

Notice No. 3, 1996
Gazette No. 5178

KWAZULU-NATAL SCHOOL EDUCATION ACT, NO. 3 OF 1996

The purpose of this legislation is to enable the Minister to govern effectively the provision and control of education in schools in the province as currently prevailing, but in a manner which will reflect the new dispensation in the country by eliminating discrimination, promoting equity and reinforcing human rights, pending the final formulation of national policy, and for matters connected therewith.

ARRANGEMENT OF SECTIONS	SECTIONS
CHAPTER 1	
Application of the Act	1-2
CHAPTER 2	
Execution of the Act	3-11
CHAPTER 3	
State schools	12-15
CHAPTER 4	
State-subsidized schools	16-26
CHAPTER 5	
Community schools	27
CHAPTER 6	
State-aided schools	28-32
CHAPTER 7	
Independent schools	33-40
CHAPTER 8	
Councils	41-49

CHAPTER 9

Learners 50-64

CHAPTER 10

Miscellaneous 65-74

BE IT ENACTED by the Provincial Parliament of the Province of Kwazulu-Natal, as follows:

CHAPTER I APPLICATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise

"centre" means a centre established under section 5(1)(a), or a centre for adult education established under section 5(1)(c);

"child with special education needs" means a child who in the opinion of the Secretary is able to benefit from a specialized education programme for children with special education needs, but who deviates to such an extent from the majority of the children of his/her age in body, mind or behaviour that he/she -

- (a) cannot benefit sufficiently from the instruction provided in the ordinary course of education;
- (b) needs specialized education to facilitate his/her adaptation in the community; or
- (c) should not attend an ordinary class in an ordinary school, because such attendance may not be in the best interest of the child;

"combined school" means a school providing primary and secondary education to a grade higher than the ninth grade but not exceeding the twelfth grade;

"community school" means a community school established or deemed to be established under section 27;

"compulsory school attendance" means compulsory school attendance introduced under section 60;

"Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"council" means a regional council established under section 28(2)(a), or a management council or hostel council established under section 31;

"Department" means the department responsible for education in the province;

"departmental institution" means a centre, state school, hostel established under section 5(1)(b), educational support service centre, teachers' centre, office of a regional council or an office of the Department;

"education" means instruction, teaching or training provided to pupils in terms of this Act;

"educational support service" means an educational support service provided under section 5(1)(e);

"education council" means the education council established under section 41;

"educator" means a person appointed in terms of the Educators' Employment Act, 1994 at a departmental institution, community school, state-subsidized school or state-aided school;

"fixed date" means the date of commencement of this Act;

"Gazette" means the official gazette in which government and other official notices of the provincial government are published;

"governing body" means a governing body referred to in section 18(1);

"grade" means that part of an educational programme in a primary, secondary, intermediate or combined school, or of any other educational programme which the Head of Education may deem to be equivalent, which a pupil may complete within one school year;

"hostel" means a hostel established under section 5(1)(b) or a hostel attached to a state-subsidized or state-aided school;

"hostel council" means a hostel council referred to in section 45(b);

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

"independent school for specialized education" means a school registered in terms of section 36 as a independent school for specialized education, or deemed to be so registered

"industrial school" means a school for the reception, care and education of children referred or transferred thereto under the Child Care Act, 1983 (Act No. 74 of 1983) or the KwaZulu Child Care Act, 1987 (Act no 14 of 1987);

"intermediate school" means a school providing primary and secondary education up to but not exceeding the ninth grade;

"learner" means any person receiving education in a school in terms of this act;

"Legislature" means the legislature established for the province under section 125 of the Constitution;

"management council" means a management council referred to in section 45(a);

"managing body" means a managing body referred to in section 28;

"Minister" means the person appointed in terms of section 149 of the Constitution as Member of the Executive Council responsible for education in the province;

"Minister of Finance" means the person appointed in terms of section 149 of the Constitution as Member of the Executive Council responsible for the administration of the financial affairs of the province;

"national policy" means national education policy determined by a competent authority within the jurisdiction of the national government;

"organized parent community" means the parent community as represented by the parent bodies and associations recognized by the Minister;

"organized teaching profession" means the teaching profession as represented in whole or in part by an employee organization as defined in section 1 of the Education Labour Relations Act, 1993 (Act No. 146 of 1993), or a provincial body of such organization recognized by the Minister;

"parent" means

- (a) a person who in law or by virtue of an order of a competent court has been awarded the custody or control of a child;

(b) the person to whom the custody or control of a child has been entrusted by the person referred to in subsection (a), or

(c) in a case where a child has no parent or legal guardian, or the child does not reside with his parent or legal guardian, any other person with whom the child resides and who exercises actual custody or control over such a child;

"pre-primary school" means a school for children of not younger than three years and who are not yet subject to compulsory school attendance;

"prescribed" means prescribed by regulation;

"primary school" means a school providing education up to but not exceeding the seventh grade;

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

"province" means the province of KwaZulu-Natal;

"public school" means a state school, community school, state-subsidised school or state-aided school;

"reform school" means a school for the reception, care and education of children referred thereto under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or transferred thereto under the Child Care Act, 1983 (Act No. 74 of 1983) or the KwaZulu Child Care Act, 1987 (Act No. 14 of 1987):

"regional council" means a regional council established under section 42(2)(a);

"regulation" means a regulation made under this Act;

"rule" means departmental rule;

"school" means a state school, community school, state-subsidized school, state-aided school or independent school;

"school attendance officer" means an officer appointed under section 10 (1);

"school for specialized education" means a school for specialized education established under section 12, and includes a state-subsidized school for specialized education, a state-aided school for specialized

education or a independent school for specialized education;

"secondary school" means a school providing education from not lower than the eighth grade up to but not exceeding the twelfth grade;

"Secretary" means the Head of the Department;

"specialized education" means education of a specialized nature provided to suit the needs of children with special and specialized education needs, as well as -

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

"state-aided school" means a school registered as a state-aided school under section 28, or deemed to be so registered;

"state school" means a school established or deemed to be established under section 12;

"state-subsidized school" means a state-subsidized school referred to in section 16;

"subsidized post" means a post for which a subsidy in terms of section 20 or 29 must be utilized by virtue of the conditions imposed in terms of the said section;

"teachers' centre" means a teachers' centre established under Section 5(1)(g);

"this Act" includes a regulation; and

"Treasury" means the financial authority referred to in section I of the KwaZulu-Natal Exchequer Act, 1994 (Act No I of 1994).

Application of Act

2. This Act applies in the Province and prevails over any inconsistent law or any provision thereof save for such Act of the national Parliament or provisions thereof adopted in terms of sections 126 (3) and (4) of the Constitution.

CHAPTER 2 EXECUTION OF ACT

Control of education

3. As from the fixed date, education in schools in the province is administered in terms of this Act.

Determination of provincial education policy

4. (1) The Minister shall, after consultation with the parliament portfolio committee, the organized teaching profession, the organized parent community, the education council and other stakeholders identified by the Minister, determine education policy in accordance with the provisions of this Act and in accordance with applicable minimum national norms and standards within the framework of the following principles, namely that -

- (a) every learner is entitled to basic education and equal access to educational institutions;
- (b) in so far as it is reasonably practicable, every learner has the right to be educated in the language of his/her choice, including the right to take his/her mother tongue as a subject;
- (c) religious observances by learners and staff are free and voluntary;
- (d) education be provided in accordance with the aptitude, ability, needs and interest of the learner and the needs of the country, and, as far as it is reasonably practicable, appropriate guidance be made available to learners;

(2) The Minister shall cause a draft of any proposed policy to be published in the Gazette, together with a notice calling upon all interested parties to indicate, within a period stated in the notice, their written submissions or desire to make oral submissions for consideration.

