

**SCHOOL EDUCATION ACT (MPUMALANGA)  
NO. 8 OF 1995**

[ASSENTED TO BY THE PREMIER ON THE 28 NOVEMBER, 1995 – ENGLISH TEXT SIGNED.]

[DATE OF COMMENCEMENT: 5 JANUARY, 1996]

**as amended by**

Mpumalanga School Education Amendment Act, No. 7 of 1998

**GENERAL NOTE**

**In terms of s. 42 of Act No. 7 of 1998, the words "farm school", "model C school", "state school" and "state-aided school", wherever they occur, are substituted by the words "public school", and the words "private school", wherever they occur, are substituted by the words "independent school".**

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**ACT**

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

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BE IT ENACTED by the Provincial Legislature of the Mpumalanga Province, as follows:

CHAPTER 1

INTERPRETATION

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

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

**"Commencement date"** means the date fixed under section 107;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);  
[Definition of "Constitution" substituted by s. 1 (a) of Act No. 7 of 1998.]

**"Council"** means the Education and Training Council established in terms of section 29;

**"Council of Education Ministers"** means the Council of Education Ministers established by the National Education Policy Act, 1996 (Act No. 27 of 1996);  
[Definition of "Council of Education Ministers" inserted by s. 1 (b) of Act No. 7 of 1998.]

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

**"district council"** means a district education and training council established in terms of section 36 (1);

**"district head"** means the officer of the Department responsible for the administration of education in a particular educational district;

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

**"educational auxiliary service"** includes any service necessary to—

- (a) provide for the health and welfare of learners;
- (b) have learners transported;
- (c) supplement educational programs; or
- (d) continue the activities of schools or centres of learning.

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

**“educator”** means an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 133 of 1994);

[Definition of “educator” substituted by s. 1 (c) of Act No. 7 of 1998.]

**“Executive Council”** means the Executive Council of the Province as referred to in section 132 of the Constitution;

[Definition of “Executive Council” substituted by s. 1 (d) of Act No. 7 of 1998.]

**“farm school”** . . . . .

[Definition of “farm school” deleted by s. 1 (e) of Act No. 7 of 1998.]

**“financial head”** means the Member of the Executive Council of the Province responsible for financial affairs;

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

**“governing body”** means a governing body for a public school, established under section 23 or deemed to be so established under section 93;

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

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

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

**“independent school”** means a school registered or deemed to be registered in terms of sections 63 (3) or 97 respectively;

[Definition of “independent school” substituted for definition of “private school” by s. 1 (i) of Act No. 7 of 1998.]

**“language policy”** of a public school, as contemplated in section 15, includes matters relating to—

- (a) the language or languages in which learning and teaching take place;
- (b) the language or languages which may be studied at the school;
- (c) the language or languages which the school communicates with educators, learners and parents of learners;
- (d) the support the school offers to learners whose language of choice is not one in which learning and teaching take place at the school.

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

**“main stakeholder means** an organized body with direct and substantial interest in the administration of education in the Province;

**“Member of the Executive Council”** means the member of the Executive Council of the Province responsible for education;

**“model C school”** . . . . .

[Definition of “model C school” deleted by s. 1 (e) of Act No. 7 of 1998.]

**“negotiating forum”** . . . . .

[Definition of “negotiating forum” deleted by s. 1 ( f ) of Act No. 7 of 1998.]

**“official language”** means a language referred to in section 3 (1) of the Constitution or a sign language recognized under section 17;

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

**“organized teaching profession”** means employee organizations as defined in the Educators Employment Act;

**“parent”** means—

- (a) the parent or guardian of a learner;

- (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;
- [Definition of "parent" substituted by s. 1 (g) of Act No. 7 of 1998.]

**"peri-urban area"** means an area which is urban in nature but without any form of urban local authority and may include an area governed by a local area committee;

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

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

[Definition of "principal" substituted by s. 1 (h) of Act No. 7 of 1998.]

**"Province"** means the Province of Mpumalanga referred to in section 103 of the Constitution;

[Definition of "Province" substituted by s. 1 (j) of Act No. 7 of 1998.]

**"Provincial Gazette"** means the *Provincial Gazette* of the Province of Mpumalanga;

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

**"public school"** means a school contemplated in Chapter 6;

[Definition of "public school" substituted by s. 1 (k) of Act No. 7 of 1998.]

**"religious policy"** of a public school, as contemplated in section 18, includes matter relating to—

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

**"rural area"** means any area that is not urban or peri-urban and may include an area governed by a district council or a local area committee;

**"school"** means a public school or an independent school which enrolls learners in one or more grades between grade zero and grade twelve;

[Definition of "school" substituted by s. 1 (m) of Act No. 7 of 1998.]

**"school for specialized education"** means a school providing primarily specialized education established under section 44;

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

- (a) cannot benefit sufficiently from the teaching provided in the ordinary course of education;
- (b) require specialized education to facilitate their adaptation in the community; or
- (c) cannot attend an ordinary class in an ordinary school, because such attendance is not in their best interests or not in the best interests of the other learners in such class; and includes—
  - (i) the psychological, medical, dental, paramedical and therapeutic treatment of, including the performance of operations on such learners;
  - (ii) the provision of artificial medical aids and apparatus to such learners;
  - (iii) the care of such learners in a hospital, hostel or other institution;
  - (iv) the provision of transport, escort and such other services as may be necessary for such learners; and
  - (v) the provision of guidance to the parents of such learners including the parents of such learners who are not yet subject to compulsory school attendance, with a view to the instruction, teaching, training or treatment of such learners.

**"specialist council"** means a specialist advisory council established under section 41;

**"state school"** . . . . .

[Definition of "state school" deleted by s. 1 (e) of Act No. 7 of 1998.]

**"state-aided school"** . . . . .

[Definition of "state-aided school" deleted by s. 1 (e) of Act No. 7 of 1998.]

**"this Act"** includes regulations made under this Act and regulations contemplated in section 105 (3);

**"treasury"** means the authority responsible for the financial affairs of the Province as defined in section 1 of the Exchequer Act (Mpumalanga), 1994 (Act No. 1 of 1994);

[Definition of "treasury" substituted by s. 1 (l) of Act No. 7 of 1998.]

**“urban area”** means a geographical area covered by an urban local authority which may include a town council, city council, and metropolitan council.

