

**EASTERN CAPE SCHOOLS EDUCATION ACT
NO. 1 OF 1999**

[\[View Regulation\]](#)

[ASSENTED TO 4 MARCH, 1999]
[DATE OF COMMENCEMENT: 31 APRIL, 1999]

(English text signed by the Premier)

as amended by

Eastern Cape Schools Education Amendment Act, No. 5 of 2004

ACT

To provide for the control of education in schools in the Province; and for other matters connected therewith.

ARRANGEMENT OF SECTIONS

[CHAPTER 1](#)

DEFINITIONS AND APPLICATION OF ACT

- [1.](#) Definitions
- [2.](#) Application of Act

[CHAPTER 2](#)

POWERS AND FUNCTIONS OF MEC AND THE HEAD OF DEPARTMENT

- [3.](#) Control of school education in the Province
- [4.](#) Determination of provincial education policy
- [5.](#) General functions of MEC
- [6.](#) General functions of head of Department
- [7.](#) Official visits to school for Administrative Purposes
- [8.](#) Inquiry at instance of MEC
- [9.](#) Submission of information
- [10.](#) Appointment of school attendance officers
- [11.](#) Functions of school attendance officers
- [12.](#) Establishment and functions of the Eastern Cape Education and Training Council
- [13.](#) Establishment of districts of the Department
- [14.](#) Establishment of district councils and determination of allowances payable to members thereof

[CHAPTER 3](#)

PUBLIC SCHOOLS

- [15.](#) Establishment and maintenance of public schools
- [16.](#) Language policy
- [17.](#) Language and discrimination
- [18.](#) Recognition of sign language
- [19.](#) Religious policy of public schools
- [20.](#) Freedom of conscience

[CHAPTER 4](#)

GOVERNING BODIES

- [22.](#) Establishment of school governing bodies for public schools and hostels
- [23.](#) Composition of a governing body of a public school
- [24.](#) Working Committees

- [25.](#) Regulations relating to governing bodies
- [26.](#) Continuation of certain bodies or councils

[CHAPTER 5](#)

INDEPENDENT SCHOOLS

- [27.](#) Establishment, conduct or maintenance of independent schools prohibited unless registered
- [28.](#) Application for registration
- [29.](#) Consideration of applications for registration of independent schools
- [30.](#) Registration of independent schools
- [31.](#) Subsidies to registered independent schools
- [32.](#) Lapsing or withdrawal of registration
- [33.](#) Appeal against refusal or withdrawal of registration
- [35.](#) Declaration of an independent school to be a public school
- [36.](#) Consequences of declaration as a public school

[CHAPTER 6](#)

LEARNERS

- [37.](#) Age requirements in respect of specialised education
- [38.](#) Admission of children with special education needs at request of parents
- [40.](#) Action in case of children with special education needs
- [41.](#) Committal of children with special education needs
- [45.](#) Admission to public schools
- [47.](#) Compulsory school attendance
- [48.](#) Exemption from compulsory school attendance
- [49.](#) Medium of instruction at, and character of, schools
- [50.](#) Control, discipline, suspension and expulsion of learners
- [51.](#) Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)

[CHAPTER 7](#)

MISCELLANEOUS

- [52.](#) School and boarding fees
- [53.](#) Unauthorized person may not visit a public school or enter the school grounds or school premises
- [54.](#) Offences relating to independent schools
- [55.](#) Offences relating to compulsory school attendance
- [56.](#) Offences relating to functions of particular persons
- [57.](#) Offences relating to unauthorised persons on school premises
- [58.](#) Penalties
- [59.](#) Delegation of powers
- [60.](#) Limitation of legal proceedings
- [61.](#) Indemnity against loss or damage
- [62.](#) Establishment and composition of finance committee
- [63.](#) Meetings of a finance committee
- [64.](#) Functions of a finance committee
- [65.](#) Regulations

[CHAPTER 8](#)

ADULT BASIC EDUCATION AND TRAINING AND ADULT CONTINUING EDUCATION AND TRAINING

- [66.](#) Establishment and maintenance of adult basic education and training centres and adult continuing education and training centres
- [67.](#) Basic policy for establishment of centres
- [68.](#) Design of programmes

69.	Partnerships
70.	Needs analysis and curriculum
71.	Role of Provincial Qualification Authority
72.	Training centres
73.	Closure of centres

[CHAPTER 9](#)

REPEAL OF LAWS AND SHORT TITLE

74.	Repeal of laws and savings
75.	Short title and commencement
Schedule	Laws repealed

CHAPTER 1

DEFINITIONS AND APPLICATION OF ACT

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

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

"child with special education needs" means a learner with physical, sensory, intellectual or multiple impairments, who is able to benefit from a specialised education programme for learners with special education needs, but who deviates to such an extent from the majority of the learners of his or her age in body, mind or behaviour that he or she-

- (a) cannot benefit sufficiently from the instruction provided in the ordinary course of education;
- (b) needs specialised education to facilitate his or her adaptation in the community; or
- (c) should not attend an ordinary class in an ordinary school, because such attendance may be harmful to himself or to the other learners in such a class;

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

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

"council" means a hostel council established under section 26 (1);

"democratically constituted community structures" means existing democratically constituted interest groups concerned with education in the community;

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

"departmental institution" means a centre, public school, hostel, educational auxiliary service or teachers' centre, established under section 5 (1);

"district" means a district established in terms of section 13;
[Definition of "region or district" substituted by s. 1 (c) of Act No. 5 of 2004.]

"district manager" means a departmental official concerned with the administration, organisation, management and development of education in a district;

"Eastern Cape Education Advisory Council" means the council established by section 12, and otherwise known as the Provincial Council;
[Definition of "Eastern Cape Education and Training Council" substituted by s. 1 (a) of Act No. 5 of 2004.]