(3) Any action taken by the Minister pursuant to the provisions of subsection (2) shall be published in the Gazette.

(4) The Secretary shall take such actions as are necessary to ensure that the policy as formulated by the Minister is implemented.

General functions of the Minister

5. (1) In addition to any other functions assigned to the Minister in terms of this Act, the Minister may, out of monies appropriated for such purpose by the Legislature -

- (a) establish and maintain such educational centres as he/she may deem necessary for the development and promotion of aptitudes of learners;
- (b) establish and maintain hostels for state schools;
- (c) establish and maintain centres for adult education;
- (d) provide such equipment and erect such buildings as he/she may deem necessary or expedient for the administration of the provisions of this Act;
- (e) make provision for such educational support services as he/she may deem necessary;
- (f) provide, on such basis and subject to such conditions as he/she may determine, financial or other material aid or financial as well as other material aid to a learner admitted to a public school; and
- (g) establish and maintain teachers' centres for the enhancement of an educator's academic and professional knowledge and teaching skills.

(2) The Minister may, after consultation with the appropriate management body and after giving reasonable notice, permanently close a centre, a hostel referred to in subsection (1) or a teachers' centre, and may discontinue an educational support service. If a hostel falls under the supervision of a council referred to in section 45 it may only be closed after consultation with the council concerned.

(3) The Minister may, without consulting interested parties, temporarily close a state school, centre, hostel referred to in terms of section 5(1)(b) or teachers' centre if, in his/her opinion, it is necessary for good reasons.

(4) A centre, hostel, teachers' centre or educational support service established or provided under any law repealed by this Act, or deemed to be established or provided under such a law, and which immediately prior to the fixed date was managed and controlled by a department referred to in such a law, shall from that date be deemed to

be a centre, hostel, teachers' centre or educational support service established or provided under this section.

(5) In addition to the other functions assigned by this Act to the Minister, the Minister may

- (a) approve educational programmes for learners;
- (b) approve educational and training programmes for children with special education needs;
- (c) determine the conditions for admission to such educational and training programmes, and the evaluation of the effectiveness of such educational and training programmes;
- (d) approve courses for the provision of education, including specialized education;
- (e) determine the conditions for admission to, and the syllabi of, such courses;
- (f) in respect of such courses -
 - (i) cause examinations to be conducted and certificates to be issued to learners who passed those examinations; and
 - (ii) cause other approved forms of assessment to be conducted;
- (g) appoint an examinations board and determine the rules according to which such board shall function, to advise him/her on
 - (i) norms and standards for the Senior Certificate examination in the province;
 - (ii) examination rules;
 - (iii) entrance requirements for supplementary examination;
 - (iv) handling of disciplinary matters and complaints with regards to question papers, and other matters affecting the Senior Certificate examination;
 - (v) policy aspects affecting evaluation and evaluation procedures, and
 - (vi) any other relevant matter on which their views, advice or assistance is required.

(h) make rules as to -

(i) the conducting of examinations referred to in paragraph (f), the entering of candidates for those examinations, the conduct and discipline of candidates prior to, during and after those examinations, and the issuing of certificates referred to in that paragraph; and

(ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators and other persons whose services are necessary in connection with the conducting of those examinations;

(i) make arrangements for medical, psychological or dental examinations of learners at schools and hostels; and

(j) determine the school calendar, school holidays and the minimum length of the school day.

(6) Different programmes, courses, school calendars, school holidays and lengths of the school day may be approved or determined, as the case may be, under subsection (4)(i) in respect of different schools.

Submission of information by schools

6. For the purposes of this Act the Secretary may direct a principal of a school or centre in writing to submit to him/her, within the period mentioned in the direction, such information as he/she may require in connection with the affairs of the school or centre.

Support and development of teaching and learning at schools

7. (1) The Secretary may, either in general or in a specific case, authorize in writing a person or persons to appraise and develop the effectiveness, standard and quality of the teaching and learning process.

(2) The person or persons authorized under subsection (1) may

(a) at a reasonable time enter the school or schools concerned:

(b) carry out such actions as are necessary for appraisal and development of the effectiveness, standard and quality of the teaching and learning process, and

(c) arrange for teachers to participate in appropriate in-service training.

Leadership and management support and development at schools

8. (1) The Secretary may, either in general or in a specific case, authorize in writing a person or persons to appraise and develop the management effectiveness of the school.

(2) The person or persons authorized under sub-section (1) may-

- (a) at a reasonable time enter the school or schools concerned;
- (b) carry out such actions as are necessary for appraisal and development of effective leadership and management, and
- (c) carry out a whole school review only after prior notice has been given.

Enquiries at schools and hostels

9. (1) The Secretary may, either in general or in a specific case, authorize in writing a person to conduct an enquiry at a school or hostel.

(2) A person authorized under subsection (1), may -

- (a) at any reasonable time and without prior notice enter upon the grounds of the school or hostel concerned;
- (b) question under oath or otherwise any person who in his/her opinion may be able to furnish information on a matter to which this Act relates:
- (c) require of a person who has in his/her possession or custody or under his/her control a register, book or document on a matter to which this Act relates, to submit such register, book or document to him/her;
- (d) examine such a register, book or document or make an extract therefrom or a copy thereof, and require from any person an explanation under oath or otherwise of any entry therein, and
- (e) attach such register, book or document as in his/her opinion may provide proof of an offence or irregularity.

Appointment of school attendance officers

10. (1) The Secretary may appoint a school attendance officer.

(2) The Secretary shall issue a school attendance officer, appointed in terms of subsection 1, with a certificate signed by him/her.

Functions of school attendance officers

11. (1) In order to ensure that compulsory school attendance in terms of section 60 is being complied with, a school attendance officer may -

- (a) at any reasonable time enter upon any premises if he/she has reasonable grounds to suspect that a child who is subject to compulsory school attendance is on those premises;
- (b) question any person who in his/her opinion may be able to give information regarding such a child-
- (c) if he/she has reasonable grounds to suspect that such a child is absent without adequate reasons from the school he/she should be attending, recommend to the child's legal guardian or to any relevant social worker such actions as they deem appropriate to ensure that the child concerned attends school regularly, and

the Secretary shall, in the light of the report, take such action as he may deem appropriate.

(2) A school attendance officer shall not perform a function under this section, unless he/she is, while he/she is performing that function, in possession of his/her certificate referred to in section 10(2), which shall be produced by him/her at the request of any person affected by the Performance of that function.

CHAPTER 3 STATE SCHOOLS

Establishment and maintenance of state schools

12. (1) The Minister may, out of monies appropriated for this purpose by the Legislature, establish and maintain the following state schools, namely

- (a) pre-primary schools;
- (b) primary schools;
- (c) secondary schools;
- (d) intermediate schools;
- (e) combined schools;
- (f) schools for specialized education;

(g) industrial schools;

(h) reform schools; and

(i) any other type of school which he/she deems necessary for education.

