

**GAUTENG EDUCATION POLICY ACT  
NO. 12 OF 1998**

[ASSENTED TO 2 JANUARY, 1999]  
[DATE OF COMMENCEMENT: 19 MARCH, 1999]

*(English text signed by the Premier)*

This Act has been updated to *Provincial Gazette* No. 301 dated 28 December, 2011.

**as amended by**

Gauteng Education Laws Amendment Act, No. 5 of 2011

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**ACT**

**To provide for the determination of provincial education policy; to provide for the establishment of councils to assist in the process of making education policy; to provide for the co-ordination, monitoring and evaluation of education policy; and to provide for matters connected therewith.**

ARRANGEMENT OF SECTIONS

["Arrangement of Sections" deleted by s. 43 of Act No. 5 of 2011.]

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

**"district director"** means the official contemplated in section 40 of the School Education Act, 1995 (Act No. 6 of 1995);

**"education district"** means the area designated as an education district by the Member of the Executive Council in terms of section 8 of the School Education Act, 1995 (Act No. 6 of 1995);

**"education institution"** . . . . .

[Definition of "education institution" deleted by s. 44 (a) of Act No. 5 of 2011.]

**"education and training practitioner"** means any person who provides education and training at an education institution, and includes an educator as defined in the Employment of Educators Act, 1998 (Act No. 76 of 1998);

**"governing body"** means any body or person responsible for the governance of an education institution;

**"head of department"** means the head of the department responsible for education in the province;

**"learner"** means any person receiving education or obliged to receive education in terms of the Gauteng School Education Act, 1995 (Act No. 6 of 1995);

[Definition of "learner" inserted by s. 44 (c) of Act No. 5 of 2011.]

**"Member of the Executive Council"** means the member of the executive council responsible for education in the province;

**"parent"** means-

- (a) the biological or adoptive parent or legal 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) or (b) towards the learners education at school;

[Definition of "parent" inserted by s. 44 (d) of Act No. 5 of 2011.]

**"prescribed"** means prescribed by regulation and **"prescribe"** has a corresponding meaning;

**"principal"** means an educator appointed or acting as the head of the education institution;

[Definition of "principal" substituted by s. 44 (b) of Act No. 5 of 2011.]

**"provincial department"** means the department responsible for education in the province;

**"province"** means the province of Gauteng; and

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

[Definition of "school" inserted by s. 44 (e) of Act No. 5 of 2011.]

**"stakeholder"** means an organisation or body with a direct and continuing interest in the education institution, programme, phase or sector in question;

[Definition of "stakeholder" inserted by s. 44 (e) of Act No. 5 of 2011.]

**"this Act"** includes the regulations made under this Act.

**2. Objectives of this Act.**-The objectives of this Act are to facilitate the development of education policy by-

- (a) designating responsibility for making and implementing education policy;
- (b) determining the areas in respect of which education policy may be made;
- (c) specifying the guidelines in respect of which education policy may be made;
- (d) providing for the establishment of appropriate bodies that will be responsible for advising the Member of the Executive Council on the development of education policy;
- (e) specifying the procedures in respect of which education policy may be made;
- (f) creating an environment within which the public may have access to education policy; and
- (g) ensuring that education policy is effectively monitored and evaluated.

**3. Responsibility for determining and implementing education policy.**-(1) Subject to this Act or any other law, the Member of the Executive Council is responsible for determining education policy.

[Sub-s. (1) substituted by s. 45 (a) of Act No. 5 of 2011.]

(2) . . . . .

[Sub-s. (2) deleted by s. 45 (b) of Act No. 5 of 2011.]

(3) Subject to this Act, any other law or applicable national or provincial education policy, the governing body may determine education policy for its school.

[Sub-s. (3) substituted by s. 45 (a) of Act No. 5 of 2011.]

(4) . . . . .

[Sub-s. (4) deleted by s. 45 (b) of Act No. 5 of 2011.]

(5) . . . . .

[Sub-s. (5) deleted by s. 45 (b) of Act No. 5 of 2011.]

(6) The principal of a school administered under the auspices of the provincial department must-

- (a) co-ordinate the implementation of education policy in the school; and
- (b) submit-
  - (i) quarterly or such other reports as may be reasonably requested by the school governing body; and
  - (ii) an annual report to the governing body.

[S. 3 amended by s. 45 (a) of Act No. 5 of 2011. Sub-s. (6) substituted by s. 45 (c) of Act No. 5 of 2011.]

**4. . . . .**

[S. 4 repealed by s. 46 of Act No. 5 of 2011.]

