

# WESTERN CAPE PROVINCIAL SCHOOL EDUCATION ACT NO. 12 OF 1997

[ASSENTED TO BY THE PREMIER ON THE 5 DECEMBER, 1997 -  
AFRIKAANS TEXT SIGNED.]

[DATE OF COMMENCEMENT: 16 JANUARY, 1998]

This Act has been updated to *Provincial Gazette Extraordinary* No. 8010  
dated 29 November, 2018.

## as amended by

Western Cape Provincial School Education Amendment Act, No. 7 of 2010

Western Cape Provincial School Education Amendment Act, No. 4 of 2018 (Date of commencement: To be  
proclaimed)

## General Note

**In terms of s. 27 of Act No. 7 of 2010, the expressions of "Educators' Employment Act, 1994 (Proclamation 138 of 1994)", "Member of the Executive Council", "Legislature" and "South African Schools Act, 1996 (Act 84 of 1996)" are substituted for the following expressions "Employment of Educators Act", "Provincial Minister", "Provincial Parliament" and "South African Schools Act", respectively.**

## ACT

**To provide for a uniform education system for the organisation, governance and funding of all schools; consequentially to repeal certain laws relating to schools and to make provision for the specific educational needs of the province.**

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### PREAMBLE

WHEREAS the Province of the Western Cape recognises the importance of all *education* in enabling citizens to overcome the imbalances of the past so as to achieve their potential in an increasingly competitive and complex provincial, national and international economy; and

WHEREAS, to this end, it is essential that all *learners* have access to the highest quality of *basic education* that the *province* can provide and which will uphold the principles and values of the *Constitution* of the Republic of South Africa, 1996, particularly the rights of children, while requiring the highest standards of accountability from these *learners*, their *parents*, *school governing bodies*, *educators* and *officials*,

BE IT THEREFORE ENACTED by the *Provincial Parliament* of the Province of the Western Cape, as follows:-

### CHAPTER 1 APPLICATION OF ACT

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

"**adult education**" . . . . . ;

[Definition of "adult education" deleted by s. 1 (a) of Act No. 4 of 2018.]

**"authorized person"** means a person authorized by the Head of Department to conduct an inspection in terms of section 20 of this Act;

**"basic education"** means education from *grade R* (Reception) to *grade 12*;  
[Definition of "basic education" inserted by s. 2 (a) of Act No. 7 of 2010.]

**"Chief Evaluator"** means the chief evaluator of schools appointed in terms of section 11A (2);  
[Definition of "Chief Evaluator" inserted by s. 1 (b) of Act No. 4 of 2018.]

**"circuit manager"** means the head of a circuit office in an education district, who executes functions that have been allocated by the district director or the Head of Department;  
[Definition of "circuit manager" inserted by s. 1 (b) of Act No. 4 of 2018.]

**"collaboration school"** means a public school contemplated in section 12C;  
[Definition of "collaboration school" inserted by s. 1 (b) of Act No. 4 of 2018.]

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

**"compulsory school attendance"** means compulsory school attendance introduced under section 42 of this Act;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996;  
[Definition of "Constitution" amended by s. 2 (b) of Act No. 7 of 2010.]

**"dangerous object"** means-

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that-
  - (i) the *National Minister* declares to be a dangerous object under the *South African Schools Act* for the purpose of that Act; or  
[Sub-para. (i) amended by s. 27 of Act No. 7 of 2010.]
  - (ii) the *Provincial Minister* declares by notice in the *Provincial Gazette* to be a dangerous object for the purposes of *this Act*;

[Definition of "dangerous object" inserted by s. 2 (c) and amended by s. 27 of Act No. 7 of 2010.]

**"district director"** means the head of a district office who executes functions under authority delegated by the Head of Department;  
[Definition of "district director" inserted by s. 1 (c) of Act No. 4 of 2018.]

**"donor"** means a person contemplated in section 12C (2) (a) or 12D (1) who provides funds or property to a *collaboration school* or a *donor funded public school* for the purposes of improving the delivery of education in the province;  
[Definition of "donor" inserted by s. 1 (c) of Act No. 4 of 2018.]

**"donor funded public school"** means a *public school* contemplated in section 12D;  
[Definition of "donor funded public school" inserted by s. 1 (c) of Act No. 4 of 2018.]

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

**"education at home"** means education at home referred to in section 36 of this Act;

**"Education Council"** means the Western Cape Education Council established by section 11;  
[Definition of "Education Council" substituted by s. 2 (d) of Act No. 7 of 2010.]

**"educator"** means any person, excluding a person who is appointed to perform extracurricular duties exclusively, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a *school*;  
[Definition of "educator" substituted by s. 1 (d) of Act No. 4 of 2018.]

**"Employment of Educators Act"** means the Employment of Educators Act 1998 (Act 76 of 1998);  
[Definition of "Employment of Educators Act" inserted by s. 2 (e) of Act No. 7 of 2010.]

**"Evaluator"** means an evaluator of schools appointed in terms of section 11A (4) (b);  
[Definition of "Evaluator" inserted by s. 1 (e) of Act No. 4 of 2018.]

**"financial head"** means the *Provincial Minister* responsible for the financial affairs of the *province*;  
[Definition of "financial head" substituted by s. 2 (f) and amended by s. 27 of Act No. 7 of 2010.]

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

**"governing body"** means a governing body referred to in section 21 of this Act;

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

**"Head of Department"** means the head of the Western Cape Education Department;

**"hostel"** means a hostel established under section 4 (1) (a) of this Act;

**"illegal drug"** means any drug as defined in the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), that is used or possessed in contravention of section 4 of that Act;

[Definition of "illegal drug" inserted by s. 2 (g) of Act No. 7 of 2010.]

**"independent school"** means a school registered or deemed to be registered in terms of section 30 of this Act;

**"intervention facility"** means a facility contemplated in section 12E;

[Definition of "intervention facility" inserted by s. 1 (f) of Act No. 4 of 2018.]

**"independent school for learners with special education needs"** means a school registered in terms of section 30 of this Act as an independent school for learners with special education needs, or deemed to be so registered;

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

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

**"learner with special education needs"** means a learner with additional education needs for whom provision is made in ordinary public school insofar as it is reasonably practicable, or schools for learners with special education needs;

**"Lead Evaluator"** means the lead evaluator of schools appointed in terms of section 11A (4) (a);

[Definition of "Lead Evaluator" inserted by s. 1 (f) of Act No. 4 of 2018.]

**"Provincial Parliament"** . . . . .

[Definition of "Provincial Parliament" deleted by s. 2 (h) of Act No. 7 of 2010.]

**"Member of the Executive Council"** . . . . .

[Definition of "Member of the Executive Council" deleted by s. 2 (h) of Act No. 7 of 2010.]

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

**"National Minister"** means the Minister in the National Government responsible for *basic education*;

[Definition of "National Minister" substituted by s. 2 (j) of Act No. 7 of 2010.]

**"officer"** means an employee of the Western Cape Education Department appointed in terms of the *Employment of Educators Act*, or the *Public Service Act, 1994* (Proclamation 103 of 1994);

[Definition of "officer" amended by s. 27 of Act No. 7 of 2010.]

**"operating partner"** means a non-profit organisation that is authorised to place its capacity, skills or resources at the disposal of a collaboration school to empower the *governing body*, *school* management team and *educators* at the *school* to develop systems, structures, cultures and capacities necessary to deliver quality *education*;

[Definition of "operating partner" inserted by s. 1 (g) of Act No. 4 of 2018.]

**"organised teaching profession"** . . . . .

[Definition of "organised teaching profession" deleted by s. 2 (j) of Act No. 7 of 2010.]

**"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;

**"Premier"** means the Premier of the Province of the Western Cape elected in terms of section 128 of the Constitution;

**"pre-primary school"** means a school for learners of not younger than three years and not older than six years;

**"prescribed"** means prescribed by regulation in terms of this Act, or any other law;

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

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

**"province"** means the Province of the Western Cape;

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

**"Provincial Minister"** means the Provincial Minister responsible for *education* in the *province*;  
[Definition of "Provincial Minister" inserted by s. 2 (k) of Act No. 7 of 2010.]

**"public school"** means a school established or deemed to be established under section 12 of this Act;

**"regulation"** means a regulation made under this Act;

**"representative council of learners"** means a representative council of learners established under section 48 of this Act;

**"school"** means a *public school* or an *independent school* which provides *basic education*;  
[Definition of "school" substituted by s. 2 (l) of Act No. 7 of 2010.]

**"school activity"** means any educational, cultural, sporting, fundraising or social activity of the *school* within or outside the premises of the *school*;  
[Definition of "school activity" inserted by s. 2 (m) of Act No. 7 of 2010.]

**"school attendance officer"** means a school attendance officer appointed under section 10 of this Act;

**"school fees"** means school fees contemplated in section 49, and includes any form of contribution of a monetary nature made or paid by a person in relation to the attendance or participation by a *learner* in any programme of a *public school*;  
[Definition of "school fees" inserted by s. 2 (n) of Act No. 7 of 2010.]

**"school for learners with special education needs"** means a school for learners with special education needs established under section 12 of this Act or an independent school for learners with special education needs registered under section 30 of this Act;

**"school improvement plan"** means a plan which defines a *public school's* targeted priorities for improved educational outcomes and for shaping the direction and development of the *school*;  
[Definition of "school improvement plan" inserted by s. 1 (h) of Act No. 4 of 2018.]

**"Schools Evaluation Authority"** means the Western Cape Schools Evaluation Authority contemplated in section 11A (1);  
[Definition of "Schools Evaluation Authority" inserted by s. 1 (h) of Act No. 4 of 2018.]

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

**"South African Schools Act"** means the *South African Schools Act*;  
[Definition of "South African Schools Act" inserted by s. 2 (o) of Act No. 7 of 2010.]

**"specialised education"** means education and support of a specialised nature which provides for the needs of learners with special education needs;

**"subject advisor"** means a specialist office-based educator in a district office or circuit office whose function is to facilitate curriculum implementation and improve the environment and process of learning and teaching by visiting schools, and consulting with and advising principals and educators on curriculum matters;  
[Definition of "subject advisor" inserted by s. 1 (i) of Act No. 4 of 2018.]

**"this Act"** includes the regulations; and  
[Definition of "this Act" substituted by s. 2 (p) of Act No. 7 of 2010.]

**"Western Cape Education Department"** means the provincial department responsible for education in the *province*.  
[Definition of "Western Cape Education Department" substituted by s. 2 (q) of Act No. 7 of 2010.]

**2. Control of education.**-Subject to the provisions of this Act, education in schools in the province shall vest in the *Provincial Minister* and be controlled by the Western Cape Education Department.

**3. Determination of provincial education policy.**-(1) Subject to the provisions of the *Constitution*, the *Provincial Minister* may, where necessary, from time to time determine the policy which is to be pursued in respect of education in schools in the province, taking into account the following principles, namely that-

- (a) every learner shall be entitled to *basic education* at his or her nearest ordinary *public school*, insofar as it is reasonably practicable;
- (b) every learner shall be entitled to equitable access to *public schools*;
- (c) every learner shall have the right to receive *education* in the official language or languages of choice, including the right to take any official language as a subject, insofar as it is reasonably practicable;
- (d) *education* shall-
  - (i) be provided in accordance with the needs, abilities, aptitudes and interests of the *learners* and the needs of the country;
  - (ii) be directed towards achieving equitable *education* opportunities and the redress of past *education* inequality;
  - (iii) promote a culture of respect for teaching and learning in *education* institutions;
  - (iv) enhance the quality of *education* through monitoring and evaluating delivery and performance and through training *educators* and *education* managers;
  - (v) ensure broad *public* participation in the development of *education* policy and the representation of role-players in the governance of all aspects of the *education* system.