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

"educator" means an educator as defined in the Employment of Educators Act, 1998 (Act No. 76 of 1998);

"examination board" means the body consisting of all stakeholders in education advising the head of Department regarding the formulation, implementation and administration of examinations and related issues in the Province;

"financial head" means the person appointed in terms of section 132 of the Constitution as a Member of the Executive Council responsible for financial matters in the Province;

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

"governing body" means a governing body referred to in section 22;

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

"head of Department" means the administrative head of the education department in the Province;

"hostel" means a hostel established under section 5 (1) (b);

"hostel council" means a hostel council referred to in section 26 (1);

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

"independent school for specialised education" means a school for specialised education, registered in terms of section 30 as an independent school or is deemed to be so registered;

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

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

"learner" means any person receiving education and training in a school, adult basic education and training centre and adult continuing education and training centre in terms of this Act;

"Legislature" means the Legislature of the Province of the Eastern Cape established in terms of section 104 of the Constitution;

"MEC" means the Member of the Executive Council responsible for Education in the Province;

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

[Definition of "national party" substituted by s. 1 (b) of Act No. 5 of 2004.]

"non-governmental organisations" means organisations independent from the government with an interest in education;

"organised parent community" means the parent community as represented by governing bodies, and councils established under this Act and the parent bodies and associations recognised by the MEC;

"organised teaching profession" means the teaching profession or a part thereof, as represented by an employee organisation whose membership consists mainly of educators and includes a federation of such employee organisations;

"parent" means a parent, who in law or by virtue of an order of a competent court, has the custody or control of a learner, or a legal guardian, or in the absence of such parent or guardian, the person with whom the learner resides and to whom the parent or guardian has entrusted in writing custody or control of such learner, or if the learner has no parent or legal guardian, the person with whom the learner resides and who has the actual custody or control of such learner;

"parent community" means parents of all learners and past learners in a school;

"parents of past learners" means the parents of all learners who left the school more than three years ago;

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

"prescribed" means prescribed by regulation;

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

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

"Province" means the Province of the Eastern Cape;

"provincial curriculum advisory council" means a body, consisting of all stakeholders in education within the Province, concerned with curriculum matters organised on a provincial and regional basis;

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

"Provincial Qualification Authority" means a body established in the Province to monitor the implementation of a national format of unit standards and requirements for the registration of qualifications;

"public school" means a school established or deemed to be established under section 15 and shall include a farm school;

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

74 of 1983);

"region" or **"district"** means a region or district established in terms of section 13;

"regional director"

[Definition of "regional director" deleted by s. 1 (d) of Act No. 5 of 2004.]

"regulation" means a regulation made under this Act;

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

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

"school for specialised education" means a school for specialised education established under section 15 or an independent school for specialised education;

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

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

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

"sponsoring body" means a body or groups of persons approved by the MEC, which is, on account of its involvement with a school, prepared to assist it financially;

"RCL" means a representative council of learners established in terms of section 11 of the 1996 Act;

"teachers' centre" means a teachers' centre established under section 5 (1) (g) or deemed to have been established in terms of section 5 (3);

"the 1996 Act" means the South African Schools Act, 1996 (Act No. 84 of 1996);

"this Act" includes the regulations made or deemed to have been made thereunder; and

"Treasury" means the provincial treasury of the Province as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

[Definition of "Treasury" substituted by s. 1 (e) of Act No. 5 of 2004.]

(2) Any word or expression used in this Act and to which a meaning has been assigned in the South African Schools Act, 1996, shall bear the meaning assigned thereto by the said Act.

2. Application of Act.-The provisions of this Act shall, subject to national policy and to the provisions of the Constitution or any other law or Act applying to education in general in the whole of the Republic of South Africa, apply in relation to education provided in schools in the Province.

CHAPTER 2

POWERS AND FUNCTIONS OF MEC AND THE HEAD OF DEPARTMENT

3. Control of school education in the Province.-As from the fixed date, school education in the Province shall be controlled by the Department, acting in accordance with the policy determined by the MEC.

4. Determination of provincial education policy.-(1) The MEC shall determine school education policy in the Province within the framework of the following principles:

- (a) Every person shall have the right to basic education and to equal access to schools and centres of

learning;

- (b) every learner shall have the right to instruction in the language of his or her choice where this is reasonably practicable;
- (c) no learner or educator shall be unfairly discriminated against by the Department, a public school or an independent school which receives a subsidy in terms of section 31;
- (d) there shall be a duty on the Department to foster the advancement of persons or groups or categories of persons previously disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of education rights without disadvantaging other persons or groups or categories of persons;
- (e) there shall be a duty on the Department to combat sexual harassment at schools and centres of learning;
- (f) every learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance;
- (g) every learner and educator shall have the right to peaceful assembly and demonstration and shall have the right to freedom of association;
- (h) every person shall have the right of access to all information held by the Department or the governing body of a school in so far as such information is required for the exercise or protection of his or her rights.
- (i) there shall be democratic and decentralised governance of public schools and school education;
- (j) the structures of democratic governance in school education should be constituted with due regard to the racial and gender demographics of the community served by the school;
- (k) education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption;
- (l) educational policy shall be aimed at improving the quality and availability of educational opportunities, educator development and resources to the people of the Province;
- (m) the education process shall be aimed at fostering independent and critical thought;
- (n) every learner shall be entitled to a total of ten years of basic education and to equal access to educational institutions;
- (o) parents shall, jointly with the government, be responsible for both obligatory and voluntary contributions to school fees in respect of both the compulsory and the post-compulsory school phase: Provided that no learner shall be excluded from the compulsory education phase or prejudiced in any other way on the basis of the non-payment of obligatory fees by a parent, in line with the national funding model.

(2) The MEC shall, by notice in the *Provincial Gazette*, publish details of any steps he or she intends taking to implement the policy determined by him or her in terms of subsection (1).

(3) The head of Department shall take such steps as may be necessary to implement the policy determined by the MEC.