(2) (a) A pre-primary school;

(b) a primary school;

(c) a secondary school, a high school, a vocational school, agricultural school and school where education or training is provided in any trade, technical, commercial, agricultural, domestic science, home craft or any other vocational direction;

(d) an intermediate school;

(e) a combined school;

(f) a school for specialized education, special school and home;

(g) an industrial school; or

(h) a reform school,

established or erected in terms of a law repealed by this Act, or deemed to be established or erected in terms of such a law, and which was controlled and managed by a department referred to in such law immediately prior to the fixed date, shall with effect from that date be deemed to be

(i) a pre-primary school;

(ii) a primary school;

(iii) a secondary school;

(iv) an intermediate school;

(v) a combined school;

(vi) a school for specialized education;

(vii) an industrial school; or

(viii) a reform school,

respectively, established under this section.

(3) The Minister may, in consultation with the council of a school concerned, classify any such state school into such categories or sections as he/she may determine, and combine two or more such categories or sections in one school.

Declaration of independent schools and state-subsidized schools as state schools

13. (1) The Minister may enter into an agreement with the owner of an independent school or the governing body of a state-subsidized school in terms of which such a school is declared to be a state school.

(2) No agreement shall be entered into under subsection (1), except with the concurrence of the Minister of Finance.

(3) If an agreement has been entered into under subsection (1), the Minister may, by notice in the Gazette, declare such independent school or state-subsidized school, as the case may be, to be a state school with effect from a date mentioned in the notice.

Consequences of declaration as state school

14. (1) As from the date mentioned in the notice contemplated in section 13(3)

(a) the school concerned is deemed to be a state school established under section 12;

(b) rights, powers, duties or functions in respect of the school concerned no longer vest in the previous owner or governing body;

(c) the rights obtained and obligations incurred by the owner or governing body concerned, for the purposes of or in connection with the school concerned, vest in the state; and

(d) the ownership and control of movable and immovable property which immediately prior to that date vested in the owner, state-subsidized school or governing body concerned, and which relates to the school concerned, vest in the state, unless otherwise agreed upon in terms of section 13(1).

(2) Immovable property vested in the state in terms of subsection (1)(d), is transferred to the state without payment of transfer duty, stamp duty or any other monies or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property referred to in subsection (2) is registered, makes, on submission to him/her of the title

deed concerned, such endorsements on that title deed and such entries in his/her register as may be required to register the transfer concerned.

(4) The declaration of an independent school or a state-subsidized school as a state school does not affect anything legally done by the owner or governing body concerned prior to the declaration.

Closure of state schools

15. The Minister may, after consultation with the management council concerned, if any, at any time close or disestablish a state school or part thereof.

CHAPTER 4 STATE-SUBSIDIZED SCHOOLS

16. (1) In order to ensure the provision or continued provision of education at an educational institution other than a state school, the Minister may, by notice in the Gazette, declare such an institution to be a state-subsidized school with effect from a date mentioned in the notice.

(2) The Minister shall not declare an educational institution to be a state-subsidized school under subsection (1), except with the concurrence of the owner of that institution and the Minister of Finance.

(3) The Minister may, on such conditions as he/she may determine, by notice in the Gazette declare a state school to be a state-subsidized school with effect from a date mentioned in the notice.

(4) The Minister may establish a state-subsidized school at any place approved for that purpose.

(5) A state-subsidized school is managed and controlled in terms of this Act.

(6) An institution, excluding a school for specialized education, declared or established as a state-aided school under the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988), or deemed to be so declared or established under that Act, and which existed immediately prior to the fixed date, is with effect from that date deemed to be declared or established, as the case may be, as a state-subsidized school under this section.

(7) The Minister shall declare a school for specialized education, declared or established as a state-aided school under the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988), or deemed to be so declared or established prior to the fixed date, to be either a state-subsidized school in terms of this section or a state-aided school in terms of section 37 of this Act. In making his/her declaration, the Minister shall act with the concurrence of the Minister of Finance and the governing

body or owner of the school concerned.

Status and patrimonial power of state-subsidized schools

17. (1) A state-subsidized school is a juristic person.

(2) A state-subsidized school is an employer as defined in section I of the Educators' Employment Act, 1994.

(3) A state-subsidized school does not, without the approval of the Minister, let its immovable property for a period longer than one year, sell or otherwise alienate its immovable property or grant to any person any real right therein or servitude thereon.

(4) A state-subsidized school utilises money or other goods donated or bequeathed to or received in trust by that school, in accordance with the conditions of the donation, bequest or trust.

Management and control of state-subsidized schools

18. (1) Subject to the provisions of this Act, the management, control and executive power of a state-subsidized school vest in its governing body.

(2) The provisions of sections 46, 47 and 48 apply likewise to a governing body.

Consequences or declaration of state school as state-subsidized school

19. (1) As from the date on which a state school is declared to be a state-subsidized school under section 16(3) and subject to subsection (5) -

(a) the ownership and control of movable and immovable property and all rights which immediately prior to that date vested in the state or the management council concerned and which relate to the school concerned, devolve upon the state-subsidized school concerned on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine: Provided that if immovable property so vested, in the opinion of the Minister is not being utilized in the interest of education, such immovable property reverts, without payment of compensation by the state, to the state;

(b) the liabilities and obligations which immediately prior to that date vested in the state or the management council, devolve upon the state-subsidized school concerned;

(c) the ownership and control of administrative records and other documents relating to the state school concerned as the Minister determines, is transferred to such state-subsidized school; and

(d) the management, control and executive power of the state-subsidized school concerned vest in its governing body constituted in accordance with the provisions of this Act.

(2) Immovable property devolving upon the state-subsidized school or reverting to the state in terms of subsection (1)(a), is transferred to the state-subsidized school or the state, as the case may be, without payment of transfer duty, stamp duty or other monies or costs, but subject to any term or condition contemplated in subsection (1)(a) and any existing right, encumbrance, duty or trust on or over that property.

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

(4) The declaration of a state school as a state-subsidized school, does not affect anything legally done by the state or the management council prior to the declaration.

(5) (a) Notwithstanding the provisions of subsection (1) the state, in respect of the immovable property of a state-subsidized school, remains liable for the payment of rates which are levied under any law by a local authority on the value of immovable property within its area of jurisdiction.

(b) For the purposes of the Rating of State Property Act, 1984 (Act No. 79 of 1984), a state-subsidized school is deemed to be a governmental institution as defined in section 1(1) of that Act.

Subsidies to state-subsidized schools

20. The Minister may, out of monies appropriated for such purpose by the Legislature, grant a subsidy to a state-subsidized school on such basis and subject to such conditions as he/she may determine.

Loans to state-subsidized schools

21. (1) Subject to the provisions of this Act, the Minister may, with the concurrence of the Minister of Finance, out of monies appropriated by the Legislature for such purposes, grant a loan to a state-subsidized school for -

(a) the erection of buildings and the acquisition of equipment of a permanent nature;

(b) the acquisition of land, including land on which buildings have been erected, or rights to or interests in land, and the payment of survey and transfer costs in connection with such acquisition;

(c) the payment of capital expenditure on the fencing and improvement of the land of the state-subsidized school; or

(d) the repayment of any loan, excluding a loan granted out of monies appropriated by the Legislature, lawfully raised by such state-subsidized school, for any purpose mentioned in paragraph (a), (b) or (c).

(2) Any application by a state-subsidized school for a loan contemplated in subsection (1) is addressed in writing to the Secretary and states the purpose of the loan.

