

# FREE STATE SCHOOL EDUCATION ACT NO. 2 OF 2000

[ASSENTED TO 11 APRIL 2000]  
[DATE OF COMMENCEMENT: 14 APRIL, 2000]

This Act has been updated to *Provincial Gazette* No. 122 dated 10 December, 2010.

## as amended by

Education Laws Amendment Act, No. 7 of 2010

---

## ACT

**To provide for a uniform system for the provision and control of school education in the Province; to repeal certain laws relating to education; and to provide for matters connected therewith.**

**Preamble.**—WHEREAS the School Education Act, 1996, was promulgated before the coming into operation of the South African Schools Act, 1996, and because provincial education legislation should accord with national norms and standards; and

WHEREAS the need exists to provide education in the Province in conformity with the Constitution of the Republic of South Africa, 1996, the South African Schools Act, 1996, as well as to eliminate limitations and inconsistencies in the present provincial legislation on education;

BE IT THEREFORE ENACTED by the Provincial Legislature of the Free State Province, as follows:—

### ARRANGEMENT OF SECTIONS

#### CHAPTER 1 DEFINITIONS AND APPLICATION OF THIS ACT

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

#### CHAPTER 2 OBJECTIVES OF THIS ACT

- [3.](#) Objectives of Act

#### CHAPTER 3 EDUCATION COUNCILS AND EXAMINATION BOARD

- [4.](#) Establishment of Provincial Education and Training Council
- [5.](#) Establishment of District Education and Training Councils
- [6.](#) Establishment of a Provincial Examination Board
- [7.](#) Establishment of Provincial Principals' Council
- [8.](#) Establishment of Provincial and District Governing Body Councils

#### CHAPTER 4 PUBLIC SCHOOLS

- [9.](#) Status of public schools
- [10.](#) Provision of public schools
- [11.](#) Public schools on State property
- [12.](#) Public schools on private property
- [13.](#) Merger of public schools
- [14.](#) Suspension of classes and temporary closure of public schools
- [15.](#) Closure of public schools
- [16.](#) Enrolment of home-based learners at public schools
- [17.](#) Language and admission policy of public schools
- [18.](#) Freedom of conscience and of religion in public schools

#### CHAPTER 5

## INDEPENDENT SCHOOLS

- [19.](#) Establishment of an independent school
- [20.](#) Registration as an independent school
- [21.](#) Withdrawal of registration and closure of an independent school
- [22.](#) Declaration of independent school as public school
- [23.](#) Management of independent schools
- [24.](#) Subsidies to registered independent schools
- [25.](#) Regulations relating to independent schools

## CHAPTER 6 HOME-BASED EDUCATION

- [26.](#) Registration of a learner for home-based education

## CHAPTER 7 LEARNERS

- [27.](#) Compulsory school attendance
- [28.](#) School attendance officers
- [29.](#) Duties of principals and the Head of Education regarding compulsory school attendance
- [30.](#) Offences relating to compulsory school attendance
- [31.](#) Exemption from compulsory school attendance
- [32.](#) Code of conduct for learners
- [33.](#) Prohibition of corporal punishment
- [34.](#) Suspension and expulsion of learners from public schools
- [35.](#) Representative council of learners

## CHAPTER 8 GOVERNANCE AND PROFESSIONAL MANAGEMENT OF PUBLIC SCHOOLS

- [36.](#) Governing body of a public school
- [37.](#) Governance and professional management of public schools
- [38.](#) Governing body serving two or more public schools
- [39.](#) Membership of governing body of ordinary public school
- [40.](#) Membership of governing body of special public school
- [41.](#) Functions of all governing bodies
- [42.](#) Allocated functions of governing bodies
- [43.](#) Withdrawal of functions from governing bodies
- [44.](#) Enhancement of capacity of governing bodies
- [45.](#) Constitution of governing body
- [46.](#) Election and appointment of members of a governing body
- [47.](#) Failure by governing body to perform functions
- [48.](#) Recusal by members of governing body
- [49.](#) Reimbursement of members of governing body
- [50.](#) Office-bearers of governing bodies
- [51.](#) Committees of governing body
- [52.](#) Term of office of members and office-bearers of governing bodies
- [53.](#) Status of minors on governing bodies of public schools

## CHAPTER 9 FUNDING OF PUBLIC SCHOOLS

- [54.](#) The responsibility of the Department
- [55.](#) Norms and standards for funding of public schools
- [56.](#) Responsibility of the governing body of a public school
- [57.](#) School fees at public schools
- [58.](#) Parents' liability for payment of school fees
- [59.](#) Enforcement of payment of school fees
- [60.](#) Financial records and statements of public schools
- [61.](#) Financial year of a public school

CHAPTER 10  
POWERS AND DUTIES OF THE RESPONSIBLE MEMBER AND HEAD OF EDUCATION

- [62.](#) Powers and duties of responsible Member
- [63.](#) Powers and duties of Head of Education

CHAPTER 11  
TRANSITIONAL PROVISIONS

- [64.](#) Transitional provisions relating to schools other than private or independent schools
- [65.](#) Categories of public schools
- [66.](#) Transitional provisions relating to private or independent schools
- [67.](#) Transitional provisions relating to public schools on private property
- [68.](#) Transitional provisions relating to school attendance officers
- [69.](#) Transitional provisions relating to governing bodies and representative councils of learners
- [70.](#) Transitional provisions relating to allocated functions

CHAPTER 12  
GENERAL PROVISIONS

- [71.](#) Duty of schools to provide information
  - [72.](#) Regulations
  - [73.](#) Delegation of powers
  - [74.](#) . . . . .
  - [75.](#) Repeal of laws, and savings
  - [76.](#) Short title
- [Schedule](#)

CHAPTER 1  
DEFINITIONS AND APPLICATION OF THIS ACT

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

**“assessment process”** means a continuous process that would reflect learner performance at any given point in time;

**“class”** means a number of learners from the same grade or different grades who are at the same time grouped together to receive tuition in specific learning context;

**“combined school”** means a school providing education in all grades falling under a primary school as well as all grades falling under a secondary school;

**“Constitution”** means the Constitution of the Republic of South Africa, 1996;  
[Definition of “Constitution” amended by s. 1 (2) of Act No. 7 of 2010.]