[Sub-s. (1) substituted by s. 3 and amended by s. 27 of Act No. 7 of 2010 and amended by s. 2 of Act No. 4 of 2018.]

(2) The Head of Department shall take such steps as may be necessary to carry in to effect the policy so determined by the *Provincial Minister*.

**4. General functions of the *Provincial Minister*.**-(1) In addition to the other functions assigned to him or her under this Act, the *Provincial Minister* may, out of moneys appropriated for this purpose by the Legislature-

- (a) establish and maintain hostels for public schools;
- (b) . . . . .

[Para. (b) deleted by s. 3 of Act No. 4 of 2018.]

- (c) provide such equipment and erect such buildings as he or she may deem necessary or expedient for the administration of the provisions of this Act.

(2) The *Provincial Minister* may, after consultation with the governing body of a public school concerned, close a hostel referred to in subsection (1).

(3) A centre for the development and promotion of some or other aptitude of learners established or provided for under any law repealed by this Act, or deemed to be established or provided for under such law, and which immediately prior to the fixed date was managed and controlled, shall from that date be deemed to be a public school established or provided for under this section.

**5. Authority of the *Provincial Minister* regarding governing bodies.**-The *Provincial Minister* may, by notice in the *Provincial Gazette*, determine that some governing bodies may exercise one or more functions referred to in section 21 of the *South African Schools Act*, without making an application, if-

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

**6. Enhancement of capacity of governing bodies.**-The Head of Department shall, out of moneys appropriated for this purpose by the Legislature, establish a programme to promote the effectiveness of governing bodies in

**7. General functions of Head of Department.**-(1) In addition to the other functions assigned to the Head of Department in terms of this Act and any other applicable law, he or she may-

- (a) approve educational and training programmes for learners;
- (b) approve educational and training programmes for learners with special education needs;
- (c) determine the conditions for admission to such educational and training programmes, and the evaluation, by means of inspection or otherwise, of the effectiveness of the teaching and training provided in accordance therewith;
- (d) approve courses for the provision of education, including education for learners with special education needs;
- (e) determine the conditions for admission to, and the syllabi of, such courses;
- (f) in respect of such courses-
  - (i) cause examinations to be conducted and certificates to be issued to learners who passed those examinations; and
  - (ii) cause other approved forms of assessment to be conducted;
- (g) make rules as to-
  - (i) the conducting of examinations referred to in subsection (1) (f) (i), the handling of, and inquiries into, and the consequences of, any irregularities in the conduct of those examinations, the entering of candidates for those examinations, the conduct and discipline of candidates prior to, during and after those examinations, and the issue of certificates referred to in that subsection; and
  - (ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators, markers and other persons whose services are necessary in connection with the conducting of those examinations; and  
[Sub-para. (ii) substituted by s. 4 (a) of Act No. 7 of 2010.]
  - (iii) the management and conduct of *school* based assessments; and  
[Sub-para. (iii) added by s. 4 (b) of Act No. 7 of 2010.]
  - (iv) quality assurance of national, provincial or *school* based assessments.  
[Sub-para. (iv) added by s. 4 (b) of Act No. 7 of 2010.]
- (h) make arrangements for medical, psychological or dental examinations of learners and of persons employed at public schools and hostels.

(2) Different programmes and courses may be approved or determined, as the case may be, under subsection (1) in respect of different public schools.

**7A. Repealed**

[S. 7A repealed by s. 4 of Act No. 4 of 2018.]

**8. Authority of Head of Department regarding 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 and any applicable provincial law.

(2) The Head of Department may refuse an application contemplated in subsection (1), only if the governing

body concerned does not have the capacity to perform such function effectively.

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

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

(5) The Head of Department may, on reasonable grounds, withdraw a function of a governing body.

(6) The Head of Department may not take action under subsection (5), 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.

(7) In cases of urgency, the Head of Department may act in terms of subsection (5), without prior communication to such governing body, if the Head of Department thereafter-

- (a) furnishes the governing body with reasons for his or her actions;
- (b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
- (c) duly considers any such representations received.

(8) The Head of Department may, for sufficient reasons, reverse or suspend his or her action in terms of subsection (7).

(9) Any person aggrieved by a decision of the Head of Department in terms of this section, may appeal against the decision to the *Provincial Minister*.

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

[Date of commencement: 01 March 2019]

**8A. Procurement of goods and services.**-Notwithstanding section 8 (1) (a), (c) and (d) and section 8 (2) or any other law to the contrary, the *Head of Department* may, after consultation with the *governing body* contemplated in section 8 (1) (a), (c) and (d), centrally procure goods and services relating to *education* in the *province* if he or she considers this to be in the interests of *education* in the *province*, including the efficient, effective and economic utilisation of public funds.

[S. 8A inserted by s. 5 of Act No. 4 of 2018.]

**9. Visitation and assessment of schools and hostels.**-The *Head of Department* may, either generally or in a specific case, authorize, in writing, a person to visit and assess a *school* or *hostel*, after consultation with the *principal* of the *school*, for the purpose of-

- (a) evaluating performance in accordance with national and provincial norms and standards;
- (b) monitoring compliance with national and provincial norms and standards.

[S. 9 substituted by s. 6 of Act No. 7 of 2010.]

[Date of commencement: 01 March 2019]

**9A. Monitoring and support of curriculum delivery.**-(1) The *Head of Department*, a district director, the *principal* of a *public school* or an authorised representative of an *operating partner* in respect of a *public school* to which their duties relate may conduct monitoring and support of curriculum delivery by an *educator* in the classroom of a public school, or may authorise such monitoring and support by-

- (a) a *subject advisor*;
- (b) a deputy principal;
- (c) a deputy principal;
- (d) a subject head.

(2) The *Head of Department*, the *district director*, the *circuit manager* if authorised to do so by the *district director*, or an authorised representative of an *operating partner*, may conduct monitoring and support of curriculum delivery by the *principal* of a *public school*.

(3) The *Head of Department* may make rules for monitoring and support in terms of this section.  
[S. 9A inserted by s. 6 of Act No. 4 of 2018.]

**10. Appointment of school attendance officers.**-(1) The Head of Department may appoint a school attendance officer to carry into effect the provisions of section 3 (5) and (6) of the *South African Schools Act*.  
[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

**11. Establishment and functions of Education Council.**-(1) There is hereby established an *Education Council* known as the Western Cape Education Council.

(2) The *Education Council* shall-

(a) advise the *Provincial Minister* and the *Western Cape Education Department* in regard to matters relating to *education*, including laws and *regulations*, referred to it by the *Provincial Minister* or that Department or which the *Education Council* wishes to bring to the attention of the *Provincial Minister* or that Department; and

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

(b) perform such other functions as may be assigned to it by or under *this Act* or any other law.

(3) The *Provincial Minister* may make *regulations* in relation to-

(a) the categories, qualifications and term of office of members of the *Education Council*;

(b) the filling of vacancies and the removal of members;

(c) the appointment and functions of the executive committee of the *Education Council*;

(d) any other matter necessary for the proper management and operation of the *Education Council*.

[Para. (d) amended by s. 27 of Act No. 7 of 2010.]

(4) The *Education Council* shall consist of-

(a) a chairperson and vice-chairperson appointed by the *Provincial Minister*;

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

(b) the *prescribed* number of officers designated by the *Head of Department* from his or her staff;

[Para. (b) amended by s. 7 (a) of Act No. 4 of 2018.]

(c) the *prescribed* number of persons designated by the *Provincial Minister* out of nominations made in the *prescribed* manner in the various categories referred to in subsection (3) (a).

[Para. (c) amended by s. 27 of Act No. 7 of 2010.]

(5) An act of the *Education Council* shall not be invalid merely by reason of a vacancy on the Council.

(6) A member of the *Education 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 Parliament*, such allowances as the *Provincial Minister* may, with the concurrence of the *financial head*, determine.

[Sub-s. (6) amended by s. 27 of Act No. 7 of 2010.]

(7) The administrative functions of the *Education Council* shall be performed by *officers* of the *Western Cape Education Department*.

(8) The *Education Council* shall determine its own rules governing meetings and procedures at those meetings, subject to the *regulations*.

[S. 11 substituted by s. 7 of Act No. 7 of 2010.]

(9) (a) The Education Council must provide the Provincial Minister with an advisory report.

(b) The *Provincial Minister* must consider the advisory report and inform the chairperson of the Education Council of his or her decision in respect thereof.

[Sub-s. (9) inserted by s. 7 (b) of Act No. 4 of 2018.]

[Date of commencement: 01 March 2019]

**11A. Establishment of Schools Evaluation Authority.**-(1) The *Provincial Minister* may establish an evaluation authority, to be known as the Western Cape Schools Evaluation Authority, to conduct independent evaluations of schools.

- (2) The Provincial Minister may appoint to the Schools Evaluation Authority a Chief Evaluator of schools.
- (3) The Chief Evaluator shall be appointed for a non-renewable term of four years.
- (4) The Chief Evaluator may appoint to the Schools Evaluation Authority-
  - (a) *Lead Evaluators of schools*; and
  - (b) *Evaluators of schools*.

[S. 11A inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11B. Eligibility for appointment as Chief Evaluator, Lead Evaluator or Evaluator.**-To be eligible for appointment as *Chief Evaluator, Lead Evaluator or Evaluator* a person shall-

- (a) be a citizen of the Republic;
- (b) not be an unrehabilitated insolvent;
- (c) not at any time have been convicted of-
  - (i) an offence for which he or she was sentenced to imprisonment without the option of a fine;
  - (ii) a sexual offence against a child; or
  - (iii) theft, fraud, forgery, the uttering of a forged document, perjury, any offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), or any offence of which dishonesty is an element; and
- (d) possess appropriate knowledge of or experience in *education* and *school* management.

[S. 11B inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11C. Removal from office.**-(1) The *Provincial Minister* may, after due process, remove the *Chief Evaluator* from office-

- (a) if he or she no longer meets the eligibility criteria contemplated in section 11B; or
  - (b) on any reasonable ground, including misconduct, incapacity or incompetence.
- (2) The *Chief Evaluator* may, after due process, remove a *Lead Evaluator* or an *Evaluator* from office-
- (a) if he or she no longer meets the eligibility criteria contemplated in section 11B; or
  - (b) on any reasonable ground, including misconduct, incapacity or incompetence.