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

## CHAPTER 2 CONTROL OF SCHOOL EDUCATION

**3. Control of education.**—As from the commencement date, school education in the Province shall, subject to the provisions of this Act, be controlled by the Department, acting in accordance with the policy determined by the Member of the Executive Council.

**4. General principles of education policy.**—(1) The Member of the Executive Council shall, subject to the Constitution and to the provisions of this Act and any other law, determine school education policy in the Province within the framework of the following principles subject to limitations contemplated in Chapter 3 of the Constitution:

- (a) Every learner shall have the right to—
  - (i) basic education and every person shall have the right to equal access to schools and centres of learning;
  - (ii) instruction in the language of his or her choice where this is reasonably practicable.
- (b) No person shall be unfairly discriminated against by the Department, a public school or an independent school which receives a subsidy in terms of section 66.
- (c) There shall be a duty on the Department to—
  - (i) foster the advancement of persons or groups or categories of persons previously disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of educational rights;
  - (ii) combat sexual harassment at schools and centres of learning.
- (d) Every person shall have the right to—
  - (i) freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance;
  - (ii) peaceful, unarmed assembly and demonstration and to freedom of association;
  - (iii) access to information held by the Department or by the governing body of a public school in so far as such information is required for the exercise or protection of his or her rights.
- (e) There shall be democratic and decentralized governance of schools and school education providing for the appropriate involvement of elected representatives of the main stakeholders in school education;
- (f) The structures of democratic governance of school education shall be constituted with due regard to the racial and gender demographics of the Province;
- (g) Education policy shall be aimed at—
  - (i) achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, mal-administration and corruption;
  - (ii) improving the quality and availability of educational opportunities and resources to the people of the Province.
- (h) The education process shall be aimed at fostering independent and critical thought.

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

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

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

**5. Powers of Member of Executive Council.**—(1) In addition to the other powers assigned to him or her by

this Act, the Member of the Executive Council may, out of moneys appropriated by the Provincial Legislature for this purpose and in order to further the objects of this Act—

- (a) establish and maintain public schools;
- (b) establish and subsidize public schools;
- (c) establish and maintain centres of learning;
- (d) establish and maintain hostels, clinics, educators' quarters and other accessories connected to public schools;
- (e) provide such equipment and erect such buildings as may be necessary or expedient for the administration of this Act;
- (f) make provision for such educational auxiliary services as may be necessary; and
- (g) provide, on such basis and subject to such conditions as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted to a public school.

(2) Subject to the provisions of this Act, the Member of the Executive Council may, after giving reasonable notice and furnishing reasons to all interested parties, close any centre of learning, hostel, clinic, educators' quarters or other accessories connected to schools or discontinue any educational auxiliary service referred to in subsection (1).

(3) In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organizations: Provided that no agreement placing financial obligations on the department shall be entered into without the concurrence of the financial head.

(4) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may certify or withdraw the certification of—

- (a) the syllabi of, and conditions for admission to, courses at any school or centre of learning;
- (b) the content of, and conditions for admission to educational and training programs at any school or centre of learning.

(5) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may accredit institutions providing courses and programs for the training of educators and may withdraw the accreditation of any institution providing courses and program for the training of educators.

(6) The Member of the Executive Council may determine the school calendar, school holidays, school religious holidays and the minimum length of the school day.

(7) Different syllabi, conditions for admission, contents of educational and training programs, school calendars, school holidays, school religious holidays and lengths of the school day may be certified determined as the case may be, in respect of different schools or centres of learning.

**6. Educational districts.**—The Member of the Executive Council may—

- (a) divide the area of the Province into educational districts, and each such district into educational circuits, for the purpose of the administration of matters relating to education in the Province; and
- (b) amend the boundaries of any educational district or of any educational circuit.

**7. Inquiry at instance of Member of Executive Council.**—(1) If it is in the interests of education in the Province, the Member of the Executive Council may appoint any appropriate person to conduct, an inquiry within written terms of reference.

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

- (a) enter the grounds of any school or centre of learning at any reasonable time without prior notice of his or her intention to do so;
- (b) if he or she has reason to believe that any person is able to give evidence on any matter relevant to the inquiry, direct that person to appear before him or her at a stated time and place to answer his or her questions;
- (c) question, under oath or otherwise, any person referred to in paragraph (b);
- (d) if he or she has reason to believe that any person is able to produce any article, document book, video or audio recording relevant to the inquiry, order that person to deliver to him or her the article, document, book, video or audio recording concerned;
- (e) examine any article, document, book, video or audio recording referred to in paragraph (d) if it may provide evidence of any offence or irregularity.

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

(4) Any person who without just cause—

- (a) hinders or obstructs a person conducting an inquiry in the performance of his or her functions under this section;
- (b) fails to appear in accordance with a direction issued under subsection (2) (b), at the time and place in question;
- (c) refuses to answer a question put to him or her under subsection (2) (c);
- (d) deliberately gives a false answer to a question put to him or her under subsection (2) (c);
- (e) fails to produce any article, document, book, video or audio recording as ordered under subsection (2) (d);
- (f) prevents any other person from appearing in accordance with a direction issued under subsection (2) (b), at the time and place in question,

shall be guilty of an offence.

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

(2) For the purposes of gathering information in connection with education in the Province, the Head of Department or any person authorized in writing by him or her shall have the same powers as a person who conducts an inquiry under section 7.

### CHAPTER 3 SCHOOLING

**9. Admission to schools.**—(1) Subject to this Act, the Member of the Executive Council may make regulations as to the admission of learners to public schools.

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

(3) 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 authorize the principal of the school or any other person to administer such test.

[Sub-s. (3) added by s. 2 of Act No. 7 of 1998.]

**10. Compulsory school attendance.**—(1) Attendance at school during school hours shall be compulsory for a learner from the first school day of the year in which he or she reaches the age of 7 years until—

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

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

(b) No notice referred to in paragraph (2) (a) above shall be valid unless it has been ratified by resolution of the Provincial Legislature: Provided that no such notice shall be issued after 31 December 1998.

(3) Notwithstanding the provisions of subsection (1), the Head of Department may require that attendance at a school for specialized education during school hours shall be compulsory for any learner with specialized educational needs whose age is above three years, if he or she has reason to believe that it would be in the best interest of the learner concerned.