(3) Upon receipt of any such application the Secretary shall call for such estimates, plans, specifications, reports, returns and other documents or information, and cause such inspections to be carried out, as he/she may consider necessary in order to determine whether the application should be granted.

Repayment of loans by state-subsidized schools

22. (1) A loan granted by the Minister to a state-subsidized school in terms of section 21, together with interest due thereon at a rate determined by the Minister of Finance, is repaid within a period determined by the Treasury before the granting of the loan: Provided that the Treasury may extend such a period: Provided further that such a loan, together with the interest due thereon, is to be repaid within a period of 40 years from the date determined by the Treasury in terms of subsection (2).

(2) The first repayment of an instalment of a loan referred to in subsection (1) is made on a date determined by the Treasury before the granting of the loan, which date is to be not later than three years after the date on which the loan or first portion thereof was paid out.

(3) During the period from the date on which the loan referred to in subsection (1), or the first portion thereof, is paid out, to the date of the first repayment referred to in subsection (2), interest at a rate determined by the Minister of Finance is payable on the loan or first portion thereof.

(4) The state-subsidized school to which a loan is granted under section 21 repays, on the date of the first repayment referred to in subsection (2), and thereafter on the first day of January and on the first day of July in every year, instalments to the Treasury, and the instalments continue to be payable until the capital amount of the loan, together with interest due thereon is repaid: Provided that the Treasury may, if in its opinion special circumstances exist, grant an extension of time in respect of the repayment on one or more of such instalments.

(5) The instalments of a loan referred to in this section each amount to one half of the annual payment required to redeem the capital amount of the loan, together with interest due thereon, within the period determined by the Treasury under subsection (1).

Security for repayment of loans

23. (1) From the date on which a loan or the first portion thereof is paid out under section 27 to the state-subsidized school concerned, and subject to any prior security or hypothecation, all immovable property of a state-subsidized school serves as security for the repayment of the amount due in respect of the loan, costs and interest.

(2) The Minister may, with the concurrence of the Minister of Finance, at any time in writing waive the preference which is granted by virtue of subsection (1), in favour of the holder of a later bond over the immovable property of a state-subsidized school, if he/she is of the opinion that the sum of the amounts due in respect of the loan, costs and interest and the amount secured by bond does not exceed the value of the immovable property of the state-subsidized school.

Financial year, records and annual Financial statements of state-subsidized schools

24. (1) The financial year of a state-subsidized school terminates on the last day of December in each year.

(2) The governing body of a state-subsidized school shall -

(a) keep records of monies received or spent by the state-subsidized school, and of the assets, liabilities and financial transactions of the state-subsidized school; and

(b) as soon as possible, but not later than three months after the end of each financial year, draw up annual financial statements which indicate with suitable particulars, monies received and expenditure incurred by the state-subsidized school during, and its assets and liabilities at the end of the financial year concerned.

(3) The records and annual financial statements referred to in subsection (2) shall be audited by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), or other person approved by the Minister, and appointed by the governing body.

(4) A governing body shall within six months after the end of each financial year submit a copy of the annual financial statements, audited in terms of subsection (3), to the Secretary.

(5) The Secretary may issue instructions to a governing body with regard to the system of bookkeeping and accounting to be followed.

Termination or reduction of subsidy to a state-subsidized school

25. If, in the opinion of the Minister, a condition subject to which a subsidy was granted under section 20 has not been complied with, he/she may at any time terminate or reduce the subsidy from a date determined by him/her:

Provided that the Minister shall, before he/she terminates or reduces such subsidy, give the governing body of the state-subsidized school an opportunity to make representations to him/her in connection with the proposed termination or reduction.

Closure of state-subsidized schools

26. (1) (a) If the Minister considers it necessary on educational grounds he/she may, after consultation with the governing body of a state-subsidized school, by notice in the Gazette declare that the state-subsidized school concerned shall be closed from a date mentioned in such notice.

(b) The notice contemplated in subsection (1)(a) shall set out the reasons of the Minister for deciding to close the state-subsidized school.

(2) As from the date on which a state-subsidized school is declared to be closed all assets and liabilities of such school shall, subject to the conditions of a donation, bequest or trust contemplated in section 17(4), devolve upon the state.

(3) The Minister shall appoint a person to administer the affairs of the state-subsidized school concerned.

(4) Immovable property devolving upon the state by virtue of subsection (2) shall be transferred to the state without payment of transfer duty, stamp duty or other monies or costs.

(5) The officer in charge of a deeds registry or other office where the immovable property referred to in subsection (4) is registered, makes, on submission to him/her of the title deed concerned, the necessary endorsements on that title deed and necessary entries in the registers.

CHAPTER 5 COMMUNITY SCHOOLS

Establishment, maintenance, subsidization and closure of community schools

27. (1) The Minister may, out of monies appropriated for this purpose by the Legislature, establish and maintain a community school.

(2) A community school established in terms of a law repealed by this Act, or deemed to be established in terms of such a law, and which was controlled and managed by a department referred to in such law immediately prior to the fixed (late, is with effect from that date deemed to be a community school established under this section.

(3) The provisions of section 45(a) apply likewise to a community school.

(4) The Minister may, with the concurrence of the Minister of Finance and on the conditions he/she may determine with the concurrence of the Minister of Finance, out of monies appropriated by the Legislature for such purpose, grant a loan or a subsidy or a loan as well as a subsidy, to the person or body providing, or who will provide, the school building and premises for the community school, for -

(a) the erection of buildings and the acquisition of equipment of a permanent nature;

(b) the payment of capital expenditure on the fencing and improvement of the school grounds; and

(c) the repayment of a loan, excluding a loan granted out of monies appropriated by the Legislature, lawfully raised for a purpose mentioned in paragraph (a) or (b).

(5) The Minister may, after consultation with the community and management council concerned, close a community school or any part thereof on such conditions as he/she may determine.

CHAPTER 6 STATE-AIDED SCHOOLS

Registration of state-aided schools

28. (1) Any person who wishes to provide education to learners, except at a state school, a community school, an independent school or a state-subsidized school, applies to the Secretary in writing for the registration of a state-aided school, and he/she shall not provide such education before the school has been registered in terms of this section.

(2) The registration of state-aided schools is in accordance with the prescribed requirements.

(3) The Secretary may grant an application referred to in subsection (1) if he/she is of the opinion that the requirements referred to in subsection (2) are complied with.

(4) (a) If the Secretary grants an application referred to in subsection (1), he/she registers the school concerned and issues to the applicant a registration certificate in such form as he/she may determine.

(b) When registering a school as contemplated in paragraph (a), the Secretary may classify the school in such categories or sections of schools as he/she may determine, and he/she may combine two or more categories or sections

in one school.

(5) Any registration in terms of subsection (4) may be made subject to such conditions as the Secretary may determine, and the Secretary may at any time -

(a) withdraw or amend any such condition or impose further conditions; and

(b) withdraw any registration in terms of subsection (4) if he/she is of the opinion that any condition imposed in respect thereof, has not been complied with or that other good and sufficient reasons for such withdrawal exist: Provided that the Secretary shall not act in terms of paragraph (a) or (b) unless he/she has first afforded the managing body concerned a reasonable opportunity to submit representations to him/her in regard to the proposed action.

(6) A person aggrieved by a decision of the Secretary under subsection (3), (4) and (5) has a right of appeal to (he Minister.

(7) (a) The person who manages a state-aided school is, for the purposes of this act, called a managing body.