[S. 11C inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11D. Functions of Schools Evaluation Authority.**-(1) The *Chief Evaluator* shall keep the *Provincial Minister* informed in the prescribed manner of the following in respect of *schools*-

- (a) the quality of education provided at the school;
- (b) the extent to which education at the school meets the diverse needs of the learners through a holistic approach;
- (c) the educational standards achieved at the school;
- (d) the quality of leadership and management at the school;
- (e) the financial resources made available at the school and whether they are managed economically, efficiently and effectively;
- (f) the extent to which the school is developing internal procedures of self-evaluation in terms of its school improvement plans;
- (g) the safety, behaviour and attendance of learners and staff at the school;

- (h) the social and cultural development of learners at the school;
  - (i) the performance management and development of educators; and
  - (j) the relationship between parents, the community and the school.
- (2) Upon written request by the Provincial Minister, the Chief Evaluator shall-
- (a) advise the Provincial Minister on any matter specified in the request; and
  - (b) evaluate and report on a school, or class in a school, specified in the request.
- (3) The Chief Evaluator shall compile and publish reports as prescribed, which shall include empirical findings and, where applicable, recommendations for improvement.
- (4) The Chief Evaluator, a Lead Evaluator or an Evaluator may-
- (a) on two school days' written notice to the district director, principal and governing body, obtain access to and evaluate a school and any classroom in a school, observe lessons and gather first-hand evidence to inform his or her recommendations;
  - (b) on two school days' written notice, conduct an interview with a governing body or any member thereof, an official of the Department, a member of staff of a school, a learner or a parent;
  - (c) submit a written request for documentation to the principal of a school;
  - (d) without notice, enter a school and seize financial records, statements and documents, regardless of form or medium, if he or she has-
    - (i) *prima facie* proof of financial mismanagement at the school; and
    - (ii) a reasonable suspicion that the records and documents will be hidden, destroyed or tampered with if notice is given; and
  - (e) at any time make recommendations to the Provincial Minister on any matter concerning a school.
- (5) The powers contemplated in subsection (4) (a) and (b) may be exercised without notice if the Chief Evaluator has reasonable grounds to believe that this is necessary for the effective performance of the functions of the Schools Evaluation Authority.
- (6) (a) The Provincial Minister may, after consultation with the Chief Evaluator, authorise him or her to perform additional duties or exercise additional powers if the Provincial Minister has reason to believe that-
- (i) the Chief Evaluator has the capacity to perform those additional duties or exercise those additional powers; and
  - (ii) it would be in the public interest for the Chief Evaluator to do so.
- (b) The *Provincial Minister* may, after consultation with the *Chief Evaluator*, revoke the authority given to the *Chief Evaluator* in terms of paragraph (a) if the Provincial Minister has reason to believe that-
- (i) the *Chief Evaluator* no longer has the capacity to perform that additional duty or exercise that additional power; or
  - (ii) it would be in the public interest for the *Provincial Minister* to do so.
- (c) The *Provincial Minister* may, after consultation with the *Chief Evaluator*-
- (i) exempt the *Chief Evaluator* from performing a duty imposed by subsection (1); or
  - (ii) revoke a power conferred on the *Chief Evaluator*, a *Lead Evaluator* or an *Evaluator* by subsection (4).

[S. 11D inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11E. Remuneration and allowances.**-The Chief Evaluator, Lead Evaluators and Evaluators shall be paid the remuneration and allowances determined by the Provincial Minister after consultation with the financial head.

[S. 11E inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11F. Functions of Head of Department regarding Schools Evaluation Authority.**-(1) The Head of Department shall provide the Schools Evaluation Authority with general support and the necessary resources to perform its functions, including administrative support and infrastructure support.

- (2) The Head of Department shall designate officials of the Western Cape Education Department to provide

administrative support to the Schools Evaluation Authority as contemplated in subsection (1).

(3) The Head of Department shall consider the findings and recommendations referred to in section 11D (3) and implement appropriate measures to facilitate improvement.

[S. 11F inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11G. Dissolution.**-(1) The Provincial Minister may dissolve the Schools Evaluation Authority with effect from a date determined by the Provincial Minister if the Schools Evaluation Authority fails to perform its functions in a satisfactory manner, is no longer effective, or acts in a manner which is not in the best interests of education.

(2) The Provincial Minister may not act under subsection (1) unless he or she has-

- (a) given reasonable notice to the Schools Evaluation Authority of his or her intention to do so and his or her reasons therefor;
- (b) granted the Schools Evaluation Authority a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) given due consideration to any representations received.

[S. 11G inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

**11H. Regulations regarding Schools Evaluation Authority.**-The *Provincial Minister* may make *regulations* on-

- (a) procedures for the appointment of the *Chief Evaluator, Lead Evaluators* and *Evaluators* and the filling of vacancies;
- (b) the terms and conditions of appointment of the *Chief Evaluator, Lead Evaluators* and *Evaluators*;
- (c) procedures for the removal of the *Chief Evaluator, Lead Evaluators* and *Evaluators*;
- (d) procedures for the exercise of the powers referred to in section 11D (4);
- (e) the manner in which the *Chief Evaluator* shall inform the *Provincial Minister* of the matters set out in section 11D (1);
- (f) the preparation and publication of reports by the *Schools Evaluation Authority*; and
- (g) any other matter which may be necessary or expedient to prescribe in order to achieve the objects of the *Schools Evaluation Authority*.

[S. 11H inserted by s. 8 of Act No. 4 of 2018.]

[Date of commencement: 12 April 2019]

### CHAPTER 3 PUBLIC SCHOOLS

**12. Establishment and maintenance of public schools.**-(1) The *Provincial Minister* may, out of moneys appropriated for this purpose by the Legislature, establish and maintain the following public schools, namely-

- (a) pre-primary schools;
- (b) primary schools;
- (c) secondary schools;
- (d) intermediate schools;
- (e) combined schools;
- (eA) collaboration schools;

[Para. (eA) inserted by s. 9 of Act No. 4 of 2018.]

- (eB) donor funded public schools;

[Para. (eB) inserted by s. 9 of Act No. 4 of 2018.]

- (f) schools for learners with special education needs; and
- (g) any other type of school which he or she deems necessary for education.

(2) The following types of schools-

- (a) a pre-primary school;
- (b) a primary school;
- (c) a secondary school, a high school, a vocational school, agricultural school and a school where education is provided in any trade, technical, commercial, agricultural, domestic science, homecraft or any other vocational direction;
- (d) an intermediate school;
- (e) a combined school;
- (f) a school for specialized education, special school, home, centres for mentally severe handicapped learners and schools of skill;
- (g) an industrial school; or
- (h) a reform school,

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

- (i) a pre-primary school;
- (ii) a primary school;
- (iii) a secondary school;
- (iv) an intermediate school;
- (v) a combined school; or
- (vi) a school for learners with special education needs established under this section.

(3) Transitional provisions

- (a) Any school which was established or was deemed to have been established under any law governing school education in the province which existed immediately prior to the commencement of this Act other than a private school referred to in section 38, is deemed to be a public school;
- (b) The assets and liabilities which vested in a school contemplated in subsection (2) immediately prior to the commencement of this Act, vest in the public school concerned;
- (c) Funds and other movable assets used by, held for or on behalf of, a school contemplated in subsection (3) (a) which in law are the property of the State, remain at the disposal of the school, and devolve on the school from the fixed date by notice in the *Provincial Gazette*; and
- (d) The immovable property of a school contemplated in subsection (3) (a) devolves upon the State by a date determined by the National Minister by notice in the *Government Gazette* in terms of section 55 of the *South African Schools Act*.

[Para. (d) amended by s. 27 of Act No. 7 of 2010.]

(4) The *Provincial Minister* may, insofar as it is feasible and where reasonably practicable, provide education for learners with special education needs at ordinary public schools and provide relevant educational support services for such learners.

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

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

(2) Before merging two or more *public schools* the *Provincial Minister* shall-

- (a) give written notice to the *schools* in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;
- (c) give the *governing bodies* of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.

[Para. (e) amended by s. 27 of Act No. 7 of 2010.]

(3) If one or more of the *schools* that are to be merged in terms of subsection (1) are *public schools* on private property, the *Provincial Minister* shall also-

- (a) notify the owner of the private property of the intention to merge the *schools* in question;
- (b) consider any contractual obligations in terms of the agreement contemplated in section 14 of the *South African Schools Act*;

[Para. (b) amended by s. 27 of Act No. 7 of 2010.]

- (c) renegotiate any obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of section 14 of the *South African Schools Act*, if the single *school* contemplated in subsection (1) is to be situated on private property.

[Para. (d) amended by s. 27 of Act No. 7 of 2010.]

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

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

[Sub-s. (5) amended by s. 27 of Act No. 7 of 2010.]

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

(b) The interim *governing body* shall decide on the budget and differences in codes of conduct and *school fees*, as well as any issue that is relevant to the merger or which is *prescribed*, until a new *governing body* is constituted in the manner prescribed under section 24.

[Para. (b) amended by s. 27 of Act No. 7 of 2010 and by s. 10 of Act No. 4 of 2018.]

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

[S. 12A inserted by s. 8 of Act No. 7 of 2010.]

**12B. Identification of underperforming public schools.**-(1) The *Head of Department* shall, annually, from the report contemplated in section 13A (1) (b) and from other relevant reports, identify any *public school* that is underperforming in relation to any matter referred to in subsection (2) (a), (b) or (c).

(2) The *Head of Department* shall issue a written notice to the *school* contemplated in subsection (1) if satisfied that-

- (a) the standard of performance of *learners* is below the standards prescribed by the National Curriculum Statement and is likely to remain so unless the *Head of Department* exercises a power in terms of *this Act*;
- (b) there has been a serious breakdown in the way the *school* is managed or governed which is prejudicing, or likely to prejudice, the standards of performance; or
- (c) the safety of *learners* or staff is threatened.

(3) The written notice contemplated in subsection (2) shall inform the *school* that it shall-

- (a) within 14 days after delivery of the notice, respond to the notice; and
- (b) as soon as possible after that response, provide the *Head of Department* with a plan for correcting the situation.

(4) The *Head of Department* shall take all reasonable steps to assist a *school* identified in terms of subsection (1) in addressing the underperformance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), the *Head of Department* shall consider-

- (a) implementing the incapacity code and procedures for poor work performance referred to in section 16 of the *Employment of Educators Act*;

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

- (b) withdrawing the functions of the *governing body* in terms of section 8 (5) of *this Act*; or

- (c) appointing persons in terms of section 25 of the *South African Schools Act*, to perform the functions or specified functions of the *governing body*.

[Para. (c) amended by s. 27 of Act No. 7 of 2010.]

(6) The counselling of the *principal* as contemplated in item 2 (5) (b) (ii) of Schedule 1 to the *Employment of Educators Act* may include the appointment of an academic mentor or a substitute *principal* to take over the functions and responsibilities of the *principal* for the period determined by the *Head of Department*.

[Sub-s. (4) amended by s. 27 of Act No. 7 of 2010.]

(7) In order to assist the *National Minister* in carrying out his or her duties referred to in section 8 of the National Education Policy Act, 1996 (Act 27 of 1996), the *Provincial Minister* shall report to the *National Minister* within three months after the end of a *school* year on the action taken by the *Head of Department* in regard to an underperforming *public school*.

[S. 12B inserted by s. 11 of Act No. 8 of 2018.]

**12C. Collaboration schools.**-(1) The *Provincial Minister* may identify a *public school* contemplated in section 12 (1) (a) to (f) for declaration as a *collaboration school* if he or she is satisfied that such declaration will be in the interests of education at the school, having regard to relevant reports on the school, including reports on the performance of the school.

(2) Subject to subsection (1), the *Provincial Minister* may, on the recommendation of the *Head of Department*, enter into an agreement with-

- (a) a *donor*;
- (b) an *operating partner*; and
- (c) the *governing body* of a *public school*,

in terms of which an existing *public school* contemplated in section 12 (1) (a) to (f) is to be declared a *collaboration school*.

(3) The *Provincial Minister* may, on the recommendation of the *Head of Department*, enter into an agreement with a *donor* and an *operating partner* for the establishment of a new *collaboration school* and establish the *school*.

(4) The agreements contemplated in subsections (2) and (3) shall contain the minimum requirements prescribed by the *Provincial Minister*.

(5) On conclusion of an agreement contemplated in subsection (2), the *Provincial Minister* may, by notice in the *Provincial Gazette*, declare the *public school* concerned to be a *collaboration school*.

(6) The *Provincial Minister* may not make a declaration contemplated in subsection (5) unless he or she has called for public comment in respect of the intended declaration and given due consideration to any comments received.

(7) If an agreement with an operating partner or donor contemplated in subsection (2) (a) or (b) or subsection (3) is terminated, the *Provincial Minister* may, on the recommendation of the *Head of Department*, enter into a new agreement with a new *operating partner* or *donor*, as the case may be, and the school may retain its status as a collaboration school.