5. General functions of MEC.-In addition to the other functions assigned to him or her by this Act, the MEC may, out of moneys appropriated for this purpose by the Legislature-

- (a) establish and maintain such centres as he or she may deem necessary for the development and promotion of the aptitude of learners or a category of learners;
- (b) establish and maintain hostels for public schools;
- (c) establish and maintain centres for adult education;
- (d) 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;
- (e) make provision for such educational auxiliary services as he or she may deem necessary;
- (f) provide on such basis and subject to such conditions as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted at a public school;
- (g) establish and maintain teachers' centres for the enrichment of educators' academic and professional knowledge and teaching skills; and
- (h) make provision for the appointment of outside persons, institutions, organizations or departments to act on an agency basis.

(2) The MEC may at any time close a centre, a hostel or a teachers' centre, or discontinue an educational

auxiliary service referred to in subsection (1): Provided that where a hostel falls under the supervision of a council referred to in section 26 (1), such hostel may be closed only after consultation with the council concerned.

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

(4) In order to further the objects of this Act, the MEC may enter into agreements with other government departments and with non-governmental organisations, but no agreement placing financial obligations on the Department shall be entered into without the concurrence of the financial head.

6. General functions of head of Department.-In addition to the other functions assigned to the head of Department in terms of this Act, he or she may-

- (a) approve educational programmes for learners;
- (b) approve education and training programmes for learners with special education needs;
- (c) determine conditions for admission to such education and training programmes, and the evaluation, by means of appraisal or otherwise, of the effectiveness of the teaching and training provided in accordance therewith;
- (d) approve courses for the provision of education, including specialised education;
- (e) determine the conditions for admission to, and the syllabi in, such course;
- (f) in respect of such courses-
 - (i) establish provincial and regional curricula, advisory councils and also study committees for specific subjects;
 - (ii) establish a provincial examination board;
 - (iii) provide for effective methods of assessment and evaluation of learners and the implementation of effective development appraisals for educators;
 - (iv) cause other approved forms of assessment and evaluation to be conducted;
- (g) make rules as to-
 - (i) the conducting of examinations referred to in paragraph (f), the entering of candidates for those examinations, the conduct and discipline of candidates prior to, during and after, those examinations, and the issue of certificates referred to in that paragraph; and
 - (ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators and other persons whose services are necessary in connection with the conducting of those examinations; and
- (h) in consultation with parents or guardians, make arrangements for medical, psychological, psychometric or dental examinations of learners and to provide social services to learners and persons employed at schools and hostels.

7. Official visits to school for Administrative Purposes.-(1) The head of Department may through the district manager authorise in writing official visits to schools for administrative purposes.

(2) A person authorised under subsection (1) may-

- (a) at any reasonable time after prior notice enter upon the grounds of the school or hostel concerned;
- (b) question under oath or otherwise any person who in his or her opinion may be able to furnish information on matters to which this Act relates;
- (c) require any person who has in his or her possession or custody or under his or her control a register, book or document on a matter to which this Act relates, to submit such register, book or document to him or her;
- (d) examine such a register, book or document or make an extract therefrom or a copy thereof, and require from any person an explanation of the information contained therein;
- (e) attach such register, book or document as in his or her opinion may serve as proof of an offence or irregularity; and
- (f) take steps to assist the administrative management of schools: Provided that under justifiable circumstances no notice need be given when entering the school or hostel under paragraph (a).

8. Inquiry at instance of MEC.-(1) If it is in the interests of education in the Province, the MEC may appoint any appropriate person to conduct an inquiry on a matter specified in written terms of reference: Provided that the provisions of any applicable law be taken into account.

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

- (a) enter the grounds of any school or centre of learning at any reasonable time as long as he or she has given to the person in charge of such school or centre of learning reasonable prior notice of his or her intention to enter the grounds;
- (b) if he or she has reason to believe that any person is able to give evidence on any matter relevant to the inquiry, direct that person, by notice served on him or her personally, to appear before him or her at a stated time and place to answer his or her questions;
- (c) question, under oath or otherwise, any person referred to in paragraph (b);
- (d) if he or she has reason to believe that any person is able to produce any article, document, book, video or audio recording relevant to the inquiry, order that person to deliver to him or her that article, document, book, video or audio recording;
- (e) examine and make copies of any document, book, video or audio recording referred to in paragraph (d); and
- (f) attach any article, document, book, video or audio recording referred to in paragraph (d) if, in his or her opinion, it may provide evidence of any offence or irregularity.

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

(4) Any person who, without just cause-

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

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 6 months.

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

(2) Any principal of a school, district manager, or any official senior in rank or position to any educator, may, if he or she suspects on reasonable grounds that such educator is guilty of misconduct as detailed in section 17 (1) (h) of the Employment of Educators Act, 1998 (Act No. 76 of 1998), require such educator-

- (a) to breathe into the prescribed apparatus for such period as he or she may direct; or
- (b) to undergo examination by a district surgeon or other registered medical practitioner; or
- (c) to breathe into the prescribed apparatus and to undergo the examination referred to in paragraph (b).

(3) If-

- (a) any educator fails or refuses to breathe into the prescribed apparatus or to undergo any examination when so required under subsection (2) (a); or
- (b) the prescribed apparatus records that such educator has a blood alcohol content expressed in grams per one hundred millilitres of blood, of not less than 70 milligrams (0,7 per cent); or
- (c) the examination referred to in paragraph (a) indicates that such prescribed limit as aforesaid has been exceeded,

such educator shall be deemed to be guilty of misconduct as prescribed in section 17 (1) (h) of the said Act.

10. Appointment of school attendance officers.-(1) The Head of Department may appoint a school attendance officer.

(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.

(3) A school attendance officer may, in the execution of his or her duties and functions, be assisted by any other person or persons authorised by the head of Department for this purpose.