(b) The managing body may be the owner of the school or it may be a person appointed or authorized by the owner with the approval of the Secretary, to manage the school on his/her behalf and subject to the provisions of this Act: Provided that in the case of a state-aided school for specialized education, the managing body shall be a body consisting of the owner or a person appointed by him/her with the approval of the Secretary, and such other persons as may be designated in the prescribed manner.

(c) The owner of a state-aided school is an employer as defined in section I of the Educators' Employment Act, 1994.

(8) Notwithstanding the provisions of subsection (6) the Secretary may, in the case of a state-aided school situated on a farm, other than a state-aided school for specialized education, after consultation with the owner, determine that the managing body of such school shall consist of the owner or his/her representative, who shall be a person approved by the Secretary, and such parents of learners enrolled at the school, as may be elected or designated in the prescribed manner:

Provided that the managing body shall not take any decision -

(a) which imposes a financial burden or contractual liability on the owner, without the owner's consent; or

(b) which is in conflict with a condition imposed under subsection (5).

(9) A state-aided school registered, declared or created in any other way in terms of a law repealed by this Act, excluding the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988), and which existed immediately prior to the fixed date, shall from that date be deemed to be a state-aided school registered in terms of this section, and the governing body of such school shall from that date be deemed to be a managing body constituted in terms of this section.

(10) The Minister may, after consultation with the managing body of a state-aided school, close the school concerned on the conditions he/she may determine after consultation with the managing body.

Subsidies and loans to state-aided schools

29. (1) The Minister may out of monies appropriated by the Legislature for such purpose, grant a subsidy (which may include an ad hoc grant-in-aid) and a loan to the managing body of a state-aided school, or to a hostel attached to such school.

(2) The granting of a subsidy and a loan in terms of subsection (1) shall be effected on such basis and subject to such conditions as the Minister may determine.

(3) Where a loan is granted for the purchase, erection or improvement of premises or buildings for a school, a written agreement approved by the Secretary in consultation with the Treasury, is, subject to subsection (2), concluded between the state and the managing body and, if the land on which the school is erected or about to be erected does not belong to the managing body, also the owner of such land, in which agreement it is specified which immovable property of the managing body and the owner of the land shall serve as security for the repayment of the loan.

(4) From the date on which an agreement referred to in subsection (3) is concluded, the immovable property of the owner and managing body specified in the agreement, subject to any prior security or hypothecation, shall serve as security for the repayment of the amount due in respect of the loan, costs and interest.

(5) The Minister may, with the concurrence of the Minister of Finance, at any time, in writing, waive the preference which is granted by virtue of subsection (4), in favour of the holder of a later bond over the immovable property concerned, if he/she is of the opinion that the sum of the amount due in respect of the loan, costs and interest and the amount secured by bond, does not exceed the value of the movable and immovable property referred to in subsection (4).

(6) Any bond registered in favour of the state prior to the fixed date in order to secure the repayment of a loan to a school referred to in subsection (8) of section 28, remains in force until the loan has been repaid and the bond is cancelled.

(7) If a condition, subject to which a subsidy or loan was granted under this section, in the opinion of the Minister has not been complied with, he/she may at any time

terminate, reduce or withdraw the subsidy or loan from a date determined by him/her: Provided that the Minister shall, before he/she terminates, reduces or withdraws such subsidy or loan, give the managing body of the state-aided school an opportunity to make representations to him/her in connection with the proposed termination, reduction or withdrawal.

Erection and maintenance of buildings for state-aided schools

30. (1) Notwithstanding anything to the contrary contained in this Act, the Minister may, if a school is registered under section 28 as a state-aided school

-

(a) out of money appropriated by the Legislature for this purpose;

(b) on the prescribed terms and conditions; and

(c) against the registration of a long lease in favour of the State over the land on which the school is erected or about to be erected,

erect and maintain the necessary building or buildings for such school.

(2) The powers of the Minister under subsection (1) shall include the power to maintain the buildings of an existing school, or to add to an existing building or buildings, or to erect and maintain additional buildings at an existing school.

Continued existence of church schools and farm schools

31. (1) Notwithstanding the repeal of any law by this Act, a church school or farm school mentioned in such a law and which existed immediately prior to the fixed date, continues to exist.

(2) A church school or farm school is deemed to be a state-aided school.

(3) The Minister may, with the concurrence of the Minister of Finance, adjust, alter or withdraw the aid given to a church school or the grant-in-aid paid to a farm school, as the case may be.

(4) The Minister may enter into an agreement with the manager of a church school or the owner of a farm school regarding the closure of the school.

Taking over of management and control of state-aided school by the state

32. (1) The Minister may, with the concurrence of the Minister of Finance, and with effect from a date determined by the Minister, take over the management and control of a state-aided school, or any part thereof, as a state school, if

(a) the managing body of the school in question has agreed thereto; or

(b) the registration of such school is withdrawn in terms of section 28(5)(b).

(2) The taking over of the management and control of any such school is to be on such conditions and on such arrangements concerning the take-over of the property of such school as may be agreed upon between the Minister and the managing body concerned.

(3) As from the date of any such taking over, the school concerned is deemed to be a state school established under section 12, and the managing body concerned ceases to have any rights, powers or duties in regard to such school.

(4) If any property which by virtue of a trust, donation or bequest was vested in or would have accrued to any managing body, devolves upon the state, the Secretary shall deal with such property in accordance with the conditions of such trust, donation or bequest.

(5) As from the date referred to in subsection (1) the rights and liabilities acquired or incurred by the managing body in question for the purposes of or in connection with the school concerned shall pass to the state.

(6) The provisions of subsections (2) and (3) of section 14 apply likewise to immovable property taken over by the state in terms of subsection (2).

CHAPTER 7 INDEPENDENT SCHOOLS

Establishment, conduct and maintenance of independent schools

33. No person shall establish, conduct or maintain a school or any institution purporting to be a school unless it is registered in terms of this Act.

Application for registration

34. (1) Any person intending to establish, conduct or maintain an independent school shall apply to the Secretary in writing for the registration of that independent school.

(2) An applicant for the registration of an independent school shall furnish such additional particulars in connection with his/her application as the Secretary may require.

Consideration of applications for registration of independent schools

35. (1) The Secretary may approve an application referred to in section 34, if he/she is of the opinion that the prescribed requirements are complied with.

(2) If the Secretary refuses an application referred to in section 34, he/she shall notify the applicant in writing of such refusal and the reasons therefor.

Registration of independent schools

36. (1) If the Secretary approves an application referred to in section 34, he/she shall register the independent school in question and issue to the applicant a registration certificate in such form as he/she may determine.

(2) The registration of an independent school is subject to the prescribed regulations.

(3) An independent school registered in terms of a law repealed by this Act and which existed immediately prior to the fixed date, must apply for re-registration in terms of this Act within 6 months of the fixed date.

(4) The owner of an independent school may manage such school himself/herself or he/she may appoint or authorise any person to manage the school on his/her behalf subject to the provisions of this Act.

Subsidies to registered independent schools

37. (1) A registered independent school may annually, on or prior to the prescribed date, apply to the Secretary in writing for the prescribed subsidy.

(2) The Secretary may at his/her discretion grant or refuse an application referred to in subsection (1). He/she shall not grant any application unless he/she is satisfied that the registered independent school complies with the prescribed requirements.