**“Council”** means the Provincial Education and Training Council established under section 4;

**“Department”** means the Department of Education, mentioned in the first column of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“education”** means instruction, teaching or training provided to learners in terms of this Act or any other applicable law;

**“educational programme”** means a pre-arranged course or activity related to education;

**“educational support services”** means all education related health and social work, general and counselling guidance, psychological programmes and services provided to all learners;

**“educator”** means a person, excluding a person who is appointed to exclusively perform extra-curricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education support services at schools;

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

**“expulsion”** means the permanent prohibition of a learner to attend a particular school or a hostel of that school, as the case may be;

**“further education and training”** means all learning and training programmes leading to qualifications from levels 2 to 4 of the National Qualifications Framework as contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), which levels are above general education, but below higher education;

**“general education”** means the school attendance phase from grade R to grade 9;

**“governing body”** means a governing body of a public school established in terms of this Act;

**“grade”** means that part of an educational programme in a school, or another educational programme which the responsible Member may deem to be equivalent thereto, which a learner may complete in one school year;

**“Head of Education”** means the Head of Education in the Province mentioned in the second column of Schedule 2 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“home-based education”** means education which provides for the educational needs of a learner at the learner’s home;

**“home learner”** means a learner who receives education at home;

**“hostel”** means an institution attached to a school for the residential accommodation of learners;

**“independent school”** means a school registered or deemed to be registered in terms of section 20;

**“industrial school”** means a public school for the reception, care and education of learners referred or transferred thereto in terms of the Child Care Act, 1983 (Act No. 74 of 1983);

**“intermediate school”** means a school for primary and secondary education up to a grade not higher than grade 9;

**“language policy”** means the policy regarding the language or languages that are used as medium of instruction, used as medium of communication at the school, as well as the support a school offers to learners whose language of choice is not one in which instruction takes place at the school;

**“learner”** means a person receiving education or obliged to receive education in terms of this Act;

**“medium of instruction”** means the language used for education, instruction or training at a school;

**“National Act”** means the South African Schools Act, 1996 (Act No. 84 of 1996);

**“national policy”** means national education policy determined by a competent authority within the jurisdiction of the national government;

**“officer”** means an employee of the Department appointed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“ordinary public school”** means a public school which provides education for all learners;

**“parent”** means—

- (a) the parent or guardian of a learner;
- (b) the person legally entitled to custody of a learner; or
- (c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner’s education at school;

**“pre-primary school”** means a school which provides education for children of the age of three years and above but below the age of 7 years;

**“primary school”** means a school which provides education for learners from grade R or grade 1 up to a grade not higher than grade 7;

**“principal”** means an educator appointed permanently or temporarily as head of a school or acting as such;

**“Province”** means the Free State Province as provided for in section 103 of the Constitution;

**“public school”** means a school financed by the Provincial Legislature, that may be an ordinary public school or a special public school;

**“secure care”** means the physical containment in a safe and healthy environment—

- (a) of children with behavioral and emotional difficulties; and
- (b) of children in conflict with the law.

[Definition of “secure care”, previously definition of “reform school”, substituted by s. 1 (2) of Act No. 7 of 2010.]

**“regulation”** means a regulation made under this Act;

**“responsible Member”** means the Member of the Executive Council of the Province who is responsible for Education;

**"school"** means a public school or an independent school which provides education for learners in one or more grades from grade R to grade 12;

**"school attendance officer"** means an officer designated by the responsible Member to supervise the compulsory attendance of learners;

**"school fees"** means an amount of money determined in terms of section 57 by the parents of learners of a public school, payable to the school's school fund by parents of learners admitted to that school;

**"school fund"** means a fund established and administered by the governing body of a public school in accordance with the directions issued by the Head of Education and into which all money received by or on behalf of such school including school fees and voluntary contributions, must be paid;

**"secondary school"** means a school which provides education for learners from grade 8 to grade 12;

**"secure care"** means the physical containment in a safe and healthy environment—

(a) of children with behavioral and emotional difficulties; and

(b) of children in conflict with the law.

[Definition of "secure care", previously definition of "reform school", substituted by s. 1 (2) of Act No. 7 of 2010.]

**"special public school"** means a public school providing cost-intensive additional resources for learners with special education needs;

**"suspension"** means the temporary prohibition of a learner to attend a particular school or a hostel of that school, as the case may be;

**"this Act"** includes all regulations and notices.

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

## CHAPTER 2 OBJECTIVES OF THIS ACT

**3. Objectives of Act.**—The responsible Member must, out of funds appropriated by the Provincial Legislature, aim to achieve the following objectives with education and training in the Province:

- (a) To provide for the fundamental right to education as set out in the Constitution.
- (b) To effect a system of educational provision and support which serves the needs and the interests of all the people of the Province.
- (c) To effect the full and active participation in education of various interest groups, in particular, educators, parents, learners, workers, employers and the broader community.
- (d) To co-ordinate education policy through uniform norms and minimum standards which apply generally throughout the Province.
- (e) To enhance the dignity, stature and status of educators in schools, while developing an effective culture of teaching, learning, service and professional commitment.
- (f) To emphasise school facilities as a basis for community learning.
- (g) To reflect demographic realities in the placement and utilisation of all support systems.
- (h) To sensitise the community to maintain a balance between the acquisition of academic and vocational skills necessary for developing practical and income-generating initiatives.

## CHAPTER 3 EDUCATION COUNCILS AND EXAMINATION BOARD

**4. Establishment of Provincial Education and Training Council.**—(1) The responsible Member must, by notice in the *Provincial Gazette*, establish a Provincial Education and Training Council.

(2) The Provincial Education and Training Council established in terms of section 6 of the School Education Act, 1996 (Act No. 1 of 1996) shall function until such time that a Council is established in terms of subsection (1).

(3) The Council referred to in subsection (1) shall advise the responsible Member regarding any matter relating to education referred to it by the responsible Member, or any such matter which the Council, of its own accord, wishes to bring to the attention of the responsible Member.

(4) The responsible Member must, by notice in the *Provincial Gazette*, determine—

- (a) the composition of the Council;
- (b) the procedure for the election or the appointment of members and office-bearers of the Council;
- (c) the procedure for the disqualification or removal of a member of the Council and the dissolution of the Council, for sufficient reasons in each case;
- (d) the procedure for the filling of a vacancy on the Council;
- (e) the term of office of members and office-bearers of the Council;
- (f) the powers and duties of the Council;
- (g) guidelines for meetings of the Council;
- (h) guidelines for the composition and functions of committees, including an executive committee, of the Council; and
- (i) any other matter relating to the Provincial Education and Training Council which must or may be prescribed in terms of this Act.

**5. Establishment of District Education and Training Councils.**—(1) The responsible Member may, if he or she deems it in the interest of education in the Province, by notice in the *Provincial Gazette*—

- (a) divide the Province into districts and determine the boundaries thereof;
- (b) change the boundaries of such districts;
- (c) establish a District Education and Training Council for a district; or
- (d) suspend or dissolve a District Education and Training Council established in terms of paragraph (c).

(2) The provisions of section 4 (4) apply *mutatis mutandis* to District Education and Training Councils after they have been established in terms of subsection (1) (c).

**6. Establishment of a Provincial Examination Board.**—(1) The responsible Member must, by notice in the *Provincial Gazette*, establish a Provincial Examination Board.