[Sub-s. (3) substituted by s. 3 (a) of Act No. 7 of 1998.]

(4) Notwithstanding the provisions of subsection (1), the Head of Department may exempt a learner, entirely, partially or conditionally, from compulsory school attendance if it is in the best interest of the learner concerned.

[Sub-s. (4) substituted by s. 3 (b) of Act No. 7 of 1998.]

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

[Sub-s. (5) added by s. 3 (c) of Act No. 7 of 1998.]

**10A. 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 shall 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.

[S. 10A inserted by s. 4 of Act No. 7 of 1998.]

**11. Duties of principals relating to compulsory school attendance.**—(1) Where a learner is repeatedly absent from school without reasonable cause, the principal or an educator designated by him or her shall consult jointly with the learner, his or her parents and an appropriate officer of the Department of Welfare, in order to reach an agreement on the appropriate measures to remedy the problem.

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

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

[Sub-s. (1) substituted by s. 5 (a) of Act No. 7 of 1998.]

(2) Any person who, without just cause prevents a learner who is subject to compulsory school attendance in terms of section 10 (1) from attending school, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

[Sub-s. (2) substituted by s. 5 (b) of Act No. 7 of 1998.]

**13. Age requirements.**—(1) The Member of the Executive Council may make regulations prescribing the age requirements in respect of the different categories of schools, grades and classes.

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

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

**14. School fees.**—No learner shall be refused admission at a public school on the grounds that his or her school fees contemplated in section 45 has not been paid.

[S. 14 substituted by s. 6 of Act No. 7 of 1998.]

**14A. Parent's liability for payment of school fees.**—(1) A parent is liable to pay the school fees determined in section 45 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 shall follow due process which safeguards the interests of the parent and the governing body.

[S. 14A inserted by s. 7 of Act No. 7 of 1998.]

**15. Language policy of public schools.**—(1) The language of education at a public school shall be determined by the district council of the school concerned in consultation with the Department, the governing body of the school concerned and subject to the approval of the Member of the Executive Council.

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

- (a) The education process shall aim at the development of a national democratic culture with respect for the country's diverse language communities.
- (b) Within practical limits, a learner shall have the right to language choice in education.
- (c) School language policy shall be designed to facilitate the maximum participation of learners in the learning process.
- (d) Special measures shall be taken to enable a learner to become competent in the language of learning of his or her school, and where practicable, to enable learners to use his or her language of choice where it differs from the languages of learning of his or her school.
- (e) School language policies shall be co-ordinated at a district level and shall take into account the availability of human and other resources.
- (f) On completion of the ninth grade of education a learner should have acquired satisfactory levels of competence in at least two of the official languages.
- (g) Special measures shall be taken to promote the status and use of official languages have previously been neglected or discriminated against by education authorities in the Province.
- (h) There shall be a duty on all public schools and on the Department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.

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

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

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

(3) No learner at a public school or an independent school which receives a subsidy in terms of section 66 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.

(4) (a) Every learner at a public school or an independent school which receives a subsidy in terms of section

66 shall not be penalized for expressing himself or herself in a language which is not language of education of the school concerned.

(b) The right contemplated in paragraph (4) (a) may be limited in circumstances where such limitation is reasonable and justifiable in an open and democratic society based on freedom and equality and committed to multilingualism.

**17. Recognition of sign languages.**—(1) The Member of the Executive Council may by notice in the *Provincial Gazette* recognize any sign language which is used by a significant proportion of people communicating in a sign language in the Province.

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

**18. Religious policy of public schools.**—The religious policy of a public school shall be developed within the framework of the following principles—

- (a) The education process shall aim at the development of a national democratic culture with respect for diverse cultural and religious traditions;
- (b) Freedom of religion shall be respected at all public schools.

**19. Freedom of conscience.**—(1) No person employed at—

- (a) any public school shall attempt to indoctrinate learners into any particular belief or religion;
- (b) any public school or independent school shall in the course of his or her employment denigrate any religion.

(2) (a) Every learner at a public school, or at an independent school which receives a subsidy in terms of section 66, shall have the right not to attend religious education classes and religious practices at that school.

(b) The right conferred by paragraph (a) on a learner at an independent school which receives a subsidy in terms of section 66, may be limited where such limitation is justifiable in an open and democratic society based on freedom and equality and is necessary to preserve the religious character of the independent school concerned.

(c) No person employed at a public school or at an independent school which receives a subsidy in terms of section 66 shall in any way discourage a learner from choosing not to attend religious education classes or religious practices at that school.

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

**19A. Code of conduct.**—(1) Subject to any applicable provincial law, a governing body of a public school shall adopt a code of conduct for the learners after consultation with the learners, parents and educators of the school.

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

(3) The Member of the Executive Council may 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 code of conduct shall contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

[S. 19A inserted by s. 8 of Act No. 7 of 1998.]

**20. Suspension and expulsion from public school.**—(1) Subject to this Act, the governing body of a public school may, after a fair hearing suspend a learner from attending the school—

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

(2) Subject to any applicable provincial law, a learner at a public school may be expelled only—

(a) by the Head of Department; and

(b) if found guilty of serious misconduct after a fair hearing.

(3) The Member of the Executive Council shall 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; and

(c) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

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

(5) If a learner who is subject to compulsory attendance in terms of section 10 (1) is expelled from a public school, the Head of Department must make an alternative arrangement for his or her placement at a public school.

[S. 20 substituted by s. 9 of Act No. 7 of 1998.]

**20A. 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.

[S. 20A inserted by s. 10 of Act No. 7 of 1998.]

**21. Rights of parents to information.**—(1) Every parent shall have the right of access to any information held by the Department, a public school or an independent school if such information concerns a learner who is his or her responsibility.

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

**22. Duties of learners with respect to school property.**—(1) Every learner at a public school shall take good care of the property of the school or of the Department which is placed at his or her disposal and shall return it to his or her school at the end of the school year.

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

#### CHAPTER 4

#### SCHOOL GOVERNANCE

**23. Governing bodies of public schools and hostels.**—(1) For the purpose of promoting the participation of the people of the Province in the governance of public schools, the Member of the Executive Council shall establish a governing body for every such school.

(2) The Member of the Executive Council may, instead of establishing a governing body for each of two or more public schools, establish one governing body for such schools: Provided that no single governing body shall have powers over a public school and a public school.