(3) If the Secretary is of the opinion that a requirement, subject to which a subsidy is granted under subsection (2), has not been complied with, he/she may at any time terminate or reduce the subsidy from a date determined by him/her: Provided that the Secretary shall, before he/she terminates or reduces such subsidy, give the owner of the independent school or his/her representative, an opportunity to make representations to him/her in connection with the proposed termination or reduction.

Lapsing or withdrawal of registration

38. The registration of an independent school lapses or may be withdrawn under the prescribed circumstances.

Appeal against refusal or withdrawal of registration

39. (1) A person who feels aggrieved by the refusal by the Secretary of an application contemplated in section 34, or the withdrawal of registration in terms of section 38, may, within 30 days after receiving notice of such refusal or withdrawal, appeal to the Minister in writing, setting out the grounds of appeal against the refusal or withdrawal.

(2) The Minister shall, after he/she has considered an appeal referred to in subsection (1), confirm or set aside the decision of the Secretary.

Regulations relating to schools

40.(1) The Minister may make regulations as to

- (a) the admission of learners of an independent school to examinations conducted by or under the supervision of the Secretary;
- (b) the keeping of registers or other documents by a registered independent school;
- (c) the manner in which any subsidy, if the application therefor has been granted, is paid to a registered independent school;
- (d) the lapse or withdrawal of the registration of an independent school;
and
- (c) any matter relating to independent schools which shall or may be prescribed.

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

CHAPTER 8

Establishment and functions of an education council

41.(1) The Minister shall, within 120 days of the promulgation of this Act, establish an education council for the province, which shall consist of -

- (a) the Secretary;
- (b) the prescribed number of persons designated by the Minister from his/her department;
- (c) the prescribed number of persons in respect of universities, technikons and colleges of education respectively, designated by the Minister out of nominations made in the prescribed manner by the respective institutions in the province;
- (d) the prescribed number of persons designated in the prescribed manner by the organized teaching profession in the province from its members;
- (e) the prescribed number of persons designated in the prescribed manner by the organized parent community in the province from its members;

- (f) the prescribed number of representatives of independent schools designated by the Minister out of nominations made in the prescribed manner by the independent schools registered with the Department;
- (g) the prescribed number of representatives of state-subsidized schools designated by the Minister out of nominations made in the prescribed manner by the state-subsidized schools in the province;
- (h) the prescribed number of representatives of state-aided schools designated by the Minister out of nominations made in the prescribed manner by the state-aided schools in the province;
- (i) one person designated by the Minister out of nominations made in the prescribed manner by the management councils and governing bodies of schools for specialized education in the province;
- (j) one person designated by the Minister out of nominations made in the prescribed manner by the councils of technical colleges in the province;
- (k) the prescribed number of persons designated by the organized trade and industry in the province; and
- (l) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by the registered trade unions in the province;
- (m) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by training boards in the province registered in terms of the Manpower Training Act, Act No 56 of 1981;
- (n) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by student bodies in the province, recognised by the Minister for the purpose of representation on this council;
- (o) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by non-governmental organisations in the province, recognised by the Minister for the purpose of representation on this council;
- (p) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by community-based organisations in the province, recognised by the Minister for the purpose of representation on this council;

(q) the prescribed number of persons designated by the Minister out of nominations made in the prescribed manner by organisations representing rural communities in the province, recognised by the Minister for the purpose of representation on this council;

(r) the prescribed number of representatives designated by the Minister from each of the regional councils, and

(s) the prescribed number of persons designated by the Minister.

(2) An education council shall elect from its members a chairperson and a vice-chairperson.

(3) Whenever the chairperson of an education council is absent or is unable to perform his/her functions as chairperson, the vice-chairperson shall act as chairperson, and while he/she is so acting, the vice-chairperson shall have all the powers and shall perform all the functions of the chairperson.

(4) The Minister may make regulations in relation to -

(a) the qualifications and term of office of members of an education council, and the filling of vacancies;

(b) the appointment and functions of an executive committee for an education council, and

(c) the appointment and functions of sub-committees consisting of members and, if he/she decides, non-members, of an education council.

(5) A member of an education council who is not in the full-time employment of the State may be paid, out of monies appropriated for such purpose by the Legislature, such allowances as the Minister may determine with the concurrence of the Minister of Finance.

(6) If a designation contemplated in paragraph (d) or (e) of subsection (1), or a nomination contemplated in paragraph (f), (g), (h), (i) or (j) of subsection (1), is not made, the Minister may instead thereof make a designation or nomination, as the case may be.

(7) The administrative functions of an education council is performed by the officers of the Department.

(8) The functions of an education council are to -

(a) determine its own rules relating to meetings and procedures at those

meetings;

- (b) advise the Minister in respect of educational and training matters referred to it by the Minister;
- (c) advise the Minister on any matter which it wishes to bring to his/her attention;
- (d) conduct investigations on educational and training matters referred to it for advice by the Minister;
- (e) establish sub-committees, refer matters to such sub-committees for investigation, consideration and reports and to consider reports received from such sub-committees;
- (f) liaise with individuals and organisations representing as many viewpoints and interests as possible;
- (g) make recommendations, at the request of the Minister, on the constitution of the council; and
- (h) perform any other functions as may be assigned to it by or under this Act.

(9) The council may not conduct any investigation in terms of sub-section 8(d) above involving expenditure without obtaining prior written approval from proposed expenditure.

(10) No act of an education council is invalid merely on account of a vacancy in the education council.

Establishment of regional councils

42. (1) The Minister may, after consultation with the education council, by notice in the Gazette

- (a) (i) divide the province into regions and such regions into districts;
 - (ii) determine the boundaries of each of those regions and districts;
 - (iii) establish a regional council for each of those regions and districts; and
- (b) (i) change the boundaries of any region or district established in terms of subsection (a), and

(ii) dissolve any existing regional council.

(2) (a) The Minister may establish a regional council for each education region in the Province.

(b) The administrative functions of a regional council is performed by a person or persons employed by the Department.

(c) A member of a regional council, or a member of a committee established by a regional council, who is not in the full-time employ of the state, may be paid out of money appropriated for this purpose by the provincial Parliament, such allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(d) A regional chief director reports quarterly, in writing, on the state of education in his/her region, to the regional education council in his/her region.

(e) Apart from any specific functions assigned to a regional education council under this or any other Act or any other law, (lie general functions of a regional council is to make recommendations to the relevant regional chief director on any matter regarding education in the region referred to it by the regional chief director or which the regional education council wishes to bring to the attention of the regional chief director;

(f) (i) The regional chief director shall refer the recommendations of a regional education council to the Secretary.

(ii) Where the Secretary decides not to implement the recommendations of a regional education council, he/she shall notify the regional chief director of the reasons for his/her decision, and the regional chief director shall provide the regional education council with these reasons in writing.

Allowances to members of regional councils and committees of regional councils

43. The Minister may, with the concurrence of the Minister of Finance, determine the allowances payable to a member of a regional council, or a member of a committee thereof who is not in the full-time service of the state, when he/she is engaged in the business of that council.

Establishment of advisory committees

44. The Minister may appoint committees to advise him/her on specialist matters identified by him/her.

Establishment of councils for state schools and hostels

45. The Minister shall -

- (a) establish a management council for a state school, provided that he/she may, on the request of the management councils of the schools concerned, instead of establishing a management council for each of two or more such state schools, establish one management council for such schools; and
- (b) at the request of the management council of a state school concerned, establish a hostel council for one or more hostels if it is not expedient to place a hostel under the supervision of the management council of a particular school.