(2) The Examination Board referred to in subsection (1) shall—

- (a) advise the responsible Member regarding any matter relating to examinations referred to it by the responsible Member, or any such matter which the Council, of its own accord, wishes to bring to the attention of the responsible Member; and
- (b) facilitate the process of policy formulation on examinations and related matters.

(3) The responsible Member must, by notice in the *Provincial Gazette*, determine the following—

- (a) the composition of the Provincial Examination Board;
- (b) the procedure for the election or the appointment of members and office-bearers of the Provincial Examination Board;
- (c) the procedure for the disqualification or removal of a member of the Board and the dissolution of the Provincial Examination Board, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the Provincial Examination Board;
- (e) the term of office of members and office-bearers of the Provincial Examination Board;
- (f) the powers and duties of the Provincial Examination Board;
- (g) guidelines for meetings of the Provincial Examination Board;
- (h) guidelines for the composition and functions of committees, including an executive committee, of the Provincial Examination Board; and
- (i) any other matter relating to the Provincial Examination Board which must or may be prescribed in terms of this Act.

**7. Establishment of Provincial Principals' Council.**—(1) The responsible Member may, by notice in the *Provincial Gazette*, establish a Provincial Principals' Council.

(2) The Principals' Council referred to in subsection (1) shall advise the Head of Education regarding any

matter relating to education referred to it by the Head of Education, or any such matter which the Council of its own accord wishes to bring to the attention of the Head of Education.

- (3) The responsible Member must, by notice in the *Provincial Gazette*, determine—
- (a) the composition of the Principals' Council;
  - (b) the procedure for the election or the appointment of members and office-bearers of the Principals' Council;
  - (c) the procedure for the disqualification or removal of a member of the Principals' Council and the dissolution of the Principals' Council, for sufficient reasons in each case;
  - (d) the procedure for the filling of a vacancy on the Principals' Council;
  - (e) the term of office of members and office-bearers of the Principals' Council;
  - (f) the powers and duties of the Principals' Council;
  - (g) guidelines for meetings of the Principals' Council;
  - (h) guidelines for the composition and functions of committees, including an executive committee, of the Principals' Council; and
  - (i) any other matter relating to the Provincial Principals' Council which must or may be prescribed in terms of this Act.

**8. Establishment of Provincial and District Governing Body Councils.**—(1) The responsible Member may, by notice in the *Provincial Gazette*, establish Provincial and District Governing Body Councils.

(2) The Governing Body Councils referred to in subsection (1) shall advise the Head of Education regarding any matter relating to education referred to it by the Head of Education, or any such matter which the Governing Body Councils of their own accord wish to bring to the attention of the Head of Education.

- (3) The responsible Member must, by notice in the *Provincial Gazette*, determine—
- (a) the composition of the Governing Body Councils;
  - (b) the procedure for the election or the appointment of members and office-bearers of the Governing Body Councils;
  - (c) the procedure for the disqualification or removal of a member of the Governing Body Councils and the dissolution of the Governing Body Councils, for sufficient reasons in each case;
  - (d) the procedure for the filling of a vacancy on the Governing Body Councils;
  - (e) the term of office of members and office-bearers of the Governing Body Councils;
  - (f) the powers and duties of the Governing Body Councils;
  - (g) guidelines for meetings of the Governing Body Councils;
  - (h) guidelines for the composition and functions of committees, including an executive committee, of the Governing Body Councils; and
  - (i) any other matter relating to the Governing Body Councils which must or may be prescribed in terms of this Act.

#### CHAPTER 4 PUBLIC SCHOOLS

**9. Status of public schools.**—(1) Every public school is a juristic person, with legal capacity to perform its functions in terms of this Act.

(2) Notwithstanding subsection (1), a public school may not, without the concurrence of the responsible Member, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

**10. Provision of public schools.**—(1) The responsible Member must, out of funds appropriated for this purpose by the Provincial Legislature, establish and maintain public schools for the education of all learners.

(2) The provision of public schools referred to in subsection (1) may include the provision of hostels.

(3) Subject to sections 13 and 15, the responsible Member may, by notice in the *Provincial Gazette*, reclassify

existing categories or phases of public schools, or register new categories of public schools, if he or she deems it necessary for education in the Province.

(4) The responsible Member may not act under subsection (3), unless he or she has—

- (a) informed the governing body of the school concerned of his or her intention so to act and the reasons therefor;
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) duly considered any such representations received.

(5) The responsible Member must, where reasonably possible, provide relevant educational support services to all educators and learners.

(6) The responsible Member must take all reasonable measures to ensure that the physical facilities at public schools are accessible to persons with disabilities.

(7) Nothing in this Act prohibits the provision of gender specific public schools.

**11. Public schools on State property.**—(1) Subject to section 41 (1) (k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.

(2) The right referred to in subsection (1) is enforceable against any successor in title of the owner of the immovable property in question.

(3) The right referred to in subsection (1) may only be restricted by the responsible Member if the immovable property is not utilised by the school in the interest of education.

(4) The responsible Member may not act under subsection (3), unless he or she has—

- (a) informed the governing body of the school concerned of his or her intention so to act and the reasons therefor;
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) duly considered any such representations received.

(5) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 12 has been concluded between the responsible Member and the prospective owner of the immovable property.

(6) The Registrar of deeds may not execute, attest to or register a transfer deed in respect of the immovable property in question, unless the owner has provided the registrar with proof of the agreement contemplated in subsection (5).

(7) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (1).

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

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

- (a) the provision of education and the performance of the normal functions of a public school;
- (b) governance of the school, including the relationship between the governing body of the school and the owner;
- (c) access by all interested parties to the property on which the school stands;
- (d) security of occupation and use of the property by the school;
- (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services; and
- (f) protection of the owner's rights in respect of the property occupied by the school.

(3) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.

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

(5) Despite subsection (3), a Registrar of deeds must endorse on the title deed of the affected property that the property is subject to an agreement referred to in this section, if the Registrar of deeds receives—

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

(6) The Registrar of deeds may cancel any endorsement made in accordance with subsection (5), if the owner of the property submits an affidavit from the responsible Member to the effect that such public school has been closed in terms of section 15.

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

**13. Merger of public schools.**—(1) The responsible Member may, by notice in the *Provincial Gazette*, determine that certain public schools merge from a date mentioned in the notice.

(2) The responsible Member may only act under subsection (1) after—

- (a) he or she has given to the governing bodies of the schools concerned notice of his or her intention so to act and the reasons therefor;
- (b) he or she has granted the governing bodies of the schools concerned a reasonable opportunity to make representations to him or her;
- (c) a public hearing with reasonable notice has been conducted to enable the communities to make representations to him or her;
- (d) he or she has given due consideration to such representations received; and
- (e) he or she is satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law.

(3) The merger contemplated in subsection (1) includes the merging of different general education phases, as well as the further education and training phase presented in public schools.