(8) If a new agreement is not entered into as contemplated in subsection (7)-

- (a) the school concerned shall cease to be a collaboration school;
- (b) the *Provincial Minister* shall, by notice in the *Provincial Gazette*, declare the *school* to be the applicable type of *public school* contemplated in section 12 (1) (a) to (f); and
- (c) a new governing body shall be composed in the prescribed manner.

(9) The membership of the *governing body* of a *collaboration school* shall comprise 50 per cent of representatives of the *operating partner*, with voting rights, and 50 per cent of the other members of the *governing body*, with voting rights: Provided that the *Provincial Minister* may, on good cause shown, declare that the *governing body* of a particular *collaboration school* shall comprise more than 50 per cent of the other members of the *governing body* with voting rights.

(10) In the event of an equality of votes at a meeting of a *governing body* of a *collaboration school* where the *operating partner* with voting rights comprises 50 per cent of that governing body, the matter must be determined by a majority vote at a general meeting of *parents* present and voting.

(11) The *Western Cape Education Department* must maintain the employment of *educators* and non-*educators* who, at the time of the declaration of a *collaboration school* in terms of subsection (5), are employed at the *school* in posts established in terms of the *Employment of Educators Act* or the *Public Service Act, 1994* (Proclamation 103 of 1994), in accordance with the conditions of employment applicable to those posts for as long as those *educators* and non-*educators* remain in those posts.

(12) Subject to the *Public Finance Management Act, 1999* (Act 1 of 1999), the *Western Cape Education Department* may make transfer payments to a collaboration school equivalent to the amounts required for the funding of-

- (a) posts contemplated in subsection (11) which become vacant;

- (b) new posts determined by the Head of Department for-
  - (i) educators in terms of section 5(2) of the Employment of Educators Act;
  - (ii) non-educators in terms of the Western Cape Education Department's Norms and Standards for Support Staff Provision at Ordinary Public Schools,

subject to the available resources of the Western Cape Education Department.

(13) Subject to the *regulations* contemplated in subsection (17) (b), the *governing body* of a *collaboration school* may, from the funds contemplated in subsection (12), employ *educators* and non-educators in accordance with the staff establishment, and terms and conditions of employment, determined by the *governing body*.

(14) A *collaboration school* shall be the employer of *educators* and non-educators contemplated in subsection (13).

(15) The employment of *educators* and non-educators by a *governing body* contemplated in subsection (13) is subject to the Labour Relations Act, 1995, and the Basic Conditions of Employment Act, 1997 (Act 75 of 1997).

(16) Despite section 60 of the *South African Schools Act*, the State is not liable for any act or omission by a *collaboration school* relating to its contractual responsibility as the employer in respect of staff employed in terms of subsection (13).

(17) The *Provincial Minister* must make regulations regarding-

- (a) transfer payments contemplated in subsection (12); and
- (b) the utilisation of funds by a governing body for the purposes contemplated in subsection (13),

but such regulations may not be interpreted so as to make the State the joint employer of such staff.

(18) Save as provided for in this section, the provisions of this Act and any other applicable law regulating public schools apply to collaboration schools.

[S. 12C inserted by s. 11 of Act No. 8 of 2018.]

**12D. Donor funded public schools.**-(1) The Provincial Minister may enter into an agreement with-

- (a) a *donor*; and
- (b) the *governing body* of a *public school*, in terms of which an existing public school contemplated in section 12 (1) (a) to (f) is to be declared a *donor funded public school*, provided that the *Provincial Minister* is satisfied that such declaration will be in the interests of *education* at the *school*.

(2) The Provincial Minister may enter into an agreement with a donor for the establishment of a new donor funded public school and establish the school.

(3) The agreements contemplated in subsections (1) and (2) shall contain the minimum requirements *prescribed* by the *Provincial Minister*.

(4) On conclusion of an agreement contemplated in subsection (1), the *Provincial Minister* may, by notice in the *Provincial Gazette*, declare the *public school* concerned to be a *donor funded public school*.

(5) The *Provincial Minister* may not make a declaration contemplated in subsection (4) unless he or she has called for public comment in respect of the intended declaration and given due consideration to any comments received.

(6) In the event of the termination of an agreement contemplated in subsection (1) or (2)-

- (a) the school concerned shall cease to be a donor funded public school;
- (b) the *Provincial Minister* shall, by notice in the *Provincial Gazette*, declare the *school* to be the applicable type of *public school* contemplated in section 12 (1) (a) to (f); and
- (c) a new *governing body* shall be composed in the *prescribed* manner.

(7) The membership of the *governing body* of a *donor funded public school* may include representatives of the *donor*, with voting rights, up to a maximum of 50 per cent;

(8) In the event of an equality of votes at a meeting of a *governing body* of a *donor funded public school* where the representatives of the *donor* with voting rights comprise 50 per cent of that *governing body*, the matter must be determined by a majority vote at a general meeting of *parents* present and voting.

(9) The Provincial Minister may, on good cause shown, declare that the *governing body* of a particular *donor funded public school* shall comprise more than 50 per cent of the representatives of the *donor* with voting rights.

(10) Save as provided for in this section, the provisions of *this Act* and any other applicable law regulating *public schools* apply to *donor funded schools*.

[S. 12D inserted by s. 11 of Act No. 8 of 2018.]

**12E. Intervention facility.**-(1) Subject to the available resources of the *Western Cape Education Department*, the *Provincial Minister* may establish an *intervention facility* for learners who have been found guilty of serious misconduct.

(2) An *intervention facility* shall provide for-

- (a) therapeutic programmes and intervention strategies in order to address the serious misconduct; and
- (b) curriculum delivery equivalent to the standard provided in legislation and policies applicable to public schools.

(3) An *intervention facility* may include residential care.

[S. 12E inserted by s. 11 of Act No. 8 of 2018.]

**13. Governance and professional management of public schools.**-(1) Subject to *this Act* and the *South African Schools Act*, the governance of every *public school* is vested in its *governing body* and it may perform only such functions and obligations and exercise only such rights as *prescribed* by those Acts.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

(3) Subject to *this Act* and the *South African Schools Act*, the professional management of a *public school* shall be undertaken by the *principal* under the authority of the *Head of Department*.

[Sub-s. (3) amended by s. 27 of Act No. 7 of 2010.]

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

(5) When the *Head of Department* decides that a *school* contemplated in subsection (4) should be reopened, the *Head of Department* shall inform the *governing body* and the *principal* of the date on which the *school* shall reopen.

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

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

[Sub-s. (7) amended by s. 27 of Act No. 7 of 2010 and by s. 12 of Act No. 4 of 2018.]

[S. 13 substituted by s. 9 of Act No. 7 of 2010.]

**13A. Functions and responsibilities of principal of public school.**-(1) (a) *The principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23 (1) (b) and 24 (1) (j) of the *South African Schools Act*.

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

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

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

[Sub-para. (i) amended by s. 27 of Act No. 7 of 2010.]

(ii) the effective use of available resources.

(c) (i) *The principal* of a *public school* identified by the *Head of Department* in terms of section 12B shall annually, before the beginning of the first *school* term, prepare a plan setting out how academic performance at the *school* will be improved.

(ii) The academic performance improvement plan shall be-

- (aa) presented to the *Head of Department* on a date determined by the *Head of Department*; and
- (bb) tabled at a *governing body* meeting.

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

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

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

(2) The *principal* shall-

- (a) in undertaking the professional management of a *public school* as contemplated in section 13 (3), carry out duties which include, but are not limited to-
  - (i) the implementation of all the educational programmes and curriculum activities;
  - (ii) the management of all *educators* and support staff;
  - (iii) the management of the use of learning support material and other equipment;
  - (iv) the performance of functions delegated to the *principal* by the *Head of Department* in terms of *this Act*;
  - (v) the safekeeping of all *school* records; and
  - (vi) the implementation of policy and legislation;
- (b) attend and participate in all meetings of the *governing body*;
- (c) provide the *governing body* with a report about the professional management relating to the *public school*;
- (d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;
- (e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;
- (f) inform the *governing body* about policy and legislation; and
- (g) provide accurate data to the *Head of Department* when requested to do so.

(3) The *principal* shall assist the *governing body* in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with-

- (a) instructions of the *Head of Department*;
- (b) legislation or policy;
- (c) any obligation towards the *Head of Department*, the *Provincial Minister* or the *National Minister*; or
- (d) a provision of the *Employment of Educators Act*, and the *Personnel Administration Measures* determined in terms thereof.

[S. 13A inserted by s. 10 of Act No. 7 of 2010.]

**14. 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 *Provincial Minister* and the owner of the private property.

[S. 14 substituted by s. 13 of Act No. 4 of 2018.]

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

- (a) the provisions of education and the performance of the normal functions of a public school;
- (b) governance of the public school, including the relationship between the governing body of the public school and the owner;
- (c) access by all learners, parents of learners, educators, members of staff employed at such public school and officials of the Western Cape Education Department to the property on which the public school stands;
- (d) security of occupation and use of the property by the public school;
- (e) maintenance and improvement of the school buildings and the property and the supply of necessary services; and
- (f) protection of the owner's rights in respect of the property occupied, affected or used by the public school.

(3) The provisions of the *Deeds Registries Act, 1937 (Act 47 of 1937)*, do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this subsection.

(4) If an agreement contemplated in subsection (1), does not exist at the fixed date in respect of a school standing on private property and which is deemed to be a public school in terms of section 52 (1) of the *South African Schools Act*, the *Provincial Minister* must take reasonable measures to conclude such an agreement within six months of the fixed date.

[Sub-s. (4) amended by s. 27 of Act No. 7 of 2010.]

(5) If the private property occupied by a public school contemplated in subsection (1) is owned by a religious organisation, such owner may require that the agreement in terms of subsection (1) must recognise in an appropriate manner with this Act, the distinctive religious character of the school.

(6) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

(7) Despite subsection (3), a registrar of a deeds registry must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the registrar receives-

- (a) an application for such endorsement by the owner of the property, or the *Provincial Minister* 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 *Provincial Minister*, stating that an agreement contemplated in this section has been concluded.

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

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

**16. Public schools on State property.**-(1) Immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

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

[Sub-s. (2) amended by s. 27 of Act No. 7 of 2010.]

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

- (a) by the *Provincial Minister*; and
- (b) if the immovable property is not utilised by the school in the interest of education.

(4) The *Provincial Minister* 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 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; 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 has been concluded between the *Provincial Minister*, with the concurrence of the *Provincial Minister responsible for public works*, and the prospective owner of the immovable property.

[Sub-s. (6) substituted by s. 14 of Act No. 4 of 2018.]

(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 47 of 1937), do not apply to the right contemplated in subsection (2).

**17. Expropriation.**-Land and real rights in or over land for any purpose related to school education in the province may be expropriated by the *Provincial Minister* in terms of section 58 of the *South African Schools Act*.

**18. Closure of public schools.**-The *Provincial Minister* may at any time close a public school in terms of section 33 of the *South African Schools Act*.

[S. 18 amended by s. 27 of Act No. 7 of 2010 and substituted by s. 15 of Act No. 4 of 2018.]

**19. 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 20 of 1957), apply to any claim under subsection (1).

**20. Duty of schools to provide information.**-(1) A school must make information available for inspection by any authorized person, insofar as such information is required for the exercise and protection of such person's rights.

(2) Every school must provide such information about the school as is reasonably required by the Head of Department.

**20A. Schools for learners with special education needs.**-(1) A public school for learners with special education needs as contemplated in section 12 (3) of the *South African Schools Act* may consist of-

(a) a special school to provide education to learners with barriers to learning; or

(b) a special school which provides education with a specialised focus.

(2) The *Provincial Minister* may, subject to applicable national norms and standards, prescribe by regulation admission criteria, funding and governance models for the schools contemplated in subsection (1).

