[Sub-s. (1) substituted by s. 12 of Act No. 31 of 2007.]

Wording of Sections

(2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1).

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

[Sub-s. (3) added by s. 14 of Act No. 48 of 1999.]

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

[Sub-s. (4) added by s. 14 of Act No. 48 of 1999.]

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

[Sub-s. (5) added by s. 14 of Act No. 48 of 1999.]

Wording of Sections

s 60(1)(a) of Act 84 of 1996 prior to amendment by Act 15 of 2011

Wording of Sections

s 60(1) of Act 84 of 1996 prior to amendment by Act 31 of 2007

61. Regulations.—The *Minister* may make regulations—

(*a*) to provide for safety measures at *public* and *independent schools*;

(*b*) on any matter which must or may be prescribed by regulation under *this Act*;

(*c*) to prescribe a national curriculum statement applicable to *public* and *independent schools*;

(*d*) to prescribe a national process and procedures for the assessment of *learner* achievement in *public* and *independent schools*;

(*e*) to prescribe a national process for the assessment, monitoring and evaluation of education in *public* and *independent schools*;

(*f*) on initiation practices at *public* and *independent schools*;

(*g*) to prescribe the age norm per grade in *public* and *independent schools*;

(*h*)
to provide for norms and minimum standards for *school* funding; and

(*i*)
on any matter which may be necessary or expedient to prescribe in order to achieve the objects of *this Act*.

[S. 61 substituted by s. 5 of Act No. 53 of 2000 and by s. 9 of Act No. 50 of 2002.]

Wording of Sections

Wording of Sections

s 61 of Act 84 of 1996 prior to amendment by Act 53 of 2000
s 61 of Act 84 of 1996 prior to amendment by Act 50 of 2002

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

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

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

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

(2) The Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), is hereby amended to the extent set out in Schedule 2.

Repealed Act

P 138 of 1994 has been repealed by s 137(1) of Act 76 of 1998

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

Schedule 1

No. and year of Act	*Short title*	*Extent of repeal*
Act No. 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20, 26 and 28 to 31
Act No. 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20, 26, 28, 29, 31 and 33 (1) (*g*)
Act No. 90 of 1979	Education and Training Act, 1979	Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44 (1) (*h*)

Act No. 104 of 1986	Private *Schools* Act (House of Assembly), 1986	Section 1A
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

Schedule 2

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

1. *Amends section 1 as follows:—paragraph (a) inserts the definitions of "Department", "educational institution", "Labour Relations Act", "public education institution", "public school", "state-aided college" and "unsubsidised post"; paragraph (b) substitutes the definitions of "educator", "employee member" and "employer"; and paragraph (c) deletes the definitions of "departmental education", "subsidised post", "state-aided educational institution", "Executive Council" and "Education Labour Relations Act".*

2. *Substitutes section 3.*

3. *Inserts section 3A.*

4. *Substitutes section 4.*

5. *Amends section 5 as follows:—paragraph (a) substitutes subsection (1); and paragraph (b) deletes subsection (2).*

6. *Substitutes section 6.*

7 to 9 inclusive. *Amend sections 7, 8, and 10, respectively, by substituting the expression "public education institution" wherever it occurs, for the expression "state educational institution".*

10. *Amends section 11 by substituting subsection (3).*

11 and 12. *Substitute sections 22 and 23, respectively.*