**5. Guidelines for making education policy.**-(1) All education policy made in terms of this Act must contribute to the development of an education system which-

- (a) enhances democracy and human rights by-
  - (i) respecting the right to basic education;
  - (ii) ensuring equitable access to education opportunities and the redress of past inequalities in the provision of education;

- (iii) fostering the advancement of persons previously disadvantaged by unfair discrimination;
  - (iv) ensuring that the admission requirements at education institutions administered under the auspices of the provincial department do not include language competence testing;
  - (v) protecting persons against unfair discrimination within or by the provincial department or by an education institution;
  - (vi) fostering the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;
  - (vii) in relation to the rights referred to in subparagraph (vi), protecting the rights and duties of parents to provide direction to their children in the exercise of these rights in a manner consistent with the evolving capacity of their children;
  - (viii) encouraging freedom of association and the peaceful exercise, without the threat of violence, of the right to assemble, demonstrate and present petitions;
  - (ix) allowing all persons, including education institutions, access to information held by the provincial department in so far as such information is required for the exercise or protection of their rights; and
  - (x) facilitating the peaceful resolution of disputes amongst all stakeholders in the education sphere;
- (b) respects religious, cultural and language rights by-
- (i) promoting respect for the country's diverse communities and traditions;
  - (ii) encouraging participation of persons in the cultural life of their choice within an education institution;
  - (iii) promoting the status and use of official languages that have previously been neglected or discriminated against;
  - (iv) teaching learners in the language of their choice where reasonably practicable;
  - (v) recognising sign language as an official language of communication;
  - (vi) enabling learners to become competent in the languages of learning in their education institution;
  - (vii) allowing learners, where reasonably practicable, to use their language of choice where it differs from the language of learning in their education institution;
  - (viii) ensuring that, on completion of the ninth grade of learning, learners have acquired satisfactory levels of competence in at least two official languages; and  
[Sub-para. (viii) substituted by s. 47 of Act No. 5 of 2011.]
  - (ix) encouraging education and training practitioners to acquire the skills necessary for rendering education services in a multilingual environment;
- (c) advances personal development by-
- (i) promoting respect for teaching and learning in education institutions;
  - (ii) cultivating skills, disciplines and capacities necessary for the reconstruction and development of the country;
  - (iii) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners;
  - (iv) providing opportunities for lifelong learning;
  - (v) encouraging independent and critical thought;
  - (vi) ensuring that persons with barriers to learning are not denied the opportunity to receive education to the maximum of their potential;
  - (vii) facilitating the maximum participation of learners in the learning process;
  - (viii) promoting gender equality and the advancement of the status of women;
  - (ix) combatting sexual harassment at education institutions; and
  - (x) protecting persons from all forms of physical and mental violence at education institutions;
- (d) enhances the quality of education provision by-
- (i) ensuring that education and training is provided within a national qualifications framework;
  - (ii) promoting enquiry, research and the advancement of knowledge;
  - (iii) creating systems to improve standards of education and monitoring and evaluating their implementation; and

(iv) encouraging the cost-effective use of education resources and the sustainable implementation of education services;

(e) encourages public participation in the processes of formulating education policy, facilitates stakeholder representation in appropriate decision-making bodies and ensures democratic governance of education institutions administered under the auspices of the provincial department;

(f) eliminates wastage of resources, inefficiency, maladministration and corruption.

(2) A condition or limitation contained in any education policy made in terms of this Act, must be reasonable and proportionate to the object pursued by that policy.

**6 to 9 inclusive. . . . .**

[Ss. 6 to 9 inclusive repealed by s. 48 of Act No. 5 of 2011.]

**10. Establishment of Advisory Councils.**-(1) The Member of the Executive Council may establish Advisory Councils.

(2) A member of an Advisory Council who is not in the full-time employment of the State may be paid, out of funds appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may determine.

[S. 10 substituted by s. 49 of Act No. 5 of 2011.]

**11. Functions of Advisory Councils.**-(1) An Advisory Council may-

(a) at the request of the Member of the Executive Council, investigate and consider matters relating to education that fall within its terms of reference and report on its findings to the member;

[Para. (a) substituted by s. 50 (a) of Act No. 5 of 2011.]

(b) consider and make recommendations concerning all legislation that falls within its terms of reference, and

(c) perform any other function assigned or delegated to it in terms of this Act or any other law.

[Sub-s. (1) amended by s. 50 (a) of Act No. 5 of 2011.]

(2) The head of department shall be responsible for the establishment of a secretariat for the Advisory Councils.

[S. 11 amended by s. 50 (a) of Act No. 5 of 2011. Sub-s. (2) inserted by s. 50 (b) of Act No. 5 of 2011.]

**12. Composition, sub-committees, procedures and administration of the Gauteng Education and Training Council, a District Education and Training Council and Specialist Advisory Councils.**-(1) The Member of the Executive Council may issue regulations concerning-

(a) the composition and management of the Gauteng Education and Training Council, a District Education and Training Council and a Specialist Advisory Council and the term of office of their members;

(b) the criteria for appointing members to these councils; and

(c) the procedures for the appointment and removal of these members, including the determination and filling of vacancies.