Meetings of councils

46. (1) A council elects from its number a chairperson and vice-chairperson, who shall hold office for the prescribed period.

(2) The vice-chairperson may, if the chairperson is absent or for any reason cannot act as chairperson, perform the functions of the chairperson.

(3) In the absence of both the chairperson and the vice-chairperson from a meeting of a council, the members present may elect any person from their number to preside at that meeting.

(4) The decision of the majority of the members of a council present at a meeting of that council, constitutes a decision of that council, and in the event of an equality of votes, the person presiding at the meeting has, in addition to his/her deliberative vote, a casting vote.

(5) No decision taken by a council or action taken on the authority of a council is invalid only by reason of the fact that a vacancy existed on that council, or because a person who was not entitled to sit as a member of that council sat on that council as such a member, at the time when the decision was taken or the action was authorized, if the decision was taken or the action was authorized by the majority of the members of the council who were then present and entitled to sit as members.

Committees

47. (1) A council may appoint one or more committees of that council, which, subject to the instructions of that council, perform such functions of the council as the council may determine.

(2) A committee of a council consists of one or more members of that council or one or

more other persons deemed suitable by that council, and that council may at any time dissolve or reconstitute the committee.

(3) One of the members of a committee of a council is designated by that council as chairperson of the committee.

(4) A council is not be divested of a function which in terms of this section is assigned to a committee of that council.

Regulations relating to councils

48. The Minister may make regulations as to

- (a) the constitution, powers, duties and functions of councils;
- (b) the qualifications for appointment, designation or election as, the terms of office of, and the vacation of offices by, members of councils, and the filling of vacancies in councils;
- (c) the election and powers of chairpersons and vice-chairpersons of councils;
- (d) the convening of, the procedure and rules at, and the quorum for, meetings of councils and committees of councils and the keeping of minutes of such meetings;
- (e) the dissolution and reconstitution of councils; and
- (f) the designation of officials and employees in the service of the Department to perform the administrative work of the councils.

Continuation of certain councils

49. (1) (a) A management council, board of management, or any council, committee, board or other body for the control and management of a state school; or

(b) a hostel council,

established and constituted in terms of a law repealed by this Act and which existed immediately prior to the fixed date, is from that date deemed to be

-

(i) a management council; or

(ii) a hostel council,

respectively, established and constituted under this Act, and any of the members of such council, board, committee or body referred to in paragraphs (a) and (b), are after such date, deemed to be members of the council referred to in paragraphs (i) and (ii), respectively, until the membership of such council, board, committee or body lapses or until the membership is terminated by the Minister:

Provided that within 90 days of the proclamation of such regulations pertaining to such councils, new elections shall be held under such regulations for all such councils.

(2) All assets and liabilities of a council, board, committee or body referred to in paragraphs (a) and (b) of subsection (1) vest, as from the fixed date, in the corresponding council referred to in paragraphs (i) and (ii) of that subsection.

CHAPTER 9 LEARNERS

Age requirements in respect of specialized education

50. Except with the approval of the Secretary -

- (a) a child shall not be admitted to a school for specialized education before he/she has reached the age of three years;
- (b) a person shall not be admitted for the first time to a school for specialized education after he/she has reached the age determined in regulation; and
- (c) a person shall not attend a school for specialized education after the end of the year in which he/she has reached the age determined in regulation.

Admission of children with special education needs at request of parents

51. (1) Subject to the provisions of section 58 the Secretary may, at the request of the parent of a child, approve that the child be admitted to a school for specialized education.

(2) The Secretary shall not grant his/her approval under subsection (1), unless he/she is of the opinion that the child concerned is a child with special education needs.

Assessment to identify children with special education needs

52. (1) The Secretary may cause a child, who is subject to compulsory school attendance but is not attending a school for specialized education, to be assessed to

determine if the child is a child with special education needs.
He/she may only do so

- (i) if he/she suspects that the child is a child with special education needs, and
- (ii) after written notification to the parent.

(2) The Secretary may direct the parent of a child referred to in subsection (1) in writing, to take the child within the period mentioned in the direction, to the place so mentioned for the purposes of such an assessment.

Action in case of children with special education needs

53. (1) If the Secretary, after an assessment referred to in section 52(1), finds that the child is a child with special education needs, he/she shall notify the parent of the child in writing -

- (a) that he/she has found the child to be a child with special education needs who should receive specialized education and his/her reasons therefor; and
- (b) that the parent may appeal within 30 days from the date of receipt of the notification, in the first instance to the Secretary and thereafter to the Minister, against the finding.

(2) The Minister shall consider an appeal contemplated in subsection (1), and may confirm or set aside the finding of the Secretary appealed against.

Placement of children with special education needs

54. (1) The Secretary may designate a school for specialised education, an ordinary school, a centre or a suitable facility for attendance by a child found in terms of section 51 or 53 to be a child in need of special education.

The Secretary may only make such a designation in writing after consulting the parent of the child concerned.

(2) If the parent of the child for whom the Secretary has designated a school, centre or other suitable facility in terms of the preceding sub-section fails to comply with the directions of the Secretary within the period determined by him/her, the Secretary may approve the compulsory placement of the child accordingly.

Additional powers of a children's court in relation to children with special education needs

55. (1) A children's court may, in the case of a child in respect of whom it has made an

order in terms of section 15(1) of the Child Care Act, 1983 (Act No. 74 of 1983) or the KwaZulu Child Care Act, 1987 (Act 14 of 1987), direct that the case be referred to the Secretary in order to determine whether the child is a child with special education needs.

(2) If the Secretary finds that a child referred to him/her under subsection (1) is a child with special education needs, the Secretary may approve that the child be admitted to a school for specialized education.

Transfer of children with special education needs

56. The Secretary, after consultation with the parent of a child attending a school for specialized education, may transfer that child to another school for specialized education or to any other school.

Exemption from attendance of school for specialized education

57. The Secretary may exempt a child from attendance of a school for specialized education for any of the reasons set out in section 61.

Admission to public schools

58. Subject to the provisions of the Child Care Act, 1983 (Act No. 74 of 1983) or the KwaZulu Child Care Act, 1987 (Act No 14 of 1987), the admission of persons to public and independent schools is subject to the prescribed conditions.

Age requirements in respect of particular schools

59. Except with the approval of the Secretary -

- (a) a child shall not be admitted to a pre-primary school before he/she has reached the age of three years;
- (b) a child shall not attend a pre-primary school after the end of the year in which he/she has reached the age of six years;
- (c) a child shall not be admitted to a primary school unless he/she turns six years of age on or before the thirtieth day of June of the year of admission;
- (d) a person shall not be admitted to a school, excluding a school for specialized education, industrial school or reform school, after he/she has reached the age determined in regulation.

Compulsory school attendance

60. The Minister shall introduce and implement compulsory school attendance in accordance with national and provincial policy.

Exemption from compulsory school attendance

61. The Secretary may, either entirely or for such period and on such conditions as he/she may determine, exempt a child in writing from compulsory school attendance envisaged under section 60, if

- (a) he/she is of the opinion -
 - (i) that the child is not yet ready to follow the educational programme concerned;
 - (ii) that the child can derive no further benefit from an educational programme at a school;
 - (iii) that the child is receiving suitable education or treatment at a place other than a school; or
 - (iv) that the child, as a result of continuous ill-health, is not capable of attending a school;
- (b) the child is pregnant;
- (c) the child marries, or
- (d) for any other reason it will be in the interest of the child to be so exempted.