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

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

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

(c) considered all such submissions.

[Sub-s. (2A) substituted by s. 11 (a) of Act No. 7 of 1998.]

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

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

**24. 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 28A shall 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 shall, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.

(6) The governing body of a public school contemplated in section 44C may co-opt the owner of the property occupied by the school or the nominated representative of such owner.

(7) Co-opted members do not have voting rights on the governing body.

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

[S. 24 substituted by s. 12 of Act No. 7 of 1998.]

**24A. Membership of governing body of public school for learners with special education needs.**—(1) The following categories of persons shall 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;
- (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.

(2) Subject to this Act, the Member of the Executive Council shall, 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 with the Province.

(3) A notice contemplated in subsection (2) shall 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 shall consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

[S. 24A inserted by s. 12 of Act No. 7 of 1998.]

**24B. Constitution of governing body.**—(1) Subject to this Act, the governing body of a public school shall function in terms of a constitution which complies with the minimum requirements determined by the Member of the Executive Council by notice in the *Provincial Gazette*.

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

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

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

[S. 24B inserted by s. 12 of Act No. 7 of 1998.]

**24C. Recusal by members of governing bodies.**—A member of a governing body shall 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.

[S. 24C inserted by s. 12 of Act No. 7 of 1998.]

**24D. 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.

[S. 24D inserted by s. 12 of Act No. 7 of 1998.]

**24E. Office-bearers of governing bodies.**—(1) A governing body shall, from amongst its members, elect office-bearers, who shall 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.

[S. 24E inserted by s. 12 of Act No. 7 of 1998.]

**24F. Committees of governing bodies.**—(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 shall chair each committee.

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

[S. 24F inserted by s. 12 of Act No. 7 of 1998.]

**24G. 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.

[S. 24G inserted by s. 12 of Act No. 7 of 1998.]

**24H. Status of minors on governing bodies of public schools.**—(1) A member of a governing body who is a minor shall not enter into a contract on behalf of a public school.

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

(3) No member of a governing body who is a minor shall incur personal liability for any consequence of his or her membership of the governing body.

[S. 24H inserted by s. 12 of Act No. 7 of 1998.]

**25. Powers and functions of all governing bodies.**—(1) Subject to this Act, the governing body of a public school shall—

- (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;
- (f) determine times of the school day consistent with any applicable conditions or employment of staff at the school;
- (g) administer and control the school's property, buildings and grounds occupied by the school, including school hostels, if applicable;
- (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;
- (i) recommend to the Head of Department the appointment of educators at the school, subject to the Educators Employment Act, 1994 (Proclamation No. 138 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (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;
- (k) at the request of the Head of Department, allow the reasonable use under fair conditions of the facilities of the school for educational programmes not conducted by the school;
- (l) discharge all other functions imposed upon the governing body by or under this Act; and
- (m) discharge other functions consistent with this Act as determined 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.

[S. 25 substituted by s. 13 of Act No. 7 of 1998.]

**25A. 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; or
- (e) other functions consistent with this Act.

(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 shall be conveyed in writing to the governing body concerned, giving reasons for such a decision.

(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.

[S. 25A inserted by s. 14 of Act No. 7 of 1998.]

**26. Capacity building of governing bodies.**—(1) For the purposes of promoting efficiency and active participation in decentralized school and hostel governance, the Head of Department may institute courses and training programmes for the training of governing bodies.

[Sub-s. (1) substituted by s. 15 (a) of Act No. 7 of 1998.]

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

[Sub-s. (2) substituted by s. 15 (b) of Act No. 7 of 1998.]

**26A. 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;
- (c) duly considers any such representations received.

(4) The Head of Department may for sufficient reasons reserve 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.

[S. 26A inserted by s. 16 of Act No. 7 of 1998.]

**27. Inability of governing body to perform its functions.**—(1) If a governing body of a public school or hostel is unable or unwilling to perform the functions allocated to it under this Act, the Head of Department may, after consultation with the governing body concerned, by notice in the *Provincial Gazette* dissolve the governing body, and may authorize one or more persons to exercise any or all of the powers of the governing body during a period, not longer than one year, set out in the notice.

[Sub-s. (1) substituted by s. 17 (a) of Act No. 7 of 1998.]

(2) The Head of Department may by notice in the *Provincial Gazette* curtail or extend the period authorized under subsection (1), but the period may not be extended for a period longer than one year from the date of the notice referred to in subsection (1).

[Sub-s. (2) substituted by s. 17 (b) of Act No. 7 of 1998.]

(3) A power exercised by a person or persons authorized under subsection (1), shall be deemed to have been exercised by the governing body concerned.

(4) Within one year of the notice referred to in subsection (1), the Head of Department shall ensure that a new governing body of the school concerned is constituted in terms of this Act.

**28. Regulations relating to governing bodies.**—The Member of the Executive Council may make regulations as to—

- (a) the qualifications for elections of, the terms of office of, and the vacation of office by, members of governing bodies, and the filing of incidental vacancies in governing bodies;
- (b) the manner of election, the powers and functions of officers of governing bodies;
- (c) the convening of, procedure and rules of, the quorum for, meetings of governing bodies and the keeping of minutes of such meetings;
- (d) the dissolution and reconstitution of governing bodies; and
- (e) the designation of persons employed by the Department to perform the work relating to the performance of the functions of governing bodies.

**28A. Representative council of learners.**—(1) A representative council of learners at the school shall be established at every public school enrolling learners in the eighth grade and higher.

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

(3) 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.

[S. 28A inserted by s. 18 of Act No. 7 of 1998.]

## CHAPTER 5

### DEMOCRATIC GOVERNANCE OF EDUCATION

**29. Establishment of Education and Training Council.**—(1) The Member of the Executive Council shall, within six months of the commencement date, establish a body to be known as the Education and Training Council.

(2) Every district council established under section 36 shall be represented on the Council.

(3) Every specialist council established under section 41 shall be represented on the Council.

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

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

(6) A member of the Council, or a member of a committee established by the Council under section 34 (1), who is not in the full-time employment of the State may be paid out of moneys appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

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

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

**30. Head of Department reports to council.**—(1) The Head of Department shall report quarterly in writing, on the state of education in the Province to the executive committee of the Council.