11. Functions of school attendance officers.-(1) In order to ensure that compulsory attendance is being complied with, a school attendance officer may-

- (a) at any reasonable time enter upon any premises if he or she has reasonable grounds to suspect that a learner who is subject to compulsory school attendance is on those premises;
- (b) question any person who in his or her opinion may be able to give information regarding such a learner; and
- (c) if he or she has reasonable grounds to suspect that such a learner is absent without adequate reasons from the school he or she should be attending, take such a learner into his or her custody, take him or her to the relevant principal.

(2) A school attendance officer shall not perform a function under this section without having on his or her person the certificate provided to him or her in terms of section 10 (2), and that certificate shall be produced by him or her to any person thereby affected.

12. Establishment and functions of the Eastern Cape Education and Training Council.-(1) There is hereby established a provincial council to be known as the Eastern Cape Education Advisory Council, which shall consist of-

- (a) the head of Department;
- (b) two persons designated by the head of Department from his or her staff;
- (c) one person to represent each of the following classes of institution in the Province, respectively:
 - (i) universities;
 - (ii) technikons;
 - (iii)
 - (iv) further education and training institutions; and
 - (v) two representatives from learner organisations,who shall be nominated by the respective institutions in the prescribed manner;
- (d) two persons designated in the prescribed manner by the organized teaching profession;
- (e) three representatives from religious organisations;
- (f) two representatives from the business sector;
- (g) two representatives from non-governmental organisations;
- (h) two representatives from school governing bodies; and
- (i)
- (j) two representatives from the community based organizations,

who shall be nominated by the respective institutions in the prescribed manner.

[Sub-s. (1) substituted by s. 2 of Act No. 5 of 2004.]

(2) The provincial council shall elect from its members a chairperson and a vice-chairperson.

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

(4) The MEC may, in consultation with relevant stakeholders, make regulations in relation to-

- (a) the qualifications and term of office of members of the provincial council and the filling of vacancies;

and

(b) the appointment and functions of the executive committee of the provincial council.

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

(6) If a designation contemplated in paragraph (d) or (e) of subsection (1) or a nomination contemplated in paragraph (f), (g) or (h) of subsection (1), is not made, after due notice having been given to the relevant body, the MEC may make such designation or nomination as the case may be.

(7) The administrative functions of the provincial council shall be performed by officers of the Department who shall be seconded for this purpose.

(8) The provincial council shall-

(a) determine its own rules governing meetings and procedure at those meetings;

(b) advise the MEC and the Department in regard to matters relating to education referred to it by the MEC or the Department, or which the council wishes to bring to the attention of the MEC or the Department; and

(c) perform such functions as may be assigned to it by or under this Act, or any other Act or regulations.

(9) An act of the provincial council shall not be invalid merely by reason of a vacancy which exists on such a council.

13. Establishment of districts of the Department.-The MEC may, after consultation with the Provincial Council, by notice in the *Provincial Gazette*-

(a) divide the Province into districts, determine the boundaries thereof and establish district councils in respect of each as provided in section 14; and

(b) change the boundaries of, and should he or she deem it desirable dissolve such councils and establish new councils with effect from a date mentioned in the notice.

[S. 13 substituted by s. 3 of Act No. 5 of 2004.]

14. Establishment of district councils and determination of allowances payable to members thereof.-The MEC may, with the concurrence of the financial head, determine the need for district councils for the purpose of advising the MEC on policy implementation and determine the allowances payable to members thereof who are not in the full-time service of the State, when they are engaged in the business of the council.

[S. 14 amended by s. 4 of Act No. 5 of 2004.]

CHAPTER 3

PUBLIC SCHOOLS

15. Establishment and maintenance of public schools.-The MEC 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;

(f) schools for specialised education;

(g) industrial schools;

(h) reform schools; and

(i) any other type of public school which he or she deems necessary.

(2) The following types of schools:

(a) a pre-primary school;

- (b) a junior primary school;
- (c) a primary school;
- (d) a junior secondary school;
- (e) an intermediate school;
- (f) a combined school;
- (g) a school for specialised education;
- (h) an industrial school;
- (i) a reform school;
- (j) a farm school;
- (k) a clinic school;
- (l) a training centre for mentally retarded children;
- (m) a technical school;
- (n) an agricultural school;
- (o) a secondary school;
- (p) a vocational school; and
- (q) a special 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:

- (aa) a pre-primary school;
- (bb) a junior primary school;
- (cc) a primary school;
- (dd) a junior secondary school;
- (ee) an intermediate school;
- (ff) a combined school;
- (gg) a school for specialised education;
- (hh) an industrial school;
- (ii) a reform school;
- (jj) a farm school;
- (kk) a clinic school;
- (ll) a training centre for mentally retarded children;
- (mm) a technical school;
- (nn) an agricultural school;
- (oo) a secondary school;
- (pp) a vocational school; and
- (qq) a special school,

respectively, established under this section.

(3) Public schools may, subject to section 11 (2) of the 1996 Act, be classified by the MEC into such categories or sections of schools as he or she may determine, and he or she may combine two or more such categories or sections into one school.

16. Language policy.-(1) (a) The language policy of a public school shall be determined by the governing body of the school concerned, subject to section 6 of the 1996 Act.

(b) The governing body of the school concerned shall refer a policy determined in terms of paragraph (a) to the MEC who will determine whether the policy conforms with the requirements of the said section 6 and of subsection (2).

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

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

(3) If at any time, the MEC has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), he or she may, after consultation with the governing body of the school concerned, and subject to the outcome of any appeal by the governing body to the National Minister of Education, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

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

(2) Learners at public schools shall be encouraged to make use of the range of official languages used in the Province.

(3) No learner at a public school or an independent school shall be discriminated against for expressing himself or herself in a language which is not a language of learning of the school concerned.

(4) The right contemplated in section 16 (2) (b) may be limited in circumstances where such limitation is reasonable and justifiable in an open and democratic society based on freedom and equality and committed to multi-lingualism.