(4) If the public schools that are to be merged under subsection (1) are public schools on private property, the responsible Member may only act after he or she—

- (a) has notified the owners of the private properties in question and the schools concerned in writing of the intention to merge the schools;
- (b) has entered into negotiations with the governing bodies and the communities concerned;
- (c) has negotiated with the owners of the private properties in question regarding the contractual obligations in terms of their agreements contemplated in section 12;
- (d) has negotiated a new agreement in terms of section 12, if applicable; and
- (e) is satisfied that the employers of the staff at the public schools on private property have complied with their obligations in terms of the applicable labour law.

(5) If public schools merge, all assets and liabilities of those schools must, subject to the conditions of any donation, bequest or trust, devolve upon the merged school, unless otherwise agreed between the Member of the Executive Council and the governing bodies of the schools concerned.

(6) The responsible Member must, by notice in the *Provincial Gazette*, determine procedures for reasonable consultation and the criteria for the merger contemplated in subsection (1).

**14. Suspension of classes and temporary closure of public schools.**—(1) The responsible Member may suspend the tuition of certain classes of a public school or close a public school, temporarily.

(2) The responsible Member may only act under subsection (1) if he or she is of the opinion that—

- (a) the safety of the learners or members of staff of such class or school is in jeopardy;
- (b) vandalism of property may occur; or
- (c) the situation is no longer conducive to teaching.

(3) The responsible Member may only act under subsection (1) after consultation with the governing body of the school concerned.

(4) The responsible Member must, by notice in the *Provincial Gazette*, provide for the procedures to be followed for the termination of classes and the closure of a public school under subsection (1).

**15. Closure of public schools.**—(1) The responsible Member may, by notice in the *Provincial Gazette*, close a public school from a date mentioned in the notice.

(2) The responsible Member may not act under subsection (1) unless he or she has—

- (a) informed the governing body of the school and if it is a public school on private property, the owner of the property, of his or her intention so to act and his or her reasons therefor;
- (b) granted the governing body of the school and if it is a public school on private property, the owner of the property, a reasonable opportunity to make representations to him or her in relation to such action;
- (c) conducted a public hearing with reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
- (d) given due consideration to any such representations received.

(3) If a public school is closed in terms of subsection (1), all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust, devolve on the State, unless otherwise agreed between the responsible Member and the governing body of the school.

**16. Enrolment of home-based learners at public schools.**—(1) The governing body of a public school may not refuse an application for the enrolment of a home-based learner at such school for additional educational support if the school has the capacity to provide the services requested at a negotiated and reasonable fee.

(2) The public school concerned shall not benefit from the enrolment of home-based learners in terms of educator-learner ratio for the purpose of educator provisioning.

**17. Language and admission policy of public schools.**—(1) Subject to subsection (3) the language policy of a public school may be determined by the governing body of the school within the norms and standards determined by section 6 (1) of the National Act.

(2) The South African Sign Language has the status of an official language for purposes of learning and teaching at a public school.

(3) The Head of Education shall assure him or herself that the medium of instruction of a public school is determined within the norms and standards as determined by section 6 (1) of the National Act.

(4) Subject to this Act and the National Act, the admission policy of a public school shall be determined by the governing body of that school.

(4A) The governing body of a public school may determine the language policy of the public school, subject to the Constitution, the South African Schools Act, 1996 (Act No. 84 of 1996) and the approval of the Head of Education.

[Sub-s. (4A) added by s. 1 (2) of Act No. 7 of 2010.]

(4B) 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 with respect for the country's diverse language communities;
- (b) Where reasonably practicable, a learner shall have the right to language choice in education;
- (c) School language policy shall be designed to facilitate the maximum participation of learners in the learning process;
- (d) Special measures shall be taken by the governing body to enable a learner to become competent in the language of teaching of their choice and where reasonably practicable if there is a place available in the relevant grade the public school must admit the learner;
- (e) Where no public school in a district offers the desired language as a medium of learning and teaching, the Department upon request, may make provision for instruction in the chosen language;
- (f) On completion of the ninth grade of education a learner should have acquired satisfactory levels of competence in at least two of the official languages;

- (g) Special measures shall be taken by the governing body to promote the status and use of official languages that have previously been neglected or discriminated against by education authorities in the Province;
- (h) There shall be a duty on all public schools and on the governing body and the Department that educators must acquire the special skills necessary for teaching in a multilingual education environment; and
- (i) Special measures shall be taken by the governing body to stipulate how the public school will promote multilingualism through using more than one language of learning and teaching and approved by the Head of Education.

[Sub-s. (4B) added by s. 1 (2) of Act No. 7 of 2010.]

(4C) If, at any time, the Head of Education has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Head of Education may, after consultation with the district council and the governing body of the public school concerned, direct the governing body of the public school to reformulate the language policy of the public school in accordance with the provisions of subsections (1) and (2).

[Sub-s. (4C) added by s. 1 (2) of Act No. 7 of 2010.]

(5) A public school must admit learners and serve their educational requirements without unfairly discriminating in any way.

(6) The governing body of a public school may not administer any test related to the admission of a learner to a public school, or direct, or authorise the principal of the school, or any other person, to administer such test, excluding psychological assessment tests approved by the Board on Psychology.

(7) No learner may be refused admission to a public school on the grounds that his or her parent—

- (a) is unable to pay or has not paid the school fees determined by the governing body under section 57;
- (b) does not subscribe to the mission statement of the school; or
- (c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising out of the education of the learner.

(8) In determining the placement of a learner with special education needs, the Head of Education and the principal must take into account the rights and wishes of the parents of such learner.

(9) The responsible Member must, by notice in the *Provincial Gazette*, determine the following—

- (a) the guidelines for admission policy;
- (b) the manner by which an application for admission of a learner to a public school must be made;
- (c) the procedure to be followed when a learner is denied admission to a public school.

(10) Any learner or the parent of a learner who has been refused admission to a public school may appeal against the decision to the responsible Member.

**18. Freedom of conscience and of religion in public schools.**—(1) Freedom of conscience and of religion shall be respected in all public schools.

(2) Subject to the Constitution and any applicable law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance thereof is free and voluntary.

## CHAPTER 5 INDEPENDENT SCHOOLS

**19. Establishment of an independent school.**—Any natural person, judicial person or trust may, at his or her own expense, establish and maintain an independent school that—

- (a) does not discriminate on the basis of race;
- (b) maintains standards that are not inferior to the standards at comparable public schools; and
- (c) is registered by the Head of Education.

**20. Registration as an independent school.**—(1) No person may establish, operate or maintain an independent school, unless it is registered by the Head of Education.

(2) The responsible Member must, by notice in the *Provincial Gazette*, determine the conditions on which the registration of an independent school may be granted or refused by the Head of Education.

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

(4) If in relation to an application in terms of subsection (1), the Head of Education is satisfied that—

- (a) the application is *bona fide*;
- (b) the standards to be maintained by the school will not be inferior to the standards in comparable public schools;
- (c) the admission policy of the school does not discriminate on the grounds of race; and
- (d) the school complies with the conditions for registration referred to in subsection (2),

he or she shall register the independent school.