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

**31. General functions of Council.**—(1) The Council shall—

- (a) make recommendations to the Member of the Executive Council concerning Legislation relating to education in the Province;
  - (b) make recommendations to the Member of the Executive Council on any matter regarding education in the Province referred to it by the Member of the Executive Council or which the Council wishes to bring to the attention of the Member of the Executive Council;
  - (c) perform such other function, as may be assigned to it by or under this Act, or any other law;
  - (d) determine its own rules regulating its meetings and procedures at such meetings.
- (2) No act of the Council shall be invalid merely on account of a vacancy on the Council.

**32. Recommendations of the Council.**—If the Member of the Executive Council decides not to implement a recommendation made by the Council in terms of section 31 (1) (a) or (b) he or she shall provide the Council with written reasons for his or her decision.

**33. Functions of Council with respect to legislation.**—(1) No Bill relating to education in the Province shall be introduced in the Provincial Legislature unless it has been submitted to the Council for its comments at least 30 days before such introduction.

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

(3) The provisions of subsections (1) and (2) shall not apply until the Council has been established under section 29.

(4) The Council may delegate the power to comment contemplated in subsection (2), either generally or in specific cases to a committee of the Council established under section 34.

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

(6) The provisions of subsection (2) shall not apply—

- (a) unless the comments contemplated in subsection (2), are forwarded to the Member of the Executive Council within 7 days of the meeting at which the Council or its committee considered the draft regulations;
- (b) to any amendments to draft regulations made by the Member of the Executive Council after considering the comments of the Council on such draft regulations;
- (c) in cases where the Member of the Executive Council certifies by notice in the *Provincial Gazette* in which the regulations are published, that there is so urgent a need for the regulations to be put in effect that the delay occasioned by the procedures of that subsection cannot be justified.

(7) The Member of the Executive Council may not issue a notice under subsection (6) (c) unless he or she has issued a directive under subsection (5) in respect of the regulations in question.

**34. Committees of council.**—(1) The Council may—

- (a) with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions;
- (b) delegate any of its functions to such a committee, but shall not be divested of such powers and may amend or rescind any decision of such a committee;
- (c) dissolve any committee established under paragraph (a).

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

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

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

**36. Establishment of district education and training councils.**—(1) The Member of the Executive Council may establish a district education and training council for each educational district in Province.

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

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

(4) A member of a district council, or a member of a committee established by a district council under section 40, who is not in the full-time employment of the State may be paid out of moneys appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

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

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

**37. District head reports to district council.**—A district head shall report quarterly, in writing on the state of education in his or her district, to the district council of his or her district.

**38. General functions of district council.**—(1) A district council—

- (a) make recommendations to the relevant district head on any matter regarding education in the district referred to it by the district head or which the district council wishes to bring to the attention of the district head;
- (b) perform such other functions as may be assigned to it by or under this Act or any other law;
- (c) determine its own rules regulating its meetings and procedures at such meetings.

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

**39. Recommendations of district council.**—(1) The district head shall refer the recommendation of a district council to the appropriate authority within the Department.

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

**40. Committees of district council.**—A district council may—

- (a) with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions;
- (b) delegate any of its powers, to such committee, but shall not be divested of such powers, and may amend or rescind any decision of such a committee;
- (c) dissolve any committee established under paragraph (a).

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

(2) The Member of the Executive Council may make regulations as to—

- (a) the composition of a specialist council;
- (b) the qualifications and term of office of members of a specialist council and the filling of vacancies on a specialist council; and
- (c) the appointment and functions of an executive committee of a specialist council.

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

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

by the Department.

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

**42. Powers and functions of specialist councils.**—(1) A specialist council shall—

- (a) make recommendations to the Member of the Executive Council concerning legislation relating to matters falling within its terms of reference;
- (b) make recommendations to the Member of the Executive Council on any matter falling within its terms of reference referred to it by the Member of the Executive Council or which the specialist council wishes to bring to the attention of the Member of the Executive Council;
- (c) perform such other functions as may be assigned to it by or under this Act or any other law;
- (d) determine its own rules regulating its meetings and procedures at such meetings.

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

**43. Recommendations of specialist council.**—If the Member of the Executive Council decides not to implement a recommendation made by a specialist council in terms of section 42 (1) (a) or (b), he or she shall provide the specialist council with written reasons for his or her decision.

## CHAPTER 6 STATE SCHOOLS

**44. Provision of public schools.**—(1) The Member of the Executive Council shall 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 public school may be an ordinary public school or a public school for learners with special education needs.

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

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

(6) The Member of the Executive Council may provide for gender-specific public schools.

[S. 44 substituted by s. 19 of Act No. 7 of 1998.]

**44A. 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 shall, subject to the conditions of any donation, bequest or trust contemplated in section 46, devolve on the Province unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

[S. 44A inserted by s. 19 of Act No. 7 of 1998.]

**44B. 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 25 (1) (k), a public 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 utilized 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; and
- (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 44C has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.

(7) The registrar of any deeds registry 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 with proof of the agreement contemplated in subsection (6).

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

[S. 44B inserted by s. 19 of Act No. 7 of 1998.]

**44C. Public schools on private property.**—(1) Subject to the Constitution and this Act, a public school may be provided on private property only in terms of an agreement between the Member of the Executive Council and the owner of the private property.

(2) An agreement contemplated in subsection (1) shall be consistent with this Act and shall in particular 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, 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) Notwithstanding subsection (3), a registrar of a deeds registry shall endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the registrar receives —

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

(6) The Member of the Executive Council shall make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the Provincial Legislature for that purpose: Provided that the public school contemplated in subsection (1) shall not be responsible for such duties, fees or costs.

[S. 44C inserted by s. 19 of Act No. 7 of 1998.]

**45. 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 46 (3) (b).

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

- (a) the amount of fees to be charged; and
- (b) equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay school fees.

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

(4) The Member of the Executive Council may make regulations regarding the equitable criteria and procedures referred to in subsection (2) (b).

[S. 45 substituted by s. 20 of Act No. 7 of 1998.]

**45A. Enforcement of payment of school fees.**—The governing body of 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 14A.

[S. 45A inserted by s. 21 of Act No. 7 of 1998.]

**46. School funds and assets of public schools.**—(1) In order to supplement the standard of schooling provided in accordance with section 45, the governing body of a public school shall establish a school fund and may solicit contributions to be paid into such school fund.