[S. 20A inserted by s. 11 and amended by s. 27 of Act No. 7 of 2010.]

**20B. Norms and standards for basic infrastructure and capacity in public schools.**-(1) Subject to any applicable national norms and standards contemplated in section 146 (2) of the *Constitution*, the *Provincial Minister* may prescribe by regulation minimum uniform norms and standards for-

(a) school infrastructure;

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

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

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010 and by s. 16 of Act No. 4 of 2018.]

(2) When determining policy in terms of sections 5 (5) and 6 (2) of the *South African Schools Act*, a governing body must comply with the norms and standards contemplated in subsection (1) and any norms and standards prescribed by the *National Minister* under section 5A of the *South African Schools Act*.

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

[S. 20B inserted by s. 11 and amended by s. 27 of Act No. 7 of 2010.]

#### CHAPTER 4 GOVERNING BODIES

**21. Establishment of governing bodies for public schools.**-The *Provincial Minister* shall establish a governing body for a public school in the prescribed manner: Provided that, instead of establishing a governing body for each of two or more such public schools, one governing body may be established for such public schools by him or her, which governing body shall also govern the hostel(s) of the public school(s) concerned, as the case may be.

[Date of commencement: 01 March 2019]

**21A. Functions of all governing bodies.**-(1) Subject to *this Act* and the *South African Schools 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) adhere to any actions taken by the *Head of Department* in terms of section 16 of the *Employment of Educators Act* to address the incapacity of a *principal* or *educator* to carry out their duties effectively;  
[Para. (f) amended by s. 27 of Act No. 7 of 2010.]
- (g) determine times of the *school* day consistent with any applicable conditions of employment of *members of staff* at the *school*;
- (h) administer and control the *school's* property, and buildings and grounds occupied by the *school*, including *school hostels*, but the exercise of this power shall not in any manner interfere with or otherwise hamper the implementation of a decision made by the *Provincial Minister* or *Head of Department* in terms of any law or policy;  
[Para. (h) amended by s. 27 of Act No. 7 of 2010.]
- (i) encourage *parents*, *learners*, *educators* and other staff at the *school* to render voluntary services to the *school*;
- (j) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the *Employment of Educators Act* and the Labour Relations Act, 1995 (Act 66 of 1995);  
[Para. (j) amended by s. 27 of Act No. 7 of 2010.]
- (k) recommend to the *Head of Department* the appointment of non-educator staff at the *school*, subject to the Public Service Act, 1994 (Proclamation 103 of 1994), and the Labour Relations Act, 1995;
- (l) make the recommendation contemplated in paragraph (k) within the time frames contemplated in section 6 (3) (l) of the *Employment of Educators Act*;  
[Para. (l) amended by s. 27 of Act No. 7 of 2010.]
- (m) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the *school* for educational programmes not conducted by the *school*;
- (n) discharge all other functions imposed upon the *governing body* by or under *this Act* or the *South African Schools Act*; and
- (o) discharge other functions consistent with the *South African Schools Act*, as determined by the *National Minister* by notice in the *Government Gazette*, or by the *Provincial Minister* by notice in the *Provincial Gazette*.  
[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

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

(4) Subject to *this Act*, the Labour Relations Act, 1995, and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Provincial Minister* in terms of section 5 (1) of the *Employment of Educators Act*.  
[Sub-s. (4) amended by s. 27 of Act No. 7 of 2010.]

(5) Subject to *this Act*, the Labour Relations Act, 1995, and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994.

(6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) shall comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995, and any other applicable law.

(7) . . . . .

[Sub-s. (7) deleted by s. 17 (a) of Act No. 4 of 2018.]

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

- (a) the ability of the candidate;
- (b) the principle of equity;
- (c) the need to redress past injustices; and
- (d) the need for representivity.

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

[Sub-s. (9) amended by s. 27 of Act No. 7 of 2010.]

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

(11) The *Provincial Minister* may determine norms and standards by notice in the *Provincial Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

[Sub-s. (11) amended by s. 27 of Act No. 7 of 2010 and by s. 17 (b) of Act No. 4 of 2018.]

[S. 21A inserted by s. 12 and amended by s. 27 of Act No. 7 of 2010.]

**22. Meetings of governing bodies.**-(1) A governing body shall elect from its number in the prescribed manner, at least, a chairperson, treasurer and a secretary who shall each hold office for the prescribed period.

(2) In the absence of the chairperson from a meeting of a governing body the members present shall elect any person from their number to preside at that meeting.

(3) The decision of one more than half of the number of members of a governing body present at a meeting of that governing body, constitutes a decision of that governing body, and in the event of an equality of votes, the person presiding at the meeting shall, in addition to his or her deliberative vote, have a casting vote.

(4) No decision taken by a governing body or action taken on the authority of a governing body shall be invalid merely by reason of the fact that a vacancy existed on that governing body or because a person who was not entitled to sit as a member of that governing body sat on that governing body as such a member, at the time when the decision was taken or the action was authorized, if the decision was taken or the action was authorized by one more than the half of the members of the governing body who were then present and entitled to sit as members.

**23. Committees.**-(1) A governing body may establish one or more committees which, subject to the instructions of that governing body, shall perform such functions as the governing body determines.

(2) A committee of a governing body shall consist of one or more member, of that governing body or one or more other persons who are not members of the governing body.

(3) One of the members of a governing body shall be designated by that governing body as chairperson of the committee.

(4) A governing body shall not be divested of a function which in terms of this section has been assigned to a committee of that governing body.

(5) A governing body may at any time dissolve or recompose a committee contemplated in subsection (1).

**24. Regulations relating to governing bodies.**-(1) The *Provincial Minister* may make regulations as to-

- (a) the composition and functions of governing bodies;
- (b) the qualifications for appointment, designation or election as, the terms of office of, and the vacation of their offices by, members of governing bodies and the filling of casual vacancies in governing bodies;
- (c) the manner of election, functions of chairpersons, treasurers and secretaries of governing bodies;
- (d) the convening of, procedure and rules at, and quorum for, meetings of governing bodies and committees of governing bodies and the keeping of minutes of such meetings; and

(e) the dissolution and recomposition of governing bodies.

(2) The *Provincial Minister* shall not make a regulation relating to monies or allowances payable to or by any person, or relating to the control of money and State goods, except with the concurrence of the financial head.

**25. Continuation of certain councils.**-Subject to the provisions of section 54 of the *South African Schools Act*, a management council, board of management, local or domestic council, committee, board or other body for the control and management of a public school, continues to exist.

[S. 25 amended by s. 27 of Act No. 7 of 2010.]

[Date of commencement: 01 March 2019]

**26. Remuneration of members of governing bodies and committees of governing bodies.**-(1) No member of a governing body or committee of a governing body may be remunerated in any way for the performance of his or her duties.

(2) Necessary expenses incurred by a member of a governing body or committee of a governing body in the performance of his or her duties as directed by such governing body, may be reimbursed by the governing body.

**26A. Code of conduct of governing body.**-(1) The *Provincial Minister* shall, by notice in the *Provincial Gazette*, determine a code of conduct for the members of the *governing body of a public school* after consultation with associations of *governing bodies* in the *province*, if applicable.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

(2) The 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 a quality governance structure at a *public school*.

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

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

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

(6) A member of a *governing body* may appeal to the *Provincial Minister* against a decision of the *Head of Department* to suspend or terminate the membership of a *governing body* member.

[S. 26A inserted by s. 13 and amended by s. 27 of Act No. 7 of 2010.]

## CHAPTER 5 INDEPENDENT SCHOOLS

**27. Establishment of independent schools.**-(1) No person may establish, conduct or maintain an independent school unless it is registered by the Head of Department.

(2) Subject to this Act and any applicable legislation, any person may, at his or her own cost, establish and maintain an independent school.

**27A. Admission age to independent school.**-(1) The admission age of a *learner* to an *independent school* to-

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

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

(2) An *independent school* may admit a *learner* who is under the age contemplated in subsection (1) if-

(a) good cause is shown to the *Head of Department*; and

(b) the *learner* complies with the criteria contemplated by section 45A (c) of the *South African Schools Act*.

[Para. (b) amended by s. 27 of Act No. 7 of 2010.]

(3) For the purpose of subsection (2) (a), good cause shown means that-

(a) it can be shown that exceptional circumstances exist which necessitate the admission of an underage

*learner* because admission would be in the *learner's* best interest; and

- (b) the refusal to admit that *learner* would be severely detrimental to the *learner's* development.

[S. 27A inserted by s. 14 of Act No. 7 of 2010.]

**28. Application for registration.**-(1) The *Provincial Minister* must, by notice in the *Provincial Gazette*, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.

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

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

**29. Consideration of applications for registration of independent schools.**-(1) Subject to the provisions of section 46 of the *South African Schools Act*, the Head of Department may grant an application referred to in section 28, if he or she is of the opinion that the prescribed requirements have been complied with.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

(2) If the Head of Department refuses an application referred to in section 28, he or she shall notify the applicant in writing of such refusal and the reasons therefor.

**30. Registration of independent schools.**-(1) If the Head of Department grants an application referred to in section 28, 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.

(2) The registration of an independent school shall be subject to the prescribed conditions.

(3) An independent school registered in terms of a law repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be an independent school registered in terms of this Act.

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

**31. Subsidies to registered independent schools.**-The granting of subsidies to registered *independent schools* shall be dealt with as *prescribed* by the *Provincial Minister*, with the concurrence of the *financial head*.

[S. 31 amended by s. 27 of Act No. 7 of 2010 and substituted by s. 18 of Act No. 4 of 2018.]

**32. Withdrawal of registration.**-The registration of an independent school shall be withdrawn under the prescribed circumstances.

**33. Appeal against refusal or withdrawal of registration.**-(1) A person who feels aggrieved by the refusal by the Head of Department of an application contemplated in section 28, or the withdrawal of registration in terms of section 32, may, within 30 days after receiving notice of such refusal or withdrawal, appeal to the *Provincial Minister* in writing, setting out the grounds of appeal, against the refusal or withdrawal.

(2) The *Provincial Minister* shall consider an appeal referred to in subsection (1), and may confirm or set aside the decision of the Head of Department.

**34. Declaration of independent schools as public schools.**-(1) The *Provincial Minister* may enter into an agreement with the owner of an independent school in terms of which such an independent school may be declared to be a public school.

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

(3) If an agreement has been entered into under subsection (1), the *Provincial Minister* must by notice in the *Provincial Gazette* declare the independent school to be a public school with effect from a date mentioned in the notice.

**35. Consequences of declaration as public school.**-(1) As from the date mentioned in the notice contemplated in section 34 (3)-

- (a) the independent school concerned shall be deemed to be a public school established under section 12;
- (b) there shall no longer vest in the previous owner any rights or functions in respect of the school concerned;
- (c) the rights obtained and obligations incurred by the owner concerned, or the purposes of or in connection with the school concerned, shall vest in the State; and
- (d) the ownership and control of movable and immovable property which immediately prior to that date vested in the owner concerned, and which relates to the school concerned, shall vest in the public school in question, unless otherwise agreed upon in terms of section 34 (1).

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

(3) The registrar of deeds in whose office 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 his or her register as may be required to register the transfer concerned.

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

**36. Registration of learners for education at home.**-The requirements and conditions for the registration of a learner for education at home shall be as prescribed.

**37. Regulations relating to independent schools.**-(1) The *Provincial Minister* may make regulations as to-

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

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

(3) The *Provincial Minister* shall not make a regulation relating to moneys and allowances payable to or by any person, or relating to the control of money and State goods, except with the concurrence of the financial head.

**38. Continued existence of private schools.**-A private school which was registered or deemed to have been registered under the provisions of a law governing school education in the province, and which existed immediately prior to the fixed date, shall be deemed to be an independent school registered in terms of section 30 of this Act.