(2) The Gauteng Education and Training Council, a District Education and Training Council or a Specialist Advisory Council may, with the concurrence of the Member of the Executive Council, establish one or more sub-committees to-

(a) enquire into and report to the relevant council regarding any matter falling within the scope of that council's functions; and

(b) perform any other function delegated to it by that council, except that the council may not be completely divested of the function contemplated in section 7 (a).

(3) The councils referred to in subsection (2) may at any time dissolve or reconstitute a sub-committee established in terms of that subsection.

(4) . . . . .

[Sub-s. (4) deleted by s. 51 of Act No. 5 of 2011.]

(5) The provincial department must provide the Gauteng Education and Training Council, the District Education and Training Councils and Specialist Advisory Councils with the administrative support necessary to enable them to perform their functions.

**13 to 16 inclusive.** . . . . .

[Ss. 13 to 16 inclusive repealed by s. 52 of Act No. 5 of 2011.]

**17. Monitoring the implementation of education policy.**-(1) If the head of department becomes aware that an education institution which is administered under the auspices of the provincial department is not complying with a policy made in terms of this Act, or in attempting to comply with the policy, it is failing to give adequate effect to the provisions of this Act-

- (a) the head of department must send a written notice to the governing body of the education institution containing a request that it submit written representations to the head of department on the non-compliance or failure; and
- (b) the governing body must act in accordance with this request within thirty days after the date of the request.

(2) If upon considering the representations, the head of department is not satisfied with the reasons for the non-compliance or failure, the head of department must send a compliance notice to the governing body.

(3) The compliance notice referred to in subsection (2) must-

- (a) be in writing;
- (b) specify the nature of the non-compliance or failure and the steps it is required to take; and
- (c) inform the governing body that it has one month from the date of the compliance notice to take the required steps.

(4) The period within which the required steps as contemplated in subsection (3) (b) must be taken may be extended by the head of department on good cause by the governing body.

(5) If the governing body is dissatisfied by the head of department's decision to issue the compliance notice in terms of subsection (2) or specification of the steps to be taken as contemplated in subsection (3) (b), it may refer this decision to the Member of the Executive Council for consideration.

(6) The referral referred to in subsection (5) must-

- (a) be in writing;
- (b) be made within thirty days after the date of the compliance notice;
- (c) set out the grounds for the referral; and
- (d) enclose copies of the documents contemplated in subsections (1), (2), (3) and (4).

(7) Within sixty days after receipt of the referral, the Member of the Executive Council must consider the referral in a manner he or she considers appropriate and send a written notice of his or her decision to the governing body and the head of department, stating the reasons for the decision.

(8) If the Member of the Executive Council does not find in favour of the governing body, the decision made in terms of the subsection (7) must be taken within thirty days after the date of the Member of the Executive Council's decision.

**18. Regulations.**-(1) The Member of the Executive Council may make any regulation that is necessary or expedient in order to achieve the objects of this Act, including regulations regarding mechanisms and procedures for evaluating the implementation of education policy.

(2) . . . . .

[Sub-s. (2) deleted by s. 53 of Act No. 5 of 2011.]

(3) . . . . .

[Sub-s. (3) deleted by s. 53 of Act No. 5 of 2011.]

**19. Delegation.**-(1) Subject to the provisions of this Act or any other law, the Member of the Executive Council may assign or delegate any powers or functions conferred on him or her in terms of this Act, except those contemplated in sections 3 (1), 8, 10, 12 (1), 17 (8) and 18 (1) to-

- (a) any person in the employ of the provincial administration; or
- (b) any council, committee, sub-committee, board or body established in terms of this Act or any other law.

[Sub-s. (1) substituted by s. 54 of Act No. 5 of 2011.]

(2) The head of department must keep a register in the prescribed manner of all assignments or delegations made in terms of this Act.

(3) Within six months of coming into office, the Member of the Executive Council must review all assignments and delegations made in terms of this Act.

**20. Repeal of laws and transitional arrangements.**-(1) Sections 5, 18, 21, 32 to 46, and 88 of the School Education Act, 1995 (Act No. 6 of 1995), are hereby repealed.

(2) Despite subsection (1)-

- (a) a policy made or action taken in terms of the repealed provisions of the School Education Act, 1995 (Act No. 6 of 1995) will be regarded as having been done under the corresponding provision of this Act; and
- (b) any regulation issued in terms of the repealed provisions of the School Education Act, 1995 (Act No. 6 of 1995) will be regarded as having been made under the corresponding provision of this Act and continues to have force and affect unless amended or repealed in terms of this Act.

(3) . . . . .

[Sub-s. (3) deleted by s. 55 of Act No. 5 of 2011.]

**21. Short title and commencement.**-This Act is called the Gauteng Education Policy Act, 1998, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

[S. 21 substituted by s. 56 of Act No. 5 of 2011.]

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