(5) If the Head of Education refuses to grant permission for registration, he or she must notify the applicant in writing of the refusal and the reasons therefor.

(6) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

**21. Withdrawal of registration and closure of an independent school.**—(1) If a condition subject to which registration of an independent school was granted has not been complied with, the Head of Education may withdraw that registration and close the school from a date determined by him or her.

(2) No withdrawal of the registration of an independent school is valid unless—

- (a) the Head of Education has furnished the owner of that independent school with a notice of intention to withdraw the registration, stating the reasons for the intended withdrawal;
- (b) the owner of such independent school has been granted an opportunity to make written representations to the Head of Education as to why the registration should not be withdrawn; and
- (c) any representations received have been duly considered.

(3) The responsible Member must, by notice in the *Provincial Gazette* determine the procedures for the withdrawal of registration and closure of an independent school.

(4) The owner of an independent school may appeal to the responsible Member against the withdrawal of the registration and closure of the independent school.

**22. Declaration of independent school as public school.**—(1) The responsible Member may, with the concurrence of the Member of the Executive Council responsible for Finance, enter into an agreement with the owner of an independent school or his or her representative in terms whereof such independent school is declared to be a public school on private property.

(2) Notice of the change of status contemplated in subsection (1) must be published in the *Provincial Gazette*.

**23. Management of independent schools.**—The owner of an independent school may manage the 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: Provided that the owner of the school shall, for the purposes of this Act, remain responsible for compliance with the prescribed requirements and any condition subject to which approval was granted for registration of the school.

**24. Subsidies to registered independent schools.**—(1) The owner of an independent school may apply annually in a prescribed manner for a subsidy to the responsible Member.

(2) The responsible Member may, subject to the norms and standards determined in section 48 (1) of the National Act, by notice in the *Provincial Gazette*, determine provincial guidelines relating to subsidies for independent schools.

(3) In relation to an application referred to in subsection (1), the responsible Member may, subject to norms and standards referred to in section 48 (1) of the National Act and the Provincial guidelines referred to in subsection (2), out of funds appropriated by the Provincial Legislature for that purpose, grant a subsidy to an independent school.

(4) No subsidy shall be granted to an independent school, which does not comply with the prescribed norms, standards and guidelines for receiving a subsidy.

(5) If a condition subject to which a subsidy was granted has not been complied with, the Head of Education may terminate or reduce the subsidy from a date determined by him or her.

(6) The Head of Education may not terminate or reduce a subsidy under subsection (5), unless—

- (a) the owner of the independent school has been furnished by the Head of Education with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (b) the owner has been granted an opportunity to make written representations to the Head of Education as to why the subsidy should not be terminated or reduced; and
- (c) representations received have been duly considered.

(7) The owner of an independent school may appeal to the responsible Member against the termination or reduction of a subsidy to the independent school.

**25. Regulations relating to independent schools.**—(1) The responsible Member must, by notice in the *Provincial Gazette*, determine requirements for—

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

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

## CHAPTER 6 HOME-BASED EDUCATION

**26. Registration of a learner for home-based education.**—(1) A parent may apply to the Head of Education for the registration of a learner to receive education at the learner's home.

(2) The Head of Education must register a learner referred to in subsection (1) if he or she is satisfied that—

- (a) the registration is in the best interest of the learner;
- (b) the education likely to be received by the learner at home—
  - (i) will meet the minimum requirements of the curriculum at public schools;
  - (ii) will be of a standard not inferior to the standard of education provided at public schools;
- (c) the parent will comply with any other reasonable conditions set by the Head of Education; and
- (d) the prescribed requirements for registration have been complied with.

(3) On application, the parent must provide the Head of Education with an assessment procedure which confirms that the home-based education meets the minimum requirements of the curriculum and would not be of a standard inferior to the standard of education provided at public schools.

(4) The responsible Member must, by notice in the *Provincial Gazette*, determine the following—

- (a) minimum requirements for the registration of a learner for home-based education;
- (b) procedures for the registration;
- (c) due process for the withdrawal or refusal of the registration;
- (d) relevant documents for the application, registration and withdrawal of the registration of a home learner;
- (e) criteria for the assessment procedure for home learners; and
- (f) any other matter relating to home-based education.

(5) The Head of Education must, within 30 calendar days of receipt of an application for the registration of a home learner referred to in subsection (1), inform the applicant of the outcome of his or her decision.

(6) If an application referred to in subsection (1) is successful, the learner may, if the parent of such learner so chooses, enrol at a public school to obtain additional educational support.

(7) The Head of Education may, subject to subsection (8), withdraw the registration referred to in subsection (1).

(8) The Head of Education may not withdraw a registration referred to in subsection (1), unless he or she—

- (a) has informed the parent of his or her intention so to act and the reasons therefor;
- (b) has granted the parent an opportunity to make representations to him or her in relation to the action; and
- (c) has duly considered any representations received.

(9) A parent may appeal to the responsible Member against the withdrawal of a registration or the refusal to register a learner in terms of this section.

## CHAPTER 7 LEARNERS

**27. Compulsory school attendance.**—(1) School attendance during school hours shall be compulsory for a learner from the first school day of the year in which he or she reaches the age of seven years until the last school day of the year in which he or she reaches the age of fifteen years or the day on which he or she completes grade 9, whichever occurs first.

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

**28. School attendance officers.**—In order to ensure compulsory school attendance, the responsible Member may designate officers on the staff establishment of the Department to act as school attendance officers and he or she may determine their powers and duties.

**29. Duties of principals and the Head of Education regarding compulsory school attendance.**—(1) Where a learner who is subject to compulsory school attendance in terms of section 27 (1) fails to attend school or is repeatedly absent from school without reasonable cause, the principal must—

- (a) investigate the circumstances of the learner's absence from school;
- (b) consult jointly with the learner and his or her parent in order to reach an agreement on the appropriate measures to remedy the situation;
- (c) where it is impossible to reach an agreement referred to in paragraph (b), or where after reaching such an agreement, there is no material improvement in the school attendance of the learner, the principal shall report the matter to the Head of Education.

(2) Where a learner who is subject to compulsory school attendance in terms of section 27 (1) is not enrolled at or fails to attend a school, the Head of Education may—

- (a) investigate the circumstances of the learner's absence from school;
- (b) take appropriate measures to remedy the situation; and
- (c) failing such a remedy, issue a written notice to the parent of the learner requiring compliance with section 27 (1).

**30. Offences relating to compulsory school attendance.**—(1) If a parent of a learner who is subject to compulsory school attendance under section 27 (1) fails, without reasonable cause and after a written warning by the Head of Education, to cause such learner to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(2) A person who, during school hours, employs a learner who is subject to compulsory school attendance in terms of section 27 (1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(3) A person who hinders or obstructs a school attendance officer in the performance of his or her functions, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six

months.