[Sub-s. (1) substituted by s. 22 (b) of Act No. 7 of 1998.]

(2) All money received by a public school including school fees and voluntary contributions shall be paid into the school fund of the school concerned.

[Sub-s. (2) substituted by s. 22 (c) of Act No. 7 of 1998.]

(3) The governing body of a public school shall, in accordance with the instructions issued by the Head of Department—

- (a) keep records of money received and spent by the public school, and of the assets, liabilities and financial transactions of the public school;
- (b) as soon as practicable, but not later than three months after the end of each financial year, which shall commence on the first day of January and end on the last day of December draw up a budget according to guidelines determined by the Member of the Executive Council which indicate, with suitable particulars, money received and expenditure incurred by the public school during, and its assets and liabilities at the end of the financial year concerned, which budget shall 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; and
- (c) open and maintain a banking account.

[Sub-s. (3) substituted by s. 22 (d) of Act No. 7 of 1998.]

(4) The records and financial statements referred to in subsection (3) 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), and engaged as such in public practice, or another person appointed by the governing body and approved by the Member of the Executive Council.

(5) 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 (4), to the Head of Department.

(6) Any parent of a learner at a public school and any educator employed at a public school shall be entitled, on request, to be furnished by the governing body with a copy of the latest audited financial statements of the school concerned.

(7) Where there are insufficient amounts in the school fund of a public school to warrant the auditing of the financial statements of that school, the Member of the Executive Council may exempt the governing body of that school from complying with the provisions of subsections (4) to (6) on such conditions as he or she may determine.

(8) The Member of the Executive Council may, at any time, withdraw any exemption he or she has granted in terms of subsection (7).

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

[Sub-s. (9) inserted by s. 22 (e) of Act No. 7 of 1998.]

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

[Sub-s. (10) inserted by s. 22 (e) of Act No. 7 of 1998.]

(11) The school fund, all proceeds thereof and any other assets of the public school shall only be used 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.

[S. 46 amended by s. 22 (a) of Act No. 7 of 1998. Sub-s. (11) added by s. 22 (e) of Act No. 7 of 1998.]

#### CHAPTER 7

[Chapter 7 repealed by s. 23 of Act No. 7 of 1998.]

#### **47 to 62 inclusive.** . . . . .

[Ss. 47 to 62 inclusive repealed by s. 23 of Act No. 7 of 1998.]

#### CHAPTER 8

##### INDEPENDENT SCHOOLS

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

(2) No independent school shall be registered unless it complies with the prescribed requirements.

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

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

(5) The Head of Department may grant an application contemplated in subsection (3) if he or she is of the opinion that the prescribed requirements have been complied with.

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

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

(8) An applicant who is aggrieved by the refusal of the Head of Department to grant his or her application brought under subsection (3) may, within 30 days after receiving notice of such refusal, appeal to the Member of the Executive Council, in writing, setting out the grounds of the appeal.

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

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

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

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

[Sub-s. (11) substituted by s. 24 of Act No. 7 of 1998.]

**64. Lapsing or withdrawal of registration of independent schools.**—(1) The registration of an independent school shall lapse under the prescribed circumstances.

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

(3) No withdrawal of the registration of an independent school shall be valid unless—

- (a) the owner of such independent school has been granted a reasonable opportunity to make written representations to the Head of Department giving reasons why the registration of the independent school should not be withdrawn, prior to any decision to withdraw the registration of the independent school;
- (b) the owner of such independent school has been furnished by the Head of Department with a notice of such withdrawal together with written reasons for his or her decision to withdraw the registration of the independent school; and
- (c) an appeal under subsection (4) has been dismissed or no such appeal has been lodged within the 30 days provided for.

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

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

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

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

**65. Discrimination at independent schools.**—Admission requirements for independent schools shall not directly or indirectly discriminate unfairly on grounds of race, colour or social origin.

**66. Subsidies of independent schools.**—(1) An independent school may annually, on or prior to the prescribed date, apply to the Head of Department in writing for the prescribed subsidy.

(2) The Head of Department may grant or refuse an application referred to in subsection (1) but—

- (a) no subsidy shall be granted to an independent school which does not comply with the prescribed conditions for receiving a subsidy; and
- (b) no subsidy shall be granted to an independent school that is operated for profit.

(3) If a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department shall not terminate or reduce a subsidy under subsection (3) unless he or she has granted the owner of the independent school concerned an opportunity to make written representations to him or her giving reasons why the subsidy should not be reduced or terminated as the case may be.

(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.

[Sub-s. (5) added by s. 25 of Act No. 7 of 1998.]

**67. Financial statements of independent schools.**—(1) The financial year of an independent school shall end on the last day of March of each year.

(2) The provisions of section 46 (3) to (6) shall apply *mutatis mutandis* to all independent schools receiving a subsidy in terms of section 66, and in such application any reference to—

- (a) a public school shall be construed as a reference to an independent school; and
- (b) a governing body shall be construed as a reference to the owner of an independent school.

**68. Declaration of independent school as public schools.**—(1) The Member of the Executive Council may,

with the concurrence of the financial head, enter into an agreement with the owner of an independent school in terms of which the school concerned is declared to be a public school.

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

**69. Consequences of declaration as public school.**—(1) As from the date mentioned in the notice contemplated in section 68 (2)—

- (a) the school concerned shall be deemed to be a public school established under section 44 (1);
- (b) the powers, duties, rights and obligations of the previous owner, in connection with the school concerned, shall vest in the State; and
- (c) the ownership and control of movable and immovable property which immediately prior to that date vested in the owner concerned, and which relates to the school concerned, shall vest in the State, unless otherwise agreed upon in terms of section 68 (1).

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

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

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

**70. Duties of Member of Executive Council relating to independent schools.**—(1) The Member of the Executive Council shall, 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 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 shall 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 shall allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

[S. 70 substituted by s. 26 of Act No. 7 of 1998.]

## CHAPTER 9

### SPECIALIZED EDUCATION

**71. Accommodation of learners with specialized education needs in ordinary schools.**—Every public school shall, as far as is reasonably possible, attempt to accommodate the specialized education needs of any learner who attends such school.

**72. Admission of learners to schools for specialized education.**—(1) Subject to the provisions of any other law, the Head of Department may, at the request of the parent of a learner, approve that the learner be admitted to a school for specialized education.