18. Recognition of sign language.-(1) The MEC may by notice in the *Provincial Gazette* recognise sign language which in his or her opinion is used by a significant proportion of people communicating in sign language in the Province.

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

19. Religious policy of public schools.-(1) The religious policy of a public school shall be determined by the governing body of the school concerned after consultation with the Department, and subject to the approval of the MEC.

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

- (a) The education process should aim at the development of a national democratic culture of respect for our country's diverse cultural and religious traditions;
- (b) freedom of conscience and of religion must be respected at all public schools.

(3) If, at any time, the MEC has reason to believe that the religious policy of a public school does not comply with the principles set out in subsection (2) or the provisions of section 7 of the 1996 Act, he or she may, after consultation with the governing body of the school concerned, direct that the religious policy of the school shall be reformulated in accordance with subsections (2) and (2) and the said section 7.

20. Freedom of conscience.-(1) Subject to the provisions of section 19, no person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion.

(2) No person employed at any public school or at any independent school shall in the course of his or her

employment denigrate any religion.

(3) Every learner at a public school, or at an independent school, shall have the right not to attend religious education classes and religious practices at that school.

21. Closure of public schools.-The MEC may, after consultation with the governing body, organised teaching profession, democratically constituted community structures and other parties concerned with education, if any, at any time close or disestablish a public school or any part thereof.

CHAPTER 4

GOVERNING BODIES

22. Establishment of school governing bodies for public schools and hostels.-(1) The MEC shall establish a governing body for each public school.

(2) If, in the opinion of the MEC, it is not expedient to place a hostel under the supervision of the governing body of a particular public school, the MEC may then establish a hostel council for one or more hostels after consultation with the school community and other interested parties.

23. Composition of a governing body of a public school.-(1) A governing body at a public school shall include the following members, elected in the manner prescribed either in the first instance or in the case of filling of a vacancy:

- (a) Parents of learners at the school who are not employed at the school;
- (b) educators at the school;
- (c) members of staff at the school who are not educators;
- (d) the principal of the school, in his or her official capacity;
- (e) in the case of a secondary school, learners at the school nominated by the RCL of the school; and
- (f) not more than two members of the community co-opted for a specific purpose by the governing body, who shall have no voting rights.

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

(3) The composition of a governing body of a school providing education for learners with special education needs shall also be subject to Chapter 32 of the 1996 Act.

24. Working Committees.-(1) A governing body may appoint one or more working committees, which, subject to the instructions of that body, shall perform such functions as that governing body may determine.

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

25. Regulations relating to governing bodies.-The MEC may make regulations as to-

- (a) the constitution, powers, duties and functions and the categories of persons who may serve as members 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 incidental vacancies in governing bodies;
- (c) the manner of election, powers and functions of chairpersons and vice-chairpersons 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;
- (e) the dissolution and reconstitution of governing bodies; and
- (f) the designation of persons in the service of the Department to assist governing bodies to discharge their functions.

26. Continuation of certain bodies or councils.-(1) A governing body, board of management, council, committee, board or other body for the control and management of-

(a) a public school; or

(b) a hostel council,

established and constituted in terms of an Act repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be-

(aa) a governing body; or

(bb) a hostel council,

respectively, established and constituted under this Act: Provided that the members of the said governing body, board of management, local or domestic council, committee, board or other body shall, after the said date, remain members of the governing body or hostel council referred to in paragraphs (a) and (b), respectively, until their membership ceases or is terminated by the MEC in terms of the provisions of a law governing their election, appointment or constitution, as the case may be.

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

CHAPTER 5

INDEPENDENT SCHOOLS

27. Establishment, conduct or maintenance of independent schools prohibited unless registered.-(1) A person, body or bodies may establish, at their own cost, an independent school based on a common culture, language or religion, provided that there shall be no discrimination on the grounds of race.

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

(3) No person shall for reward keep in his or her custody or under his or her control 20 or more children of 3 years or older unless he or she has been registered as an independent school in terms of this Act.

(4) No person shall accept at an independent school keep in his or her custody or under his or her control children to provide specialised education to them for reward unless he or she has been registered as an independent school in terms of this Act.

28. Application for registration.-(1) 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.

(2) 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) The head of Department may grant an application referred to in section 28, if he or she is of the opinion that the provisions of section 46 of the 1996 Act and other prescribed requirements have been complied with.

(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. Such registration certificate must be prominently displayed and produced on request.

(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 school himself or herself or he or she may appoint or authorise any person to manage the school on his or her behalf subject to the provisions of this Act.

(5) Any person who contravenes the provisions of subsections (1) and (2) of section 27 and any person who admits anyone to a school which is not registered or exempted from registration in terms of this Act shall be guilty of an offence.

(6) The above provisions shall not apply to-

- (a) a correspondence college registered in terms of the Correspondence Colleges Act, 1965 (Act No. 59 of 1965), and providing tuition exclusively by means of correspondence;
- (b) a school established, maintained or controlled by a church solely for the purposes of providing theological training to prospective ministers of religion or evangelists or any schools providing exclusively, religious tuition;
- (c) any person providing, for reward, informal education which does not lead to the acquisition of any diploma, certificate or statement.

31. Subsidies to registered independent schools.-(1) A registered independent school may annually or prior to the prescribed date apply to the head of Department in writing for the prescribed subsidy.

(2) The head of Department may at his or her discretion grant or refuse an application referred to in subsection (1), but he or she shall not grant any application if he or she is of the opinion that the registered independent school does not comply with the prescribed requirements for the subsidy.

(3) If, in the opinion of the head of Department, a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, he or she may at any time terminate or reduce the subsidy from a date determined by him or her: Provided that the head of Department shall, before he or she terminates or reduces such subsidy, give the owner of the independent school or his or her representative, an opportunity to make written representations to him or her, giving reasons why the subsidy should not be reduced or terminated.