Medium of instruction and character of schools

62. The Minister may, after consulting the management council, governing body or managing body of the school concerned determine the medium of instruction and the religious character of every public school.

Control, expulsion, suspension and discipline of learners

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

(2) The control of learners at, and the expulsion from public schools and hostels, and the suspension of, or meting out of other punishments to those learners, shall be as prescribed.

Exclusion of provisions of Compensation for Occupational Injuries and Diseases

Act, 1993

64. No learner at a public school or centre shall for the purposes of the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), be deemed to be a workman or other person entitled to payment of compensation or any other benefit under the said Act.

CHAPTER 10 MISCELLANEOUS

School and boarding fees

65. (1) The parent of a learner admitted to a state school, a state-subsidized school or educational centre, or, an adult admitted to a centre for adult education, shall pay such school fees as -

(a) the Minister with the concurrence of the Minister of Finance, in the case of a state school or centre, or

(b) the governing body in the case of a state-subsidized school may determine.

(2) The parent of a learner to whom boarding is provided at a hostel established under section 5(1)(b) or by a state-subsidised school pays such boarding fees as the Minister, with the concurrence of the Minister of Finance, or the governing body of the state-subsidized school concerned, as the case may be, may determine.

(3) (a) Different school fees may be determined in terms of subsection (1)

(i) in respect of different state schools and centres;

(ii) in respect of learners on different grades;

(iii) in respect of learners with different choices of subjects;

(iv) depending upon learners' participation in extramural activities; and

(v) depending upon the number of school-attending children in a family.

(b) Different boarding fees may be determined in terms of subsection (3) in respect of different boarding facilities.

(c) The Minister, with the concurrence of the Minister of Finance or the governing body concerned, as the case may be, may exempt any learner or category of learners in whole or in part from the payment of any such fees.

Access to and utilization of state school grounds and premises

66. Access to and utilization of state school buildings and grounds shall be governed by regulation.

Offences relating to independent schools

67. Any person who contravenes a prohibition contained in section 33 is guilty of an offence.

Offences relating to compulsory school attendance

68. (1) If the parent of a child who is subject to compulsory school attendance, without sufficient cause and after written warning by the Secretary, fails to send a child to school regularly, that parent shall be guilty of an offence.

(2) Any person who -

(a) during the normal school hours

(i) makes use of the services of a child who is subject to compulsory school attendance for any work, whether for reward or otherwise;

(ii) without sufficient cause prevents or discourages such a child from attending school; or

(iii) harbours or conceals such a child;

(b) fails to comply with a direction issued under section 52(2); or

(c) removes a child with special education needs who attends a school for specialized education and who is not exempted under this Act from such attendance, from such a school,

is guilty of an offence,

Offences relating to functions of particular persons

69. Any person who -

(a) hinders or obstructs a person authorized in terms of section 7(1), or a school attendance officer, in the performance of his/her functions in terms of this Act;

(b) refuses or fails to comply with a requirement set or a request made by a person referred to in paragraph (a) in the performance of his/her

functions in terms of this Act;

(c) deliberately furnishes false or misleading information to a person referred to in paragraph (a);

(d) hinders or obstructs any educator in the performance of his/her functions, or

(e) contravenes section 63 (1)

is guilty of an offence.

Penalties

70. Any person convicted of an offence in terms of this Act is liable

(a) in the case of an offence referred to in section 67, to a fine as set by regulation, or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

(b) in the case of an offence referred to in section 68(1) and (2)(a) and (c), to a fine as set by regulation, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment; and

(c) in the case of an offence referred to in sections 68(2)(b), and 69, to a fine as set by regulation, or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

Delegation of powers

71. (1) The Minister may, subject to such conditions as he/she may determine, delegate any of his/her powers under this Act, except the power to make regulations, the power to decide an appeal lodged with him/her in terms of this Act, and his/her financial authority, and assign any of his/her duties in terms of this Act, to the Secretary or a person employed by the Department.

(2) The Secretary may, subject to such conditions as he/she may determine, delegate any of his/her powers under this Act or delegated to him/her in terms of subsection (1), or assign any of his/her duties in terms of this Act or assigned to him/her in terms of subsection (1), to a person employed by the Department.

(3) A delegation under subsection (1) or (2) shall not prevent the Minister or Secretary, as the case may be, from exercising such power or performing such duty, as the case may be, himself/herself.

Regulations

72. (1) The Minister may make regulations after consultation with the Parliamentary Portfolio Committee on Education and Culture which are not inconsistent with any law, as to -

- (a) the management and control of educational support services, centres, teachers' centres, hostels, public schools and the control over the immovable property and equipment of the Department;
- (b) (i) the payment of subsidies or loans granted to state-subsidized schools and state-aided schools under this Act, and the circumstances under which such subsidies or loans may be discontinued or reduced;
- (ii) the establishment and control of school funds for public schools;
- (iii) the receipt and use of monies or other goods by public schools and hostels attached to such schools, centres, teachers' centres and educational support services, and the books, records and statements to be kept in connection therewith by the bodies or persons mentioned in the regulations; and
- (iv) the manner in which such books, records and statements are to be kept, in accordance with generally-accepted accounting practice, the auditing thereof and the returns and reports to be submitted in connection therewith;
- (c) any matter which shall or may be prescribed by regulation under this Act; and
- (d) in general, any matter which the Minister may deem necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) The Minister shall make no regulation relating to any monies or allowances payable to or by any person, or relating to the control of money, except with the concurrence of the Minister of Finance.

(3) Different regulations may be made under subsection (1) in respect of different schools.

(4) A regulation made under subsection (1) may, for a contravention thereof or a failure to comply therewith, prescribe a penalty not exceeding a fine set in regulation or imprisonment for a period of two years.

Repeal or laws, and savings

73. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column of the Schedule.

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

(3) All regulations, notices and directives made or issued under any law repealed by this Act which were in force immediately prior to the commencement of this Act remain, notwithstanding such repeal, in force except in so far as they are incompatible with or in conflict with this Act, until they are repealed, withdrawn or amended by the Minister by regulation, notice or directive, as the case may be.

Short title and commencement

74. This Act shall be called the KwaZulu-Natal School Education Act, 1996, and shall come into operation on a date fixed by the Premier by proclamation in the Gazette. Different sections of the Act may be promulgated at different times.

SCHEDULE LAWS REPEALED

Number and year of law	Title	Extent of repeal
Act No. 47 of 1963 1963	Coloured Persons Education Act,	The whole, excluding sections 1A, 8 to 20, 26 and 28 to 31.
Act No. 61 of 1965	Indians Education Act, 1964	The whole, excluding section 1B, 3B, 8 to 20, 26, 28, 29, 31 and 33 (1) (g).
Act No. 5 of 1973	KwaZulu Medium of Instruction and Language Act, 1973	The whole.
Act No. 7 of 1978	KwaZulu Education Act, 1978	The whole except in so far as it applies to the training of teachers.
Act No. 90 of 1979 1979	Education and Training Act,	The whole, excluding sections 1A, 3, 4, 11 to 29, 31, 32, 43, and 44 (1) (h).

Act No. 104 of 1986 Private Schools Act The whole excluding
(House of Assembly), section 1A.
1986 (Act No. 104 of 1986)

Act No. 70 of 1988 Education Affairs Act The whole, excluding
(House of Assembly), 1988 sections 3 and 65 and
Chapter 7.