**31. Exemption from compulsory school attendance.**—(1) The Head of Education may, on receipt of a written application, exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interest of the learner and education to be so exempted.

(2) If the Head of Education acts under subsection (1), he or she must notify the parents of the learner in writing of his or her decision.

(3) The Head of Education must maintain a register of all learners exempted from compulsory school attendance.

**32. Code of conduct for learners.**—(1) The governing body of a public school must adopt a code of conduct for learners after consultation with the learners, parents and the members of staff of the school within the guidelines determined in terms of section 8 (3) of the National Act.

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

(3) Nothing contained in this Act exempts a learner from the obligation to comply with the code of conduct of the school attended by that learner.

(4) A code of conduct must contain provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

**33. Prohibition of corporal punishment.**—(1) No person shall administer corporal punishment to a learner at a school.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.

**34. Suspension and expulsion of learners from public schools.**—(1) The governing body of a public school may, after a fair hearing, suspend a learner from attending that school—

- (a) as correctional measure for a period not longer than five school days; or
- (b) in consultation with the Head of Education pending a decision as to whether the learner is to be expelled from the school by the Head of Education.

(2) A learner may be expelled only—

- (a) by the Head of Education; and
- (b) if he or she is found guilty of serious misconduct after a fair hearing.

(3) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Education to the responsible Member.

(4) If a learner who is subject to compulsory school attendance in terms of section 27 (1) is expelled from a school, the Head of Education must make an alternative arrangement for that learner's placement at another public school.

(5) The responsible Member must, by notice in the *Provincial Gazette*, determine the following in regard to discipline at a public school—

- (a) the behaviour by a learner which may constitute serious misconduct;
- (b) disciplinary procedures to be followed in cases of suspension and expulsion;
- (c) procedures for a fair hearing; and
- (d) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

(6) The governing body of a public school may, after a fair hearing, suspend a learner from a hostel of the school as a correctional measure for a period not longer than five school days.

(7) The governing body of a public school may expel a learner from a hostel of the school if he or she is found guilty of serious misconduct after a fair hearing.

(8) A learner or the parent of a learner who has been expelled from a hostel of a public school may appeal

against the decision of the governing body of the school to the Head of Education.

(9) A learner who is suspended or expelled from a hostel is not necessarily suspended or expelled from the school concerned.

(10) The governing body must, in the code of conduct for learners at a hostel, provide for—

- (a) the behaviour by a learner which may constitute serious misconduct;
- (b) disciplinary procedures to be followed in cases of suspension and expulsion;
- (c) procedures for a fair hearing; and
- (d) provisions of due process safeguarding the interests of the learner and any other party involved in the disciplinary proceedings.

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

(2) The responsible Member may, by notice in the *Provincial Gazette*—

- (a) determine guidelines for the establishment and composition of the council;
- (b) determine guidelines for the election and functions of the council; and
- (c) exempt certain special public schools from complying with subsection (1) if it is not practically possible for a representative council of learners to be established at the school.

## CHAPTER 8 GOVERNANCE AND PROFESSIONAL MANAGEMENT OF PUBLIC SCHOOLS

**36. Governing body of a public school.**—There shall be a governing body for every public school.

**37. Governance and professional management of public schools.**—(1) Subject to this Act, the governance of a public school is vested in its governing body.

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

(3) Subject to this Act, the professional management of a public school must be undertaken by the principal under the authority of the Head of Education.

(4) The Head of Education may determine guidelines to distinguish between governance and professional management of public schools.

**38. Governing body serving two or more public schools.**—The responsible Member may determine that the governance of two or more public schools must vest in a single governing body if it is in the best interest of education at the schools in question.

(2) The responsible Member may not act under subsection (1), unless he or she has—

- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
- (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
- (c) duly considered all the submissions.

**39. Membership of governing body of ordinary public school.**—Subject to this Act, the membership of the governing body of an ordinary public school comprises—

- (a) elected members;
- (b) the principal, in his or her official capacity;
- (c) co-opted members.

(2) Elected members of the governing body shall comprise a member or members of each of the following categories:

- (a) parents of learners at the school;
- (b) educators at the school;
- (c) members of staff at the school who are not educators; and
- (d) learners in the eighth grade or higher at the school.

(3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2) (a).

(4) The representative council of learners referred to in section 35 must elect the learner or learners referred to in subsection (2) (d).

(5) The governing body of an ordinary public school which provides education to learners with special education needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.

(6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.

(7) The governing body of a public school contemplated in section 12 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.

(8) Subject to subsection (10), co-opted members do not have voting rights on the governing body.

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

(10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must, until the vacancies are filled as contemplated in section 46, co-opt parents with voting rights.

**40. Membership of governing body of special public school.**—The following categories of persons must be represented on the governing body of a special public school, in each case by a member or members of the respective category:

- (a) parents of learners at the school, if reasonably practicable;
- (b) educators at the school;
- (c) members of staff at the school who are not educators;
- (d) learners attending the eighth grade or higher, if reasonably practicable;
- (e) representatives of sponsoring bodies, if applicable;
- (f) representatives of organisations of parents of learners with special education needs, if applicable;
- (g) representatives of organisations of persons with disabilities, if applicable;
- (h) persons with disabilities, if applicable;
- (i) experts in appropriate fields of special education needs; and
- (j) the principal in his or her official capacity.

(2) Subject to this Act, the responsible Member must, by notice in the *Provincial Gazette*, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every special public school.

(3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.

(4) The responsible Member must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

**41. Functions of all governing bodies.**—(1) Subject to this Act, the governing body of a public school must—

- (a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;
- (b) adopt a constitution;
- (c) develop the mission statement of the school;
- (d) adopt a code of conduct for learners at the school;

- (e) support the principal, educators and other staff of the school in the performance of their professional functions;
- (f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;
- (g) administer and control the school's property, and buildings and grounds occupied by the school including school hostels, if applicable;
- (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;
- (i) recommend to the Head of Education the appointment of educators at the school, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (j) recommend to the Head of Education the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (k) at the request of the Head of Education, allow the reasonable use under fair conditions of the facilities of the school for educational programmes not conducted by the school;
- (l) discharge all other functions imposed upon the governing body by or under this Act; and
- (m) discharge other functions consistent with this Act as determined by the responsible Member by notice in the *Provincial Gazette*.

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

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

(4) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for educators and employ educators additional to the establishment determined by the responsible Member in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998).

(5) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(6) An educator and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in public schools in terms of this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.

(7) A public school may only employ an educator in a post established in terms of subsection (4) if such educator is registered as an educator with the South African Council of Educators.

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

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

(9) When presenting the annual budget contemplated in section 56, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the proposed manner in which such costs will be met.

(10) Despite section 60 of the South African Schools Act, 1996 (Act No. 84 of 1996), the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).