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

- (a) the learner concerned has specialized education needs; and
- (b) those needs cannot be accommodated in an ordinary school which the learner concerned can attend.

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

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

**74. Action in case of learners with specialized education needs.**—(1) The Head of Department shall make the results of an assessment under section 73 available to, and discuss them with, the parent of the learner.

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

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

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

**75. Placement of learners with specialized education needs.**—(1) Unless—

- (a) the parent of a learner found to have specialized education needs in terms of section 74, within the period determined by the Head of Department, takes such steps as the Head of Department, after consultation with the parent, determines as adequate to ensure that the learner receives suitable education or treatment; or
- (b) the Head of Department at any time after that period is of the opinion that the learner is receiving suitable education or treatment, the Head of Department may after consultation with the parent designate a school for specialized education or an ordinary school capable of accommodating the learner's specialized education needs, at which the learner shall be placed.

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

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

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

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

**77. Transfer of learners with specialized education needs.**—The Head of Department may, after consultation with the parent of a learner attending a school for specialized education, transfer that learner to another school for specialized education.

**78. Exemption from attendance of school for specialized education.**—The Head of Department may, after consultation with the parent of a learner attending a school for specialized education, or an applicant thereto, exempt such learner from attendance at a school for specialized education if he or she is of the opinion that the learner should attend an ordinary school or should be placed in a care centre which accommodates his or her special needs.

**79. The employer of educators in the Province.**—(1) The Department shall be the employer of all educators at public schools.

[Sub-s. (1) substituted by s. 27 (a) of Act No. 7 of 1998.]

(2) . . . . .

[Sub-s. (2) deleted by s. 27 (b) of Act No. 7 of 1998.]

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

[Sub-s. (1) substituted by s. 28 of Act No. 7 of 1998.]

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

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

**81. Right of educators to information.**—(1) Every educator shall have the right of access to all information held by the Department relating to his or her employment.

[Sub-s. (1) substituted by s. 29 of Act No. 7 of 1998.]

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

**82. Political rights of educators.**—(1) The freedom of association of all educators shall be respected by the Department.

[Sub-s. (1) substituted by s. 30 of Act No. 7 of 1998.]

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

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

**83. Responsibilities of educators.**—An educator shall—

- (a) promote the intellectual and personal development of learners;
- (b) instil in learners a desire to learn;
- (c) foster in learners a culture of human rights;
- (d) act in a just and impartial manner in his or her dealings with learners; and
- (e) take the appropriate measures to attain and maintain a high level of professionalism.

**84. Responsibilities of principals.**—(1) The principal of a school shall ensure that educational services of quality are provided in that school.

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

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

- (a) employment of educators;
- (b) transfer and secondment of educators;

- (c) assessment and promotion of educators;
- (d) language requirements for entry into the teaching profession;
- (e) registration of educators with the Department;
- (f) design of educator development programs;
- (g) contracting for the provision of in-service education and training;
- (h) allocation of funds for educator development;
- (i) collection and publication of data relating to educator policy; and
- (j) all other matters relating to provincial educators.

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

#### CHAPTER 11

[Chapter 11 repealed by s. 31 of Act No. 7 of 1998.]

#### 86 to 91 inclusive. . . . .

[Ss. 86 to 91 inclusive repealed by s. 31 of Act No. 7 of 1998.]

#### CHAPTER 12

#### TRANSITIONAL PROVISIONS

**92. Transitional provisions relating to centres of learning and accessories.**—Any centre of learning, hostel, clinic, educators quarters or other accessory connected to schools established or deemed to have been established under the provisions of an Act repealed by this Act and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of this Act.

**93. Transitional provisions relating to governing bodies.**—(1) The Member of the Executive Council shall, by notice in the *Provincial Gazette*, determine dates—

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

(2) 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 shall perform all the functions it performed prior to the commencement of this Act which a governing body may lawfully perform in terms of this Act.

(3) 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 95 (1) shall perform the functions lawfully performed by its predecessor which are capable of being performed by a governing body in terms of this Act.

[S. 93 substituted by s. 32 of Act No. 7 of 1998.]

#### 94. . . . .

[S. 94 repealed by s. 33 of Act No. 7 of 1998.]

**95. Transitional provisions relating to schools other than independent schools.**—(1) Any school which was established or was deemed to have been established in terms of any law governing school education in the Province and which existed immediately prior to the commencement of this Act, other than an independent school referred to in section 97 shall be 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, shall 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 subject to conditions determined by the Member of the Executive Council by notice in the *Official Gazette*.

(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, shall be invalid.

[S. 95 substituted by s. 34 of Act No. 7 of 1998.]

**95A. Transitional provisions relating to public schools on private property.**—(1) If an agreement contemplated in section 44C does not exist at the commencement of this Act in respect of a school situated on private property and which is deemed to be a public school in terms of section 95 (1), the Member of the Executive Council shall take reasonable measures to conclude such an agreement within six months of the commencement of this Act.

(2) If the owner of the private property referred to in subsection (1) is a religious organisation, such owner may require that the agreement contemplated in section 44C shall recognise, in an appropriate manner consistent with this Act, the distinctive religious character of the school.

[S. 95A inserted by s. 35 of Act No. 7 of 1998.]

**96. . . . .**

[S. 96 repealed by s. 36 of Act No. 7 of 1998.]

**97. Transitional provisions relating to independent schools.**—An independent school which was registered or deemed to have been registered under the provisions of any law regulating school education in the Province and which existed immediately prior to the commencement of this Act, shall be deemed to be an independent school.

[S. 97 substituted by s. 37 of Act No. 7 of 1998.]

**98 to 100 inclusive. . . . .**

[Ss. 98 to 100 inclusive repealed by s. 38 of Act No. 7 of 1998.]

## CHAPTER 13 GENERAL

**101. Indemnities.**—(1) No contract shall exclude any liability of—

- (a) the Department;
- (b) a public school;
- (c) the owner of an independent school; or
- (d) any person employed at any school,

to any learner or to his or her parents arising out of circumstances related to the education of the learner concerned.

(2) Any contractual provision which contravenes subsection (1) shall be invalid.

[S. 101 substituted by s. 39 of Act No. 7 of 1998.]

**102. 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 the Province.

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

(3) A notice contemplated in subsection (2) shall—

- (a) identify the land or any real right in or over 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) shall take 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 for arbitration.