32. Lapsing or withdrawal of registration.-(1) The registration of an independent school shall lapse or may be withdrawn under the prescribed circumstances and subject to the prescribed legal requirements.

(2) No withdrawal or lapse of registration of an independent school shall be valid unless the owner of such an independent school has been furnished with written notification and reason for such lapse or withdrawal.

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 MEC in writing, setting out the grounds of appeal, against the refusal or withdrawal.

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

34. Regulations relating to independent schools.-(1) The MEC may make regulations as to-

- (a) the admission of learners of a registered independent school to examinations conducted by, or under the supervision of, the Department;
- (b) the keeping of registers or other documents by a registered independent school;
- (c) the criteria of eligibility for a subsidy, the conditions of a subsidy and the manner in which a subsidy shall be payable to a registered independent school;
- (d) the democratic governance of a registered independent school;
- (e) the lapse or withdrawal of the registration of an independent school; and
- (f) 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.

35. Declaration of an independent school to be a public school.-The MEC may enter into an agreement with the owner of an independent school or the governing body thereof in terms of which such a school may be declared to be a public school after consultation with the school community and other interested parties, and-

- (a) no agreement shall be entered into under this section, except with the concurrence of the financial head;
- (b) if an agreement has been entered into under this section, the MEC may by notice in the *Provincial*

Gazette declare the independent school concerned to a public school with effect from a date mentioned in the notice.

36. Consequences of declaration as a public school.-(1) As from the date mentioned in the notice contemplated in section 35 (b)-

- (a) the school concerned shall be deemed to be a public school established under section 15;
- (b) there shall be no longer vest in the previous owner or governing body any rights, powers, duties or functions in respect of the school concerned;
- (c) the rights obtained and obligations incurred by the owner or governing body concerned, for the purposes of or in connection with the school concerned, 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 or governing body concerned, and which relates to the school concerned, shall vest in the State, unless otherwise agreed upon.

(2) Immovable property vested in the State in terms of subsection (1) (d), shall be transferred to the State 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 to be a public school shall not affect any act or omission by the owner or governing body concerned prior to such declaration.

CHAPTER 6

LEARNERS

37. Age requirements in respect of specialised education.-Except with the approval of the head of Department-

- (a) a child shall not be admitted to a school for specialised education before he or she has reached the age of three years;
- (b) a person shall not be admitted to a school for specialised education after he or she has reached the age of nineteen years; and
- (c) a person shall not attend a school for specialised education after the end of the year in which he or she has reached the age of twenty-one years.

38. Admission of children with special education needs at request of parents.-(1) Subject to the provisions of section 44, the head of Department may, at the request of the parent of a child, approve that the child be admitted to a school for specialised education.

(2) The head of Department shall not grant his or her approval under subsection (1), unless the child concerned is a child in need of specialised education.

39. Assessment to identify children with special education needs.-(1) The head of Department may cause a child who is subject to compulsory school attendance but is not attending a school for specialised education, and who he or she suspects to be a child with special education needs, to be assessed in order to determine whether he or she is such a child.

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

40. Action in case of children with special education needs.-(1) If the head of Department, after an assessment referred to in section 39 (1), finds that the child is a child with special education needs, he or she shall notify the parent of the child in writing-

- (a) that he or she has found the child to be a child with special education needs who should receive specialised education and provide his or her reasons therefor; and

- (b) that the parent may within 30 days from the date of receipt of the notification, appeal to the MEC against the finding.

(2) The MEC shall consider an appeal contemplated in subsection (1) (b), and may confirm or set aside the finding of the head of Department.

41. Committal of children with special education needs.-(1) Unless-

- (a) the parent of a child found to be a child with special education needs in terms of section 38, within the period determined by the head of Department takes such steps as in the opinion of the head of Department are adequate to ensure that the child receives suitable education or treatment; or
- (b) the head of Department at any time after this period is of the opinion that the child is receiving suitable education or treatment,

then he or she may, after consultation with the parent, designate a school for specialised education to which the child shall be sent.

(2) If the head of Department has designated a school for specialised education under subsection (1) and the parent concerned fails to send the child to that school within the period determined by him or her, the head of Department may cause the child to be taken to the school concerned.

42. Additional powers of children's court in relation to children with special education needs.-(1) A children's court may, in the case of a child in respect of whom it has made an order in terms of section 15 (1) of the Child Care Act, 1983 (Act No. 74 of 1983), direct that the case be referred to the head of Department in order for him or her to determine whether the child is a child with special education needs.

(2) If the head of Department finds that a child referred to him or her under subsection (1) is a child with special education needs, the head of Department may approve that the child be admitted to a school for specialised education, for the periods during which specialised education is provided thereat.

43. Transfer of children with special education needs.-The head of Department may, after consultation with the parent of a learner attending a school for specialised education, transfer that learner to another school for specialised education.

44. Exemption from attendance of school for specialised education.-The head of Department may exempt a child from attendance at a school for specialised education if he or she is of the opinion that the child-

- (a) may benefit sufficiently from the instruction provided in the ordinary course of education; or
- (b) should attend an ordinary class in an ordinary school.

45. Admission to public schools.-(1) Subject to the provisions of the Child Care Act, 1983 (Act No. 74 of 1983), the admission of learners to public schools shall be subject to the prescribed conditions and to the provisions of the 1996 Act.

(2) No learner shall be denied access or admission to any school on grounds of race or religion.

46. Age requirements in respect of particular schools.-Except with the approval of the head of Department-

- (a) a child shall not be admitted to a pre-primary school before he or she has reached the age of three years;
- (b) a child shall not attend a pre-primary school after the end of the year in which he or she has reached the age of six years;
- (c) a child shall not be admitted to a primary school unless he or she reaches the age of seven years in the year in which he or she is first admitted;
- (d) a person shall not be admitted to a school, excluding a school for specialised education, industrial school or reform school, after he or she has reached the age of fifteen years; and
- (e) a person shall not attend a school, excluding a school for specialised education, industrial school or reform school, after the end of the year in which he or she has reached the age of twenty-one years.