[Sub-s. (10) substituted by s. 1 (2) of Act No. 7 of 2010.]

**42. Allocated functions of governing bodies.**—(1) Subject to this Act, a governing body may apply to the Head of Education in writing to be allocated any of the following functions:

- (a) to maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
- (b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;

- (c) to purchase textbooks, educational materials or equipment for the school;
- (d) to pay for services to the school;
- (e) to provide an adult basic education and training class or centre subject to any applicable law; or
- (f) other functions consistent with this Act and any applicable law.

(2) The Head of Education may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.

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

(4) The decision of the Head of Education on such application must be conveyed in writing to the governing body concerned and he or she must state the reasons if the application is refused.

(5) Any person aggrieved by a decision of the Head of Education in terms of this section may appeal to the responsible Member.

(6) The responsible Member may, by notice in the *Provincial Gazette*, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if—

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

**43. Withdrawal of functions from governing bodies.**—(1) The Head of Education may, on reasonable grounds, withdraw a function of a governing body.

(2) The Head of Education may not act in terms of subsection (1) unless he or she has—

- (a) informed the governing body of his or her intention so to act and the reasons therefor;
- (b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
- (c) duly considered all representations.

(3) In urgent cases the Head of Education may act in terms of subsection (1) without prior communication to such governing body, but the Head of Education must thereafter—

- (a) furnish the governing body with reasons for his or her actions;
- (b) give the governing body a reasonable opportunity to make representations relating to such actions; and
- (c) duly consider all representations.

(4) The Head of Education may for sufficient reason reverse, suspend or amend his or her decision to withdraw a function.

(5) Any person aggrieved by a decision of the Head of Education in terms of this section may appeal against the decision to the responsible Member.

**44. Enhancement of capacity of governing bodies.**—(1) Out of funds appropriated by the provincial legislature, the Head of Education must establish a programme to—

- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
- (b) provide continuous training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.

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

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

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

- (a) a meeting of the governing body at least once every school term;

- (b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;
  - (c) recording and keeping of minutes of governing body meetings;
  - (d) making available such minutes for inspection by the Head of Education; and
  - (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.
- (3) The governing body must submit a copy of its constitution to the Head of Education within 90 days of its election.

**46. Election and appointment of members of a governing body.**—The responsible Member must, by notice in the *Provincial Gazette*, determine the following—

- (a) the electoral process for the election of members of a governing body;
- (b) the appointment and co-option of members of a governing body;
- (c) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories contemplated in section 39 (2) and such formula or formulae must provide reasonable representation for each category and must relate to the different sizes of and circumstances at public schools;
- (d) the filling of incidental vacancies in a governing body;
- (e) the election of office-bearers of a governing body;
- (f) the term of office of members and office-bearers of a governing body;
- (g) the establishment of committees of a governing body, which shall include an executive committee, and a committee responsible for addressing education for learners with special education needs and to facilitate partnerships with consumer organisations;
- (h) the designation of an officer to conduct the process for the nomination and election of members of the governing body; and
- (i) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, with sufficient reason in each case.

**47. Failure by governing body to perform functions.**—(1) If a governing body has ceased to perform its functions, the Head of Education must appoint sufficient persons to perform those functions for a period not exceeding three months.

(2) The Head of Education may extend the period referred to in subsection (1), by further periods of three months each, but the total period may not exceed one year.

(3) The Head of Education must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

**48. Recusal by members of governing body.**—A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision making on any issue in which the member has a personal interest.

**49. Reimbursement of members of governing body.**—(1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

**50. Office-bearers of governing bodies.**—(1) A governing body must, from amongst its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a parent member of a governing body who is not employed at the public school may serve as the chairperson of the governing body.

(3) The provisions of subsection (2) do not apply to a special public school: Provided that the chairperson of the governing body is elected from the appointed members contemplated in section 40 (2).

**51. Committees of governing body.**—(1) A governing body may—

- (a) establish committees, including an executive committee; and
- (b) appoint persons who are not members of the governing body to such committees on grounds of expertise, but a member of the governing body must chair each committee.

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

(3) The governing body of a school to which a hostel is attached, must establish a hostel committee which includes hostel parents or co-opted hostel parents.

**52. Term of office of members and office-bearers of governing bodies.**—(1) The term of office of a member of a governing body other than a learner may not exceed three years.

(2) The term of office of a member of a governing body who is a learner may not exceed one year.

(3) The term of office of an office-bearer of a governing body may not exceed one year.

(4) A member or office-bearer of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

**53. Status of minors on governing bodies of public schools.**—(1) A member of a governing body who is a minor may not contract on behalf of a public school.

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

(3) A member of a governing body who is a minor incurs no personal liability for any consequence of his or her membership of the governing body.

## CHAPTER 9 FUNDING OF PUBLIC SCHOOLS

**54. The responsibility of the Department.**—(1) The Head of Education must finance public schools from funds appropriated for this purpose by the Provincial Legislature on an equitable basis in order to ensure the proper exercise of the rights of learners to education and the redress of past inequalities in education provision.

(2) The Head of Education must provide sufficient information to public schools regarding the funding referred to in subsection (1) on an annual basis to enable these schools to prepare their budgets for the following financial year.

**55. Norms and standards for funding of public schools.**—Public schools shall be funded within the norms and standards determined in terms of section 35 of the National Act.

**56. Responsibility of the governing body of a public school.**—(1) The governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the Department in order to improve the quality of education provided by the school to all learners attending the school.

(2) The governing body of a public school must—

- (a) prepare a budget each year, according to guidelines determined by the responsible Member, which shows the estimated income and expenditure of the school for the following financial year;
- (b) establish a school fund and administer it in accordance with directions issued by the Head of Education;
- (c) open and maintain a banking account;
- (d) keep records of funds received and spent by the school and of its assets, liabilities and financial transactions in accordance with directions issued by the Head of Education; and
- (e) implement a resolution adopted at a meeting referred to in section 57 (1).

**57. School fees at public schools.**—(1) School fees may be determined and charged at a public school only if a resolution to do so has been adopted by the majority of parents of learners of that school at a general meeting convened for consideration and approval of the annual budget of the school.

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

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

(3) The resolution referred to in subsection (1) must provide for the equitable criteria and procedures contemplated in section 39 (4) of the National Act.

**58. Parents' liability for payment of school fees.**—(1) A parent of a learner attending a public school is liable to pay the school fees determined in terms of section 57, unless or to the extent that he or she has been exempted by the governing body from payment in terms of this Act.

(2) A parent may appeal to the Head of Education against a decision of a governing body regarding the exemption of that parent from payment of school fees.

(3) In deciding an appeal referred to in subsection (2), the Head of Education must follow due process which safeguards the interest of the parent and the governing body.

**59. Enforcement of payment of school fees.**—(1) The governing body of a public school may by process of law enforce the payment of school fees by parents who are liable to pay in terms of section 57.