## CHAPTER 6 LEARNERS

**39. Identification, admission, placement, referral, transfer, discharge and exemption of learners with special education needs.**-(1) The Head of Department shall, in the process of identification, admission, placement, referral, transfer, discharge and exemption of a learner with special education needs from compulsory school attendance, take into consideration the rights and wishes of the parent of such learner.

(2) The Head of Department must inform the parent of a learner referred to in subsection (1) in writing of each of the actions contemplated in subsection (1).

(3) If the parent referred to in subsections (1) and (2), is aggrieved by any of the actions contemplated in subsections (1) and/or (2), such parent may, within 30 days from the date of receipt of the written reports on any of these actions, appeal to the *Provincial Minister* against the findings.

(4) The *Provincial Minister* shall consider an appeal contemplated in subsection (3), and may confirm or set aside the findings of the *Head of Department*.

**40. Repealed**

[S. 40 repealed by s. 19 of Act No. 4 of 2018.]

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

(2) The *governing body* of a *public school* may not administer any test related to the admission of a *learner* to a *public school* or direct or authorise the *principal* of the *school* or any other person to administer such a test, except in the case of the admission of a *learner* to a *public school* contemplated in section 20A.

[Sub-s. (2) amended by s. 20 of Act No. 4 of 2018.]

(3) No *learner* may be refused admission to a *public school* on the grounds that the *learner's parent*-

(a) is unable to pay or has not paid the *school fees* determined under section 39 of the *South African Schools Act*;

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

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

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

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

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

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

(b) Subject to the availability of suitable *school* places and other educational resources, the *Head of Department* may admit a *learner* who is under the age contemplated in paragraph (a) if-

(i) good cause is shown to the *Head of Department*; and

(ii) the *learner* complies with the criteria contemplated by section 5 (4) (c) of the *South African Schools Act*.

[Sub-para. (ii) amended by s. 27 of Act No. 7 of 2010.]

(c) For the purpose of paragraph (b) (i), good cause shown means that-

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

(ii) the refusal to admit that *learner* would be severely detrimental to the *learner's* development.

(5) Subject to *this Act* and the *South African Schools Act*, the admission policy of a *public school* is determined by the *governing body* of the *school*.

[Sub-s. (5) amended by s. 27 of Act No. 7 of 2010.]

(6) An application for the admission of a *learner* to a *public school* shall be made to the *Western Cape Education Department* in a manner determined by the *Head of Department*.

(7) If an application in terms of subsection (6) is refused, the *Head of Department* shall inform the *parent* in writing of the refusal and the reason therefor.

(8) Any *learner* or *parent* of a *learner* who has been refused admission to a *public school* may appeal against the decision to the *Provincial Minister*.

[S. 41 substituted by s. 15 and amended by s. 27 of Act No. 7 of 2010.]

**42. Compulsory school attendance.**-(1) Subject to the *South African Schools Act*, every *parent* shall cause every *learner* for whom he or she is responsible to attend a *school* from the first *school* day of the year in which the *learner* reaches the age of seven years until the last *school* day of the year in which the *learner* reaches the age of fifteen years or the ninth *grade*, whichever occurs first.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

(2) The *Provincial Minister* shall ensure that there are enough *school* places so that every child who lives in the *province* can attend *school* as required by subsection (1).

[Sub-s. (2) amended by s. 27 of Act No. 7 of 2010.]

(3) If the *Provincial Minister* cannot comply with subsection (2) because of a lack of capacity existing at the date of commencement of the Western Cape Provincial School Education Amendment Act, 2010, he or she shall take steps to remedy any such lack of capacity as soon as possible and shall make an annual report to the *National Minister* on the progress achieved in doing so.

[Sub-s. (3) amended by s. 27 of Act No. 7 of 2010.]

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

- (a) investigate the circumstances of the *learner's* absence from *school*;
- (b) take appropriate measures to remedy the situation; and
- (c) failing such a remedy, issue a written notice to the *parent* of the *learner* requiring compliance with subsection (1).

(5) Subject to the *South African Schools Act*, and any other applicable law-

- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months;
- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

[Sub-s. (5) amended by s. 27 of Act No. 7 of 2010.]

[S. 42 substituted by s. 16 of Act No. 7 of 2010.]

**43. Exemption from compulsory school attendance.**-(1) The *Head of Department* may, on receipt of a written application, either entirely or for such period and on such conditions as he or she may determine, exempt a *learner* in writing entirely, partially or conditionally from *compulsory school attendance* introduced under section 42 if it is in the best interests of the *learner*.

[Sub-s. (1) substituted by s. 17 of Act No. 7 of 2010.]

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

**44. Language policy and religious observances at public schools.**-Subject to the provisions of sections 6 and 7 of the *South African Schools Act*, the language policy and the religious observances at public school shall be determined by its governing body: Provided that in the case of public school for learners with special education needs, the governing body shall determine the language policy in consultation with the *Head of Department*.

[S. 44 amended by s. 27 of Act No. 7 of 2010.]

**45. Code of conduct, suspension and expulsion at public schools.**-(1) The governing body of a public school must adopt a code of conduct for learners in terms of section 8 of the *South African Schools Act*.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

[Sub-s. (2) substituted by s. 18 of Act No. 7 of 2010.]

(3) A *governing body* shall conduct disciplinary proceedings in the manner contemplated in section 8 of the *South African Schools Act* against a *learner* within seven *school* days after the suspension of the *learner*.

[Sub-s. (3) added by s. 18 and amended by s. 27 of Act No. 7 of 2010.]

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

[Sub-s. (4) added by s. 18 of Act No. 7 of 2010.]

(5) A *governing body* may, if a *learner* is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8 of the *South African Schools Act*-

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

- (b) make a recommendation to the *Head of Department* to expel the *learner* from the *public school*-
  - (i) refer the learner to an intervention facility for a specified period not exceeding 12 months at any one time, if the parents consent to the referral; or  
[Sub-Para. (i) inserted by s. 21 (a) of Act No. 4 of 2018.]
  - (ii) expel the learner from the public school.  
[Sub-Para. (ii) inserted by s. 21 (a) of Act No. 4 of 2018.]  
[Sub-s. (5) added by s. 18 and amended by s. 27 of Act No. 7 of 2010.]

(6) The *Head of Department* shall, within 14 days after receiving a recommendation contemplated in subsection (5) (b)-

- (a) in the case of a recommendation contemplated in subsection (5) (b) (i), decide whether or not to refer the *learner* to an *intervention facility* for a period not exceeding 12 months at any one time, if the *parents* consent to the referral; or
- (b) in the case of a recommendation contemplated in subsection (5) (b) (ii), decide whether or not to expel the learner.  
[Sub-s. (6) added by s. 18 of Act No. 7 of 2010 and substituted by s. 21 (b) of Act No. 4 of 2018.]

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

[Sub-s. (7) added by s. 18 of Act No. 7 of 2010 and substituted by s. 21 (c) of Act No. 4 of 2018.]

(8) A *learner* at a *public school* may be expelled only-

- (a) by the *Head of Department*; and
- (b) if found guilty of serious misconduct after disciplinary proceedings contemplated in section 8 of the *South African Schools Act* were conducted.  
[Sub-s. (8) added by s. 18 and amended by s. 27 of Act No. 7 of 2010.]

(9) The *Provincial Minister* 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;
- (c) provisions of due process safeguarding the interests of the *learner* and any other party involved in disciplinary proceedings.  
[Sub-s. (9) added by s. 18 and amended by s. 27 of Act No. 7 of 2010.]

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

[Sub-s. (10) added by s. 18 and amended by s. 27 of Act No. 7 of 2010.]

(11) If a *learner* who is subject to compulsory attendance in terms of section 42 (1) is expelled from a *public school*, the *Head of Department* shall make an alternative arrangement for his or her placement at a *public school*.

[Sub-s. (11) added by s. 18 of Act No. 7 of 2010.]

(12) A *learner* who has appealed in the manner contemplated in subsection (10) shall, pending the outcome of the appeal, be given access to *education* in the manner determined by the *Head of Department*.

[Sub-s. (12) added by s. 18 of Act No. 7 of 2010.]

(13) The *Head of Department*, in determining the manner of attendance contemplated in subsection (12)-

- (a) shall take reasonable measures to protect the rights of other *learners* and *educators* at the *public school*; and
- (b) may consider an alternative method of providing *education* to the *learner* contemplated in subsection (12).  
[Sub-s. (13) added by s. 18 of Act No. 7 of 2010.]

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

[Sub-s. (14) added by s. 18 of Act No. 7 of 2010.]

(14A) The sanction referred to in subsection (14) may include, on the recommendation of the governing body and with the consent of the parents of the learner, referral to an intervention facility for a specified period, which

may not exceed 12 months at any one time.

[Sub-s. (14A) added by s. 21 (d) of Act No. 4 of 2018.]

(14B) A learner who has been referred to an intervention facility in terms of subsection (6) (a) or (14A) shall, after the lapse of the specified period contemplated in those subsections, be admitted to the same public school that he or she attended prior to the referral.

[Sub-s. (14B) added by s. 21 (d) of Act No. 4 of 2018.]

(15) If the *Head of Department* decides not to impose a sanction on the *learner*, the *Head of Department* shall refer the matter back to the *governing body* for an alternative sanction, other than expulsion, in terms of the code of conduct contemplated in subsection (1).

[Sub-s. (15) added by s. 18 of Act No. 7 of 2010.]

(16) The *governing body* shall implement the sanction contemplated in subsection (14).

[Sub-s. (16) added by s. 18 of Act No. 7 of 2010.]

**45A. Prohibition of dangerous objects, illegal drugs and alcoholic liquor on school premises.**-(1) Unless authorised by the principal for legitimate educational purposes, no person may bring any *dangerous object*, alcoholic liquor or *illegal drug* onto *school* premises or have in his or her possession any *dangerous object*, alcoholic liquor or *illegal drug* on *school* premises or during any *school activity*.

(1A) Subsection (1) does not apply to the lawful consumption of alcoholic liquor by a person other than a learner at a school activity that is held off school premises.

[Sub-s. (1A) added by s. 22 of Act No. 4 of 2018.]

(2) The *principal* or his or her delegate may-

- (a) search any *learner*, or the property of any *learner*, for any *dangerous object*, alcoholic liquor or *illegal drug*, if the *principal* reasonably suspects the presence of a *dangerous object*, alcoholic liquor or *illegal drug* on the *school* premises or during a *school activity*; and
- (b) seize any *dangerous object*, alcoholic liquor or *illegal drug*, found during the search.

(3) A person conducting a search contemplated in subsection (2) shall do so in a manner that is reasonable and proportional to the aims and objects of the search.

(4) Where a search contemplated in subsection (3) entails the body search of any *learner*, the person searching the learner-

- (a) may not require the learner to remove any clothing other than outer clothing;
- (b) shall be of the same gender as the *learner*; and
- (c) may carry out the search only in the presence of another *member of staff who* is also of the same gender as the *learner*.

(5) If, as a result of a search or as a result of reliable information received, or for any other reason, the *principal* has good reason to believe that any *dangerous object*, alcoholic liquor or *illegal drug* is concealed on the body or person of a particular *learner*, the *principal* may request a member of the South African Police Service to conduct a more extensive search of that *learner's* person, which may entail the removal of clothing.