(7) The arbitrator shall determine the time venue and procedures which apply in the arbitration.

(8) The arbitrator shall determine the dispute and make a written award giving reasons for such award as soon as possible after the arbitration, and his or her award shall be binding.

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

(10) The arbitrator shall be 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) shall be determined as contemplated in section 25 of the Constitution.

[S. 102 substituted by s. 40 of Act No. 7 of 1998.]

**102A. Liability of the State.**—(1) The State is liable for any damage or loss caused as a result of any act or omission in connection with any educational activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.

(2) The provisions of the State Liability Act 1957 (Act No. 20 of 1957), shall be applicable to any claim under subsection (1).

[S. 102A inserted by s. 41 of Act No. 7 of 1998.]

**103. Delegation of powers and assignment of functions.**—(1) The Member of the Executive Council may, subject to such conditions as he or she may determine—

- (a) delegate any power conferred upon him or her under this Act, except the power to make regulations and the power to decide an appeal lodged, him or her in terms of this Act; and
- (b) assign any of his or her functions in terms of this Act,

to the Head of Department or a person employed by the Department.

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

- (a) delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (1); and
- (b) assign any of his or her functions in terms of this Act or assigned to him or 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 Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such function, as the case may be, himself or herself.

**104. Limitation of proceedings.**—No legal proceedings shall be instituted against the State or a body or person in respect of an alleged act in terms of this Act or an alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted within a period of 12 months, after the date on which the plaintiff or the applicant became aware of the alleged act or omission, or after the date on which it

could reasonably have been expected that the plaintiff or applicant would have become aware of the alleged act or omission, whichever date is the earliest.

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

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

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

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

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

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

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

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

**107. Short title and commencement.**—This Act shall be called the School Education Act (Mpumalanga), 1995 and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

## SCHEDULE

### LAWS REPEALED

No. and year of law	Title	Extent appeal
Act No. 47 of 1963	Coloured Persons Education Act, 1963	The whole, excluding sections 1A, 26 and 28 to 31 except in so far as it relates to colleges of education
Act No. 61 of 1965	Indians Education Act, 1965	The whole, excluding sections 1B, 3B, 26, 28, 29, 31 and 33 (1) (g), except in so far as it relates to colleges of education and technical colleges
Act No. 60 of 1967	Indians Education Amendment Act, 1967	The whole
Act No. 76 of 1967	Coloured Persons Education Amendment Act, 1967	The whole
Act No. 92 of 1970	General Law Further Amendment Act, 1970	Section 13
Act No. 53 of 1973	Coloured Persons Education Amendment Act, 1973	The whole
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 31
Act No. 6 of 1974	Lebowa Education Act, 1974	The whole
Act No. 94 of 1974	Second General Law Amendment Act, 1974	Section 39
Act No. 29 of 1976	Coloured Persons Education Amendment Act, 1976	The whole
Act No. 95 of 1976	Second Coloured Persons Education Amendment Act, 1976	The whole
Act No. 2 of 1979	Bophuthatswana National Education Act, 1979	The whole

Act No. 39 of 1979	Indians Education Amendment Act, 1979	The whole
Act No. 50 of 1979	Coloured Persons Education Amendment Act, 1979	The whole
Act No. 90 of 1979	Education and Training Act, 1979	The whole excluding sections 1A, 3, 4, 31, 32, 43 and 44 (1) (h), except in so far as it relates to technical colleges and colleges of education
Act No. 15 of 1980	Coloured Persons Education Amendment Act, 1980	The whole
Act No. 52 of 1980	Education and Training Amendment Act, 1980	The whole
Act No. 9 of 1981	Indians Education ,Amendment Act, 1981	The whole
Act No. 10 of 1981	Education and Training Amendment Act, 1981	The whole
Act No. 85 of 1983	Coloured Persons Education Amendment Act, 1983	The whole
Act No. 74 of 1984	Education and Training Amendment Act, 1984	The whole
Act No. 76 of 1984	National Policy for General Education Affairs Act, 1984	The whole
Act No. 78 of 1984	Indians Education Amendment Act, 1984	The whole
Act No. 64 of 1985	Indians Education Amendment Act (HD), 1985	The whole
Act No. 71 of 1985	Universities for Blacks, Technikons (Education and Training) and Education and Training Amendment Act, 1985	Section 36
Act No. 76 of 1985	Coloured Persons Education Amendment Act (HR), 1985	The whole
Act No. 3 of 1986	Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training Amendment Act, 1986	Sections 19 to 25
Act No. 100 of 1986	Education Amendment Act (House of Delegates), 1986	Sections 1 to 7
Act No. 104 of 1986	Private Schools Act (House of Assembly), 1986	The whole excluding section 1A
Act No. 95 of 1987	Education Laws (Education and Training) Amendment Act, 1987	Sections 5 to 13
Act No. 31 of 1988	Education Laws (Education and Training) Amendment Act, 1988	Sections 9 to 18
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole excluding sections 3 and 65
Act No. 35 of 1989	Education and Training Amendment Act, 1989	The whole
Act No. 42 of 1990	Education and Training Amendment Act, 1990	The whole
Act No. 60 of 1990	Private Schools Amendment Act (House of Assembly), 1990	The whole
Act No. 88 of 1991	Education Affairs Amendment Act (House of Assembly), 1991	The whole
Act No. 100 of 1991	Education and Training Amendment Act, 1991	The whole
Act No. 39 of 1992	Education Affairs Amendment Act (House of Assembly), 1992	The whole
Act No. 55 of 1992	Education and Training Amendment Act, 1992	The whole
Act No. 106 of 1992	Education and Training Second Amendment Act, 1992	The whole
Act No. 112 of 1992	Coloured Persons Education Amendment Act (House of Representatives), 1992	The whole
Act No. 113 of 1992	Coloured Persons Education Second Amendment Act (House of Representatives), 1992	The whole
Act No. 36 of 1993	Education Affairs Amendment Act (House of Assembly), 1993	The whole
Act No. 50 of 1993	Indians Education Amendment Act (House of Delegates), 1993	The whole
Act No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 15
Act No. 139 of 1993	Education Laws Amendment Act (House of Assembly), 1993	Section 1
Act No. 162 of 1993	Education Affairs Second Amendment Act (House of Assembly), 1993	The whole