(2) No learner may be discriminated against on the ground of the parent's inability or failure to pay school fees.

**60. Financial records and statements of public schools.**—The responsible Member must, by notice in the *Provincial Gazette*, determine measures—

- (a) for the keeping of financial statements and records;
- (b) regarding the audit or examination of financial records and statements; and
- (c) relating to the school fund.

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

## CHAPTER 10 POWERS AND DUTIES OF THE RESPONSIBLE MEMBER AND HEAD OF EDUCATION

**62. Powers and duties of responsible Member.**—(1) The responsible Member may, by notice in the *Provincial Gazette*, determine an education policy for the Province, which must be adhered to by the Head of Education and all educators in the Province.

(2) The responsible Member may not act under subsection (1) before he or she has consulted with—

- (a) the Provincial Education and Training Council;
- (b) provincial educator unions;
- (c) the Provincial Principals' Council; and
- (d) all other relevant interested parties.

(3) In order to further the objects of this Act, the responsible Member 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 Member of the Executive Council responsible for Finance.

(4) Subject to any norms and standards applying nationally, the responsible Member may certify and withdraw the certification of—

- (a) the syllabi of and conditions for admission to education and training programmes;

(b) the contents of and conditions for admission to education and training programmes.

(5) The responsible Member must promulgate regulations regarding conduct and discipline—

(a) of candidates prior to, during and after examinations contemplated in section 63 (2) (e); and

(b) of examiners, moderators, invigilators and other persons whose services are necessary in connection with the conducts of examinations contemplated in section 63 (2) (e).

**63. Powers and duties of Head of Education.**—(1) The Head of Education shall, in consultation with the responsible Member, take such steps as may be necessary to carry into effect the provincial and national policy.

(2) In addition to the other functions assigned to him or her, the Head of Education may, in consultation with the responsible Member and subject to norms and standards applying nationally—

(a) approve education programmes for all learners;

(b) determine the conditions for admission to such education and training programmes, as well as the evaluation, by means of inspection or otherwise, of the effectiveness of the teaching and training provided in accordance therewith;

(c) approve courses for the provision of education;

(d) determine the conditions for admission to, and the syllabi of those courses;

(e) in respect of those courses—

(i) cause examinations to be conducted and certificates to be issued to learners who passed those examinations; and

(ii) cause other approved forms of assessment to be conducted;

(f) make rules as to—

(i) the conducting of examinations referred to in paragraph (e), the entering of candidates for those examinations and the issue of certificates referred to in that paragraph; and

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

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

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

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

## CHAPTER 11 TRANSITIONAL PROVISIONS

**64. Transitional provisions relating to schools other than private or independent schools.**—Any school which was established or was deemed to be established in terms of any law governing school education in the Province and which existed immediately prior to the commencement of this Act, other than a private or independent school referred to in section 66, is deemed to be a public school in terms of this Act.

**65. Categories of public schools.**—Any of the following categories of public schools—

(a) pre-primary schools;

(b) primary schools;

(c) secondary schools;

(d) intermediate schools;

(e) combined schools;

(f) schools for special education;

(g) industrial schools;

(h) reform schools; and

(i) any other category of school,

which were established or registered or were deemed to be established or registered in terms of any law governing school education in the Province and which existed immediately prior to the commencement of this Act, shall still apply in terms of this Act.

**66. Transitional provisions relating to private or independent schools.**—A private or independent school which was registered or deemed to be registered under the provisions of a law regulating school education in the Province and which existed immediately prior to the commencement of this Act, is deemed to be an independent school registered in terms of this Act.

**67. Transitional provisions relating to public schools on private property.**—If an agreement referred to in section 12 does not exist at the commencement of this Act in respect of a school on private property and which is deemed to be a public school in terms of section 64, the responsible Member must take reasonable measures to conclude such an agreement.

**68. Transitional provisions relating to school attendance officers.**—Any school attendance officer appointed or deemed to have been appointed under the provisions of an Act repealed by this Act, shall be deemed to have been appointed under this Act.

**69. Transitional provisions relating to governing bodies and representative councils of learners.**—(1) A governing body established in terms of the National Act shall be deemed to be established in terms of this Act.

(2) Measures or guidelines regarding the composition and electoral process of governing bodies which were issued or published in terms of any law governing school education and which existed immediately prior to the commencement of this Act, are deemed to be issued in terms of this Act.

(3) Measures or guidelines regarding the composition and electoral process of representative councils of learners which were issued or published in terms of any law governing school education and which existed immediately prior to the commencement of this Act, are deemed to be issued in terms of this Act.

(4) A reference to Head of Department in the measures or guidelines referred to in subsections (2) and (3) is construed as a reference to Head of Education and a word or expression used in those measures or guidelines is interpreted in accordance with the meaning assigned to it by this Act.

**70. Transitional provisions relating to allocated functions.**—(1) The performance of a function by a governing body of a public school after 1 January 1999, but before the allocation of such function on 26 January 2000, and which would have been lawfully done, if it had been allocated earlier, shall be deemed to have been lawfully done.

(2) Functions allocated to public schools in terms of the National Act prior to the commencement of this Act, are deemed to be allocated in terms of this Act.

## CHAPTER 12 GENERAL PROVISIONS

**71. Duty of schools to provide information.**—(1) Every school must provide such information about the school as is reasonably required by the Head of Education.

(2) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of that person's rights.

**72. Regulations.**—The responsible Member may make regulations on any matter which must or may be prescribed by regulation under this Act and any other matter which may be necessary or expedient to prescribe in order to achieve the objectives of this Act.

**73. Delegation of powers.**—(1) The responsible Member may, subject to the conditions as he or she may determine, delegate any power conferred upon him or her by or under this Act to the Head of Education or an officer, except the power to publish a notice in the *Provincial Gazette*, the power to make a regulation or the power to decide an appeal lodged with him or her in terms of this Act.

(2) The Head of Education may, subject to the conditions as he or she may determine, delegate to an officer any of his or her powers conferred upon him or her in terms of this Act or delegated to him or her in terms of subsection (1), except the power to decide an appeal lodged with him or her in terms of this Act.

(3) A delegation under subsection (1) or (2) does not prevent the responsible Member or the Head of Education, as the case may be, from exercising that power or performing that duty.

**74.** . . . . .

[S. 74 repealed by s. 1 (1) of Act No. 7 of 2010.]

**75. Repeal of laws, and savings.**—(1) The laws listed in the first column of the Schedule are hereby repealed to the extent indicated in the third column of the Schedule.

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

**76. Short title.**—This Act shall be called the Free State School Education Act, 2000.

**SCHEDULE**

<i>Number and year of law</i>	<i>Short title of law</i>	<i>Extent of repeal</i>
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	All sections relating to state-aided schools
Act No. 1 of 1996	School Education Act, 1996	The whole

---