(6) Any *dangerous object*, alcoholic liquor or *illegal drug* that has been seized shall be-

- (a) clearly and correctly labelled with full particulars, including-
  - (i) where it was found and, if applicable, the name of the *learner* in whose possession it was found;
  - (ii) the time and date of search and seizure;
  - (iii) an incident reference number;
  - (iv) the name of the person who conducted the search;
  - (v) the name of the *member of staff in* whose presence the search was conducted, where applicable; and
  - (vi) any other details that may be necessary to identify the item and incident;
- (b) recorded in the *school* record book; and
- (c) handed over to a member of the South African Police Service immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(7) If the police cannot collect the *dangerous object*, alcoholic liquor or *illegal drug* from the *school* immediately, the *principal* or his or her delegate shall:

- (a) take the *dangerous object*, alcoholic liquor or *illegal drug* to the nearest police station; and
- (b) hand the *dangerous object*, *illegal drug* or alcoholic liquor over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977.

(8) The police officer who receives the *dangerous object*, alcoholic liquor or *illegal drug* shall issue an official receipt for it to the *principal* or delegate.

(9) The *principal* or his or her delegate may administer a urine or other non-invasive test to any *learner* if the *principal* has reasonable ground for suspecting that the *learner*-

- (a) is in possession of or using alcoholic liquor or *illegal drugs*; or
- (b) is under the influence of alcoholic liquor or *illegal drugs*,

during *school* hours or at a *school activity*.

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

- (a) the test is conducted by a person of the same gender as the *learner*;
- (b) it is done in a private area;
- (c) one adult witness, of the same gender as the *learner*, is present;
- (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (6), with the necessary changes; and
- (e) a device contemplated in section 8A (11) of the *South African Schools Act* is used.

[Para. (e) amended by s. 27 of Act No. 7 of 2010.]

(11) The *principal* or his or her delegate shall-

- (a) within one working day, if practicable, inform the *parent* of the *learner* concerned that a test or search and seizure was done in respect of the *learner*; and
- (b) inform the *learner* and *parent* of the result of the test immediately after it becomes available.

(12) A person who exercises a power under this section may use such force as is reasonable in the circumstances for exercising that power.

(13) A *learner* may be subjected to disciplinary proceedings if-

- (a) the *learner* is in possession of a *dangerous object*, alcoholic liquor or an *illegal drug* during *school* hours or at a *school activity*; or
- (b) the *learner* tested positive for alcoholic liquor or an *illegal drug* in the circumstances described in subsection (10).

(14) Any disciplinary proceedings in respect of a *learner* shall be conducted in terms of the code of conduct contemplated in section 45 (1).

[S. 45A inserted by s. 19 of Act No. 7 of 2010.]

#### **45B. Exception to prohibition of alcoholic liquor on school premises or during school activities.-**

(1) Notwithstanding the prohibition of alcoholic liquor on *school* premises or during any *school activity* contemplated in section 45A(1), the *Head of Department* may, on application in writing, authorise a *governing body* or, in the case of a staff function, a principal of a public school to permit the consumption or sale of alcoholic liquor on school premises or at any *school activity* or *school activities* held on school premises.

(2) In considering an application contemplated in subsection (1), the *Head of Department* must have due regard to policies of the Western Cape Government regarding alcohol harms reduction.

(3) A *governing body* or *principal* who has been given the authority contemplated in subsection (1) may permit the consumption or sale of alcoholic liquor on the *school's* premises or at any *school activity* or *school activities* held on the *school's* premises.

(4) The consumption or sale of alcoholic liquor as contemplated in this section is subject to-

- (a) the Western Cape Liquor Act, 2008, and any conditions imposed in terms of that Act; and
- (b) any conditions set by-
  - (i) the *governing body*;
  - (ii) the *principal* in the case of a staff function; and
  - (iii) the *Head of Department*.

(5) Notwithstanding subsections (1) and (3), the consumption and sale of alcoholic liquor on *school* premises or at a *school activity* held on *school* premises are not permitted during *school* hours.

(6) The *Head of Department* may, on reasonable grounds, withdraw the approval contemplated in subsection (1).

(7) The *Head of Department* may not withdraw the approval contemplated in subsection (1) unless he or she has-

- (a) informed the *governing body* or the *principal* of his or her intention to do so and the reasons therefor;
- (b) granted the *governing body* or *principal* a reasonable opportunity to make representations to him or her relating thereto; and
- (c) duly considered any representations received.

(8) In cases of urgency, the *Head of Department* may withdraw an approval contemplated in subsection (1) without complying with subsection (7), provided that the *Head of Department*-

- (a) furnishes the governing body or principal with reasons for his or her decision;
- (b) gives the governing body or principal a reasonable opportunity to make representations relating to his or her decision; and
- (c) duly considers any representations received.

(9) The *Head of Department* may, on good cause shown by the *school*, reverse or suspend his or her decision contemplated in subsection (6) or (8).

(10) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Provincial Minister*.

(11) The *Head of Department*-

- (a) may issue guidelines to schools for the consumption or sale of alcoholic liquor on school premises or at a school activity in accordance with this section; and
- (b) must issue guidelines to schools regarding the presence of learners when alcoholic liquor is consumed or sold on school premises or at a school activity in accordance with this section.

[S. 45B inserted by s. 23 of Act No. 4 of 2018.]

**45C. Consent for school outings.**-A public school must obtain the prior written consent of a parent authorising the learner to attend a school activity outside of the school premises, excluding routine sporting activities.

[S. 45C inserted by s. 23 of Act No. 4 of 2018.]

**46. Corporal punishment.**-No person shall administer corporal punishment to a learner at a school.

**46A. Prohibition of initiation practices.**-(1) A person may not conduct or participate in any initiation practices against a *learner* at a *school*.

(2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action shall be instituted against such a person in accordance with the applicable code of conduct, contemplated in section 26A or 45 (1) of *this Act* or contained in Schedule 2 to the *Employment of Educators Act*.

[Para. (a) amended by s. 27 of Act No. 7 of 2010.]

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

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

- (a) endangers the mental or physical health or safety of a person;
- (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
- (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
- (d) undermines the fundamental rights and values that underpin the *Constitution*;
- (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or

- (f) destroys public or private property.  
[S. 46A inserted by s. 20 of Act No. 7 of 2010.]

**46B. Prohibition of political activities during school time.**-(1) *School* time shall be used for educational activities only.

(2) No person may conduct party political activities on *school* premises during *school* time, including-

- (a) campaigning;
- (b) conducting a rally;
- (c) distributing party political literature; and
- (d) hanging of posters.

(3) A *governing body* or *principal* may not allow a political party or a member of such a party to conduct party political activities at a *school* during *school* time.

(4) A *school* may not allow the display of material of a party political nature within the premises of the *school*, other than as part of the prescribed curriculum.

(5) For the purposes of this section, "*school* time" means the times of the *school* day determined by the *governing body* under section 21A (1) (g), and any other time during which curricular or extra-curricular activities are taking place on the *school* premises.

(6) If a *governing body* allows the premises of a *school* to be used by a political party, it must do so in accordance with the *Constitution* and *this Act*.

[S. 46B inserted by s. 20 of Act No. 7 of 2010.]

**47. Exclusions of provisions of Compensation for Occupational Injuries and Diseases Act, 1993.**-No learner at a public school shall for the purposes of the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993, be deemed to be a workman or other person entitled to payment of compensation or any other benefit under the said Act.

**48. 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* or higher, and that council is the only recognised and legitimate representative *learner* body at the *school*.

(2) The *Provincial Minister* shall, by notice in the *Provincial Gazette*, determine the functions and the procedures for the establishment and election of *representative councils of learners*.

[Sub-s. (2) amended by s. 27 of Act No. 7 of 2010 and substituted by s. 24 of Act No. 4 of 2018.]

(3) The *Provincial Minister* 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*.

[Sub-s. (3) amended by s. 27 of Act No. 7 of 2010.]

[S. 48 substituted by s. 21 of Act No. 7 of 2010.]

## CHAPTER 7 MISCELLANEOUS

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

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

- (a) the amount of *school fees* to be charged;
- (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school fees*; and
- (c) a *school* budget that reflects the estimated cumulative effect of-

- (i) the established trends of non-payment of *school fees*; and
- (ii) the total, partial or conditional exemptions granted to *parents* in terms of the regulations contemplated in section 39 (4) of the *South African Schools Act*.  
[Sub-para. (ii) amended by s. 27 of Act No. 7 of 2010.]

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

(4) A *public school* may not charge any registration, administration or other fee, except *school fees* as defined in section 1.

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

(6) The *Provincial Minister* shall identify and compile a list of all the *schools* contemplated in section 39 (7) of the *South African Schools Act*, within the *province*.

[Sub-s. (6) amended by s. 27 of Act No. 7 of 2010.]

(7) The *schools* contemplated in section 39 (7) of the *South African Schools Act* may, despite that section, charge *school fees* if they receive less than the no fee threshold referred to in section 39 (8) of the *South African Schools Act* from the *Western Cape Education Department*.

[Sub-s. (7) amended by s. 27 of Act No. 7 of 2010.]

(8) The right of the *school* to charge *school fees* in terms of subsection (7) is limited to an amount equal to the sum obtained if the actual amount received from the State is deducted from the no fee threshold.

[S. 49 substituted by s. 22 of Act No. 7 of 2010.]

**50. School funds and assets of public schools.**-Subject to the provisions of section 37 of the *South African Schools Act*, the governing body of a public school shall deal with the school funds and assets of a public school in accordance with directions issued by the Head of Department, with the concurrence of the financial head.

[S. 50 amended by s. 27 of Act No. 7 of 2010.]

**51. Annual budget of public school.**-Subject to the provisions of section 38 of the *South African Schools Act*, the governing body of a public school shall deal with the annual budget of a public school in accordance with the guidelines determined by the *Provincial Minister*, with the concurrence of the financial head.

[S. 51 amended by s. 27 of Act No. 7 of 2010.]

**51A. Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees.**-(1) Subject to subsection (2), a *governing body* may not pay or give to a state employee employed in terms of the *Employment of Educators Act* or the Public Service Act, 1994, any unauthorised-

- (a) remuneration;
- (b) other financial benefit; or
- (c) benefit in kind.

[Sub-s. (1) amended by s. 27 of Act No. 7 of 2010.]

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

(3) Such an application shall be lodged in writing in the office of the *Head of Department* and shall state-

- (a) full details of the nature and extent of the payment;
- (b) the process and resources that will be used to compensate or remunerate the state employee; and
- (c) the extent of compliance with section 21A (5) to (9).

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

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

(6) The *Head of Department* shall not unreasonably refuse an application contemplated in subsection (2).

(7) In considering the application, the *Head of Department* shall take into account-

- (a) the implications for the employer in terms of the employment contract and labour law;
- (b) whether the service concerned in the application will interfere with the normal service delivery of the employee;
- (c) whether the service concerned in the application has already been paid for by the employer; and
- (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the *school*.

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

[Sub-s. (8) amended by s. 27 of Act No. 7 of 2010.]

(9) If a *governing body* pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the *Head of Department*, the amount of money paid or benefit given shall be recovered by the *Head of Department* on behalf of the *school* from members of the *governing body* who supported that decision, excluding a member of the *governing body* who is a minor.

(10) A *governing body* may appeal to the *Provincial Minister* against-

- (a) the refusal by the *Head of Department* of an application contemplated in subsection (2); or
- (b) the failure of the *Head of Department* to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the *Head of Department*.

[Sub-s. (10) amended by s. 27 of Act No. 7 of 2010.]

[S. 51A inserted by s. 23 and amended by s. 27 of Act No. 7 of 2010.]

**52. Financial records and statements of public schools.**-Subject to the provisions of section 42 of the *South African Schools Act*, the governing body of a public school shall deal with the financial records and statements of a public school in accordance with the guidelines determined by the *Provincial Minister*, with the concurrence of the financial head.

[S. 52 amended by s. 27 of Act No. 7 of 2010.]

**53. Audit or examination of financial records and statements.**-Audit or examination of financial records and statements of public schools shall be dealt with by the governing body in accordance with the provisions of section 43 of the *South African Schools Act*.