47. Compulsory school attendance.-There shall be compulsory school attendance in accordance with national

policy and the provisions of the 1996 Act.

48. Exemption from compulsory school attendance.-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 from compulsory school attendance introduced under section 47, if-

- (a) he or she is of the opinion that the learner-
 - (i) is not yet ready to follow the educational programme concerned;
 - (ii) can derive no benefit or further benefit from an educational programme at a school;
 - (iii) is receiving suitable education or treatment at a place other than a school, or
 - (iv) as a result of continuous ill-health, is not capable of attending a school;
- (b) has reached the age of fifteen years or has completed the ninth grade, whichever occurs first;
- (c) is pregnant;
- (d) marries;
- (e) for any other reason will benefit from being so exempted;
- (f) has been duly registered in terms of section 51 of the 1996 Act; or
- (g) sufficient school facilities are not available.

49. Medium of instruction at, and character of, schools.-The medium of instruction at, and the religious and general character of, every public school shall be determined by its governing body in consultation with the parent community of the school concerned.

50. Control, discipline, suspension and expulsion of learners.-(1) The control, discipline and suspension of learners at a public school shall be handled in accordance with the provisions of the 1996 Act.

(2) (a) A learner may be expelled from a public school only on grounds of serious misconduct as determined in regulations made by the governing body concerned and adopted in consultation with the Department and the school community.

(b) Any rule formulated by a governing body in terms of paragraph (a) shall take effect only after it has been approved by the MEC.

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

CHAPTER 7

MISCELLANEOUS

52. School and boarding fees.-(1) The parent of a learner admitted to a public school shall pay such school fees, if any, as may be fixed in terms of Chapter 4 of the 1996 Act.

(2) The parent of a learner to whom boarding is provided by the Department shall pay such boarding fees as the MEC, with the concurrence of the financial head, may determine.

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

- (i) in respect of different public schools and centres;
- (ii) in respect of learners on different grades;
- (iii) in respect of learners with different choices of subjects;
- (iv) depending upon learners' participation in extramural activities; and
- (v) depending upon the number of school attending children in a family.

(b) Different boarding fees may be determined in terms of subsection (2) in respect of different boarding

facilities.

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

53. Unauthorized person may not visit a public school or enter the school grounds or school premises.-No person, except-

- (a) a learner, educator or an employee of the school in question;
- (b) the MEC, the head of Department or any officer or educator authorized in terms of sections 7 and 8;
- (c) a member of the governing body of a school concerned, or the hostel council of a hostel attached to the school concerned, who acts with the approval of the chairperson of such governing body or council;
- (d) a parent who, in relation to the education of his or her child, or for the purpose of attending a sports meeting, concert or any other event of the school in which his or her child has an interest;
- (e) a visitor from another school for the purpose 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) office bearers of unions who visit a school for the sole purpose of consulting with their members; and
- (h) members of the Provincial Legislature may, without the written permission of the head of Department, visit a public school or any hostel attached thereto, or enter the school grounds or premises of such school or hostel.

54. Offences relating to independent schools.-Any person who contravenes a prohibition contained in section 27 shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R20 000 or to compulsory community service for a period not exceeding five years or to both such fine and such service.

55. Offences relating to compulsory school attendance.-(1) If the parent of a child who is subject to compulsory school attendance fails, without sufficient cause, to send the child to school regularly, he or she 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 child from attending school; or
 - (iii) harbours or conceals such a child;
- (b) fails to comply with a direction issued under section 39 (2); or
- (c) removes a child who needs specialised education from a school for specialised education and who is not exempted under this Act from attendance,

shall be guilty of an offence.

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

- (a) hinders or obstructs a person appointed in terms of section 8 (1), or a school attendance officer, in the performance of his or her duties in terms of this Act;
- (b) refuses or fails to comply with an order 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) hinder or obstructs any educator in the performance of his or her duties,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R500 or to compulsory

community service for a period not exceeding six months or to both such fine and such service.

57. Offences relating to unauthorised persons on school premises.-Any person who contravenes a prohibition contained in section 53, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R100 or to compulsory community service for a period not exceeding one month or to both such fine and such service.

58. Penalties.-Any person convicted of an offence in terms of this Act shall be liable-

- (a) in the case of an offence referred to in section 30 (5), to a fine not exceeding R20 000 or to compulsory community service for a period not exceeding five years, or to both such fine and such service;
- (b) in the case of an offence referred to in sections 55 (1) and (2) (a) and (c), to a fine not exceeding R2 000, or compulsory community service for a period not exceeding one year, or to both such fine and such service; and
- (c) in the case of an offence referred to in section 55 (2) (b), to a fine not exceeding R1 000, or to compulsory community service for a period not exceeding six months, or to both such fine and such service.

59. Delegation of powers.-(1) The MEC may, subject to such conditions as he or she may determine, delegate any of his or her powers under this Act, except the power to make regulations and the power to decide an appeal lodged with him or her in terms of this Act, and assign any of his or her duties in terms of this Act, so the head of Department, or a person employed by the Department, or an outside agent.

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

(b) The head of Department may delegate powers to institute an inquiry to regional directors or district managers.

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

60. Limitation of legal proceedings.-(1) No legal proceedings shall be instituted against the State or a body or person in respect of an alleged act in terms of this Act or an alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted within a period of twelve months after the date on which the plaintiff or the applicant became aware of the alleged act or omission, or after the date on which it could reasonably have been expected that the plaintiff or applicant should have become aware of the alleged act or omission, whichever date is the earlier.

(2) Legal proceedings contemplated in subsection (1) shall not be instituted within a period of one month after the date upon which a written notice of intention to institute those proceedings has been served on the defendant or respondent.

(3) A written notice referred to in subsection (2) shall contain such particulars as may be necessary to identify the alleged act or omission.