[S. 53 amended by s. 27 of Act No. 7 of 2010.]

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

**54A. Application of section 14 of the Employment of Educators Act in respect of temporary educators and educators employed on contract.**-Section 14 of the *Employment of Educators Act* applies, with the necessary changes required by the context, to *educators* appointed to temporary posts, *educators* appointed on a fixed term contract and *educators* on probation.

[S. 54A inserted by s. 24 of Act No. 7 of 2010.]

**54B. Deemed discharge of educator.**-(1) If an *educator*, whether appointed permanently, or in a temporary post or on probation, resigns after being served with disciplinary charges but before the disciplinary proceedings have been completed, the *educator* shall be deemed to have been discharged on account of such disciplinary charges for the purposes of seeking future employment as an *educator* or as an employee in the public service.

(2) The failure to disclose the fact of such disciplinary charges and of the resignation prior to the completion of the disciplinary proceedings in an application for appointment as an *educator* or to the *Western Cape Education Department* constitutes a ground for discharge.

(3) If the *Head of Department* is considering not appointing an *educator* because of the deemed discharge under subsection (1), the *Head of Department* shall request written submissions from the *educator* in the *prescribed* manner, and may initiate any process as may be *prescribed*, before deciding on the appointment.

[S. 54B inserted by s. 24 of Act No. 7 of 2010.]

**54C. Time period for lodging grievances concerning appointment or promotion.**-Notwithstanding item 3.1 (b) (i) of the Personnel Administrative Measures, grievances concerning the appointment or promotion of an *educator* or officer of the *Western Cape Education Department* made by the *Head of Department* shall be lodged within 30 days of receipt of notification of the decision concerned.

[S. 54C inserted by s. 24 of Act No. 7 of 2010.]

**54D. Disputes arising from section 54A or 54B.**-Subject to the Labour Relations Act, 1995 (Act 66 of 1995), the Education Labour Relations Council has jurisdiction to hear and determine any dispute arising out of section 54A or 54B. The rules of the Education Labour Relations Council with regard to the referral and determination of alleged unfair dismissal disputes, with such changes as may be required by the context, apply equally with regard to such disputes.

[S. 54D inserted by s. 24 of Act No. 7 of 2010.]

**55. Unauthorized persons may not visit a public school or enter the school premises.**-(1) The following persons shall have reasonable access to the premises of a public school or any hostel attached to such public school-

- (a) a learner or member of staff of the school concerned;
- (b) the *Provincial Minister*, the *Head of Department* or an officer authorized in terms of section 9;
- (c) a member of the governing body of the school concerned who acts with the written approval of the chairperson of such body;
- (d) a parent who in relation to the education of his or her child as a learner, or for the purpose of attending a school meeting, concert or any other event of the school in which his or her child as a learner has an interest;
- (e) a visitor from some other school for the purposes of participating in school sports or other school activities;
- (f) members of the community who attend a particular school activity at the invitation of the principal, or such educational programme as the *Head of Department* may approve;
- (g) a person(s) or instance(s) granted approval by the principal of the school concerned, to visit the school or hostel attached to the school;
- (h) the owner of the property occupied by the school, or his or her nominee; or
- (i) a person or persons from a trade union which is a member of the Education Labour Relations Council, who, for purposes of meeting with *educators*, have been granted approval by the *principal*.

[Para. (i) substituted by s. 25 of Act No. 7 of 2010.]

(2) Visits to public schools or any hostel attached to such public schools, by persons from outside with the intention to subject learners to physical, psychometric and scholastic examinations or to obtain confidential information on learners or their families, can only proceed with the prior written approval of the *Head of Department*.

**56. Offences relating to independent schools.**-Any person who contravenes a prohibition contained in section 27 (1), shall be guilty of an offence.

**57. Offences relating to compulsory school attendance.**-(1) If the parent of a learner who is subject to compulsory school attendance without sufficient cause and after a written warning from the *Head of Department* fails to send the learner to school regularly, that parent shall be guilty of an offence.

(2) Any person who-

- (a) during the normal school hours-
  - (i) makes use of the services of a learner who is subject to compulsory school attendance for any work, whether for reward or otherwise;
  - (ii) without sufficient cause, prevents or discourages such a learner from attending school; or
  - (iii) harbours or conceals such a learner; or
- (b) removes a learner who attends a class, unit or school for learners with special education needs and

who is not exempted under this Act from such attendance, from such a school,  
shall be guilty of an offence.

**58. Offences relating to functions of particular persons.**-Any person who-

- (a) hinders or obstructs a person authorized in terms of section 9, or a school attendance officer, in the performance of his or her duties in terms of this Act;
- (aA) hinders or obstructs the *Chief Evaluator*, a *Lead Evaluator* or an *Evaluator* in the performance of his or her functions in terms of *this Act*;  
[Para. (aA) inserted by s. 25 of Act No. 4 of 2018.]  
[Date of commencement: 12 April 2019]
- (b) refuses or fails to comply with a directive given or a request made by a person referred to in paragraph (a) in the performance of his or her duties in terms of this Act;
- (c) refuses or fails to answer to the best of his or her ability a question put to him or her by a person referred to in paragraph (a) in the performance of his or her duties in terms of this Act;
- (d) deliberately furnishes false or misleading information to a person referred to in paragraph (a); or
- (e) hinders or obstructs any educator in the performance of his or her duties, shall be guilty of an offence.

**59. Offences relating to unauthorized persons on school premises.**-Any person who contravenes the provision contained in section 55 (2), shall be guilty of an offence.

**59A. Offences relating to activities on school premises.**-Any person who contravenes section 45A (1) or section 45B (4) shall be guilty of an offence.

[S. 59A inserted by s. 26 of Act No. 4 of 2018.]

**60. Penalties.**-(1) Any person convicted of an offence in terms of this Act, shall be liable upon conviction-

- (a) in the case of an offence referred to in section 56, to a fine or to imprisonment for a period of three months;
- (b) in the case of an offence referred to in sections 57 (1), 57 (2) (a), 57 (2) (b), 58 and 59, to a fine or to imprisonment for a period not exceeding six months;
- (c) in the case of an offence referred to in section 59A, to a fine not exceeding R600 000.

[Para. (c) inserted by s. 27 of Act No. 4 of 2018.]

(2) A rule made under section 7 (1) (g) may, for a contravention thereof or a failure to comply therewith, prescribe a penalty not exceeding a fine of R4 000 and/or imprisonment for a period not exceeding 2 years.

(3) Any person who contravenes section 46 of this Act, shall be guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

**61. Delegation of powers.**-(1) The *Provincial Minister* may, subject to such conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Department or an officer, except the power to publish a notice and the power to decide any appeal lodged with him or her in terms of this Act.

(2) The Head of Department may, subject to such conditions as he or she may determine, delegate to an officer any of his or her powers under this Act or delegated to him or her in terms of subsection (1).

(3) A delegation under subsection (1) or (2) does not prevent the *Provincial Minister* or Head of Department, as the case may be, from exercising such power.

**62. Indemnity against loss or damage.**-A school attendance officer contemplated in section 10, shall not be liable for any loss or damage caused by or arising from any reasonable action taken by him or her under this Act: Provided that such a school attendance officer acts within the scope of his or her duties.

**63. Regulations.**-(1) The *Provincial Minister* may make *regulations* and, where applicable, subject to any national norms and standards contemplated in section 146 (2) of the *Constitution*, as to-

- (a) the management and control of hostels and public schools and the control over the immovable property and equipment of the Western Cape Education Department;
- (b) (i) the receipt and use of funds or other goods by public schools and hostels attached to such public schools, and the books, records and statements to be kept in connection therewith by the bodies or persons mentioned in the regulations; and  
(ii) the manner in which such books, records and statements are to be kept, the auditing thereof and the returns and reports to be submitted in connection therewith;
- (c) the duties of school attendance officers;
- (cA) effective performance evaluation of *schools, educators* and *learners*;  
[Para. (cA) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cB) performance agreements between the *Head of Department* and *principals*, deputy *principals* and office based *educators*;  
[Para. (cB) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cC) minimum teaching hours per *school* week and *school* day;  
[Para. (cC) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cD) the declaration of personal interest of members of *governing bodies* in the procurement of goods and services for *schools*;  
[Para. (cD) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cE) disciplining, suspension and expulsion of *learners*;  
[Para. (cE) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cF) norms and standards for basic infrastructure and capacity in *public schools*;  
[Para. (cF) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cG) the visitation and assessment of *schools*;  
[Para. (cG) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cH) the issuing by the *Head of Department* of performance indicators binding on all *schools*;  
[Para. (cH) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cI) the funding and governance models for collaboration schools and donor funded public schools;  
[Para. (cI) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cJ) the norms and standards for the granting of subsidies to independent schools;  
[Para. (cJ) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cK) the promotion and progression of learners at public schools;  
[Para. (cK) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cL) the norms and standards for an intervention facility;  
[Para. (cL) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cM) the admission of learners to public schools;  
[Para. (cM) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cN) the procurement of goods and services relating to education in the province;  
[Para. (cN) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cO) the monitoring of, and access to, an independent school;  
[Para. (cO) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (cP) the procedure for registration as an independent school;  
[Para. (cP) inserted by s. 28 (b) of Act No. 4 of 2018.]
- (d) any matter which shall or may be prescribed by regulation under this Act; and
- (e) in general any matter which the *Provincial Minister* may deem necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.

(2) The *Provincial Minister* shall not make a regulation relating to moneys or allowances payable to or by any person, or relating to the control of money and State goods, except with the concurrence of the financial head.

(3) A regulation made under subsection (1) may, for a contravention thereof or a failure to comply therewith, prescribe a penalty or imprisonment for a period not exceeding one year.

**64. Repeal of laws and savings.**-(1) Subject to the provisions of subsection (2), the laws mentioned in the first column of the Schedule are hereby repealed to the extent indicated in the third column of that Schedule.

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

(3) All laws, regulations, notices and directives made or issued under any law repealed by this Act, and which were in force immediately prior to the fixed date shall, notwithstanding such repeal, remain in force except insofar as they are incompatible with or in conflict with this Act, or until repealed, withdrawn or amended by the *Provincial Minister* by regulation, notice or directive, in terms of this Act.

**65. Short title and commencement.**-This Act shall be called the Western Cape Provincial School Education Act, 1997, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

## SCHEDULE

### LAWS REPEALED

<i>No. and year of Act</i>	<i>Title</i>	<i>Extent of repeal</i>
Act No. 47 of 1963	Coloured Persons Education Act, 1963	The whole, excluding sections 1A, 8 to 20, 26, 28 to 31 and where the Act relates to colleges of education
Act No. 61 of 1965	Indians Education Act, 1965	The whole, excluding sections 1B, 3B, 8 to 20, 26, 28, 29, 31, 33 (1) (g) and where the act 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. 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. 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, 11 to 29, 31, 32, 43, 44, 44 (1) (h) and where the Act 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. 78 of 1984	Indians Education Amendment Act, 1984	The whole
Act No. 64 of 1985	Indians Education Amendment Act, 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, 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, 20, 21, 22, 23, 24 and 25
Act No. 100 of 1986	Education Amendment Act (House of Delegates), 1986	Sections 1, 2, 3, 4, 5, 6 and 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, 6, 7, 8, 9, 10, 11, 12 and 13
Act No. 31 of 1988	Education Laws (Education and Training) Amendment Act, 1988	Sections 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole, excluding sections 3, 65 and Chapter 7
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. 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
Act No. 10 of 1994	Western Cape School Education Law, 1994	The whole
Act No. 7 of 1996	Western Cape School Education Amendment Law, 1996	The whole

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