61. Indemnity against loss or damage.-The State or any school attendance officer shall not be liable for any loss or damage caused by or arising from any reasonable action taken by a school attendance officer under this Act.

62. Establishment and composition of finance committee.-(1) (a) There shall be established at every school, a subcommittee of the governing body which shall be known as a finance committee.

(b) The finance committee shall be responsible for the appointment of auditors and the control and administration of school fund contributions.

(c) If the audit referred to in subsection 1 (b) is not reasonably practicable, the governing body of a public school must appoint a person to examine and report on the records and financial statements of the school concerned. The person so appointed must be approved by the MEC for this purpose.

(2) The composition of the finance committee shall be as follows:

- (a) the principal of the school concerned;
- (b) one member of the parent component of the governing body;
- (c) one member of the teacher component of the governing body;
- (d) one member of the learner component of the governing body, where applicable; and
- (e) other members of the governing body, to a maximum of five members.

63. Meetings of a finance committee.-A finance committee shall from its members elect a chairperson, vice chairperson, a secretary and a treasurer who shall hold office for a prescribed period: Provided that its terms of office shall correspond with that of the governing body concerned.

64. Functions of a finance committee.-(1) The principal, in his capacity as accounting officer of the school, shall ensure that the functions of the finance committee, as outlined in the manual relating to school funds, are properly executed.

(2) The finance committee shall report to the governing body at least twice per year.

65. Regulations.-(1) The MEC may make regulations which are not inconsistent with any law, as to-

- (a) the management and control of educational auxiliary services, centres, teachers' centres, hostels, public schools and the control over the immovable property and equipment of the Department;
- (b)
 - (i) the establishment and control of school funds for public schools;
 - (ii) the receipt and use of funds or other goods by public schools and hostels attached to such schools, centres and educational auxiliary services, and the books, records and statements to be kept in accordance therewith by the bodies or persons mentioned in the regulations; and
 - (iii) 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) any matter which shall or may be prescribed under this Act;
- (d) any matter which the MEC 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 MEC shall not make a regulation relating to moneys or allowances payable to or by any person, or relating to the control of money, except with the concurrence of the financial head.

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

CHAPTER 8

ADULT BASIC EDUCATION AND TRAINING AND ADULT CONTINUING EDUCATION AND TRAINING

66. Establishment and maintenance of adult basic education and training centres and adult continuing education and training centres.-The MEC may, in terms of section 5 (1) (c), establish and maintain centres for adult basic education and training and adult continuing education and training.

67. Basic policy for establishment of centres.-The basic policy of adult basic education and training and adult continuing education and training is to provide a force for social participation and economic development.

68. Design of programmes.-Adult basic education and training and adult continuing education and training programmes shall be designed around a common core of fundamental concepts, a recognition of prior learning and knowledge and skills on which further learning, knowledge and skill formation could be built.

69. Partnerships.-Partnerships of all constituencies with a vital interest in adult basic education and training and adult continuing education and training, including non-governmental, labour and business stakeholders may undertake the planning and development of resources for the programmes in partnership with governmental institutions.

70. Needs analysis and curriculum.-(1) Adult basic education and training and adult continuing education and training programmes shall be established after a needs analysis has been done with regard to personnel, facilities and infrastructure. This together with submissions made from amongst the learner community shall be employed to establish an appropriate adult basic education and training and adult continuing education and training curriculum for each centre, whose standards will be fully compatible with the National Qualification Framework.

(2) The MEC shall set criteria for the recognition of learning achievements.

71. Role of Provincial Qualification Authority.-The Provincial Qualification Authority shall monitor all adult basic education and training as well as adult continuing education and training programmes of all governmental and non-governmental organisations in the Province.

72. Training centres.-Industry, commerce and agriculture may establish adult basic education and training and adult continuing education and training centres: Provided that such centres shall be monitored by the Provincial Qualification Authority, where accreditation by the Provincial Qualification Authority is required.

73. Closure of centres.-The MEC may, after consultation with the community and governing body concerned, close an adult education and training centre or an adult continuing education and training centre, or any part thereof, on such conditions as he or she may determine.

CHAPTER 9

REPEAL OF LAWS AND SHORT TITLE

74. 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 thereof.

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

(3) (a) All 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 in so far as they are incompatible, or in conflict, with this Act.

(b) Such regulations, notices and directives shall remain in force until repealed, withdrawn or amended by the MEC by regulation, notice or directive, in terms of this Act.

75. Short title and commencement.-This Act shall be called the Eastern Cape Schools Education Act, 1999 and shall come into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

SCHEDULE

LAWS REPEALED

(Section 74)

<i>Number of year of Law</i>	<i>Title</i>	<i>Extent of Repeal</i>
1. Ordinance No. 20 of 1956	Education Ordinance, 1956	Part C
2. Act No. 47 of 1963	Coloured Persons Education Act, 1963	The whole excluding sections 1A, 8 to 20, 26 and 28 to 31, except in so far as it relates to technical colleges and colleges of education.
3. Act No. 61 of 1965	Indians Education Act, 1965	The whole excluding sections 1B, 3B, 8 to 20, 26, 28, 29, 31 and 33 (1) (g), except in so far as it relates to technical colleges and colleges of education.
		The whole excluding sections 1A, 3, 4, 11 to

4. Act No. 90 of 1979	Education and Training Act, 1979	29, 31, 32, 43 and 44 (1) (h), except in so far as it relates to technical colleges and colleges of education.
5. Act No. 26 of 1983	Education Act, 1983 (Transkei)	The whole excluding sections 3 to 32 and 35, except in so far as it relates to technical colleges of education.
6. Act No. 104 of 1986	Private Schools Act (House of Assembly), 1986	The whole, excluding section 1A.
7. Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole, excluding sections 3 and 65.
8. Decree No. 22 of 1992	Ciskei Education Decree, 1992	The whole, except in so far as it relates to technical colleges of education
