

**SOUTH AFRICAN SCHOOLS ACT
NO. 84 OF 1996**

[View Regulation]

[ASSENTED TO 6 NOVEMBER, 1996]
[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 34620 dated 19 September, 2011.

as amended by

Education Laws Amendment Act, No. 100 of 1997
Education Laws Amendment Act, No. 48 of 1999
Education Laws Amendment Act, No. 53 of 2000
Education Laws Amendment Act, No. 57 of 2001
Education Laws Amendment Act, No. 50 of 2002
Education Laws Amendment Act, No. 1 of 2004
Education Laws Amendment Act, No. 24 of 2005
Education Laws Amendment Act, No. 31 of 2007
Basic Education Laws Amendment Act, No. 15 of 2011

ACT

To provide for a uniform system for the organisation, governance and funding of schools; to amend and repeal certain laws relating to schools; and to provide for matters connected therewith.

Preamble.—WHEREAS the achievement of democracy in South Africa has consigned to history the past system of education which was based on racial inequality and segregation; and

WHEREAS this country requires a new national system for *schools* which will redress past injustices in educational provision, provide an education of progressively high quality for all *learners* and in so doing lay a strong foundation for the development of all our people's talents and capabilities, advance the democratic transformation of society, combat racism and sexism and all other forms of unfair discrimination and intolerance, contribute to the eradication of poverty and the economic well-being of society, protect and advance our diverse cultures and languages, uphold the rights of all *learners, parents and educators*, and promote their acceptance of responsibility for the organisation, governance and funding of *schools* in partnership with the State; and

WHEREAS it is necessary to set uniform norms and standards for the education of *learners* at *schools* and the organisation, governance and funding of *schools* throughout the Republic of South Africa;

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CHAPTER 1
DEFINITIONS AND APPLICATION OF ACT

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

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
[Definition of "Constitution" substituted by s. 1 (b) of Act No. 100 of 1997.]

"Council of Education Ministers" means the *Council of Education Ministers* established by the National Education Policy Act, 1996 (Act No. 27 of 1996);

"dangerous object" means—

- (a) any explosive material or device;
- (b) any firearm or gas weapon;
- (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or
- (d) any object that the *Minister* may, by notice in the *Gazette*, declare to be a dangerous object for the purpose of this Act;

[Definition of "dangerous object" inserted by s. 4 (a) of Act No. 31 of 2007.]

"education department" means the department established by section 7 (2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a *province*;

"educator" means any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a *school*;

[Definition of "educator" substituted by s. 6 (a) of Act No. 48 of 1999.]

"governing body" means a *governing body* contemplated in section 16 (1);

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

"Head of Department" means the head of an *education department*;

"illegal drug" means—

- (a) any unlawful substance that has a psychological or physiological effect; or
- (b) any substance having such effect that is possessed unlawfully;

[Definition of "illegal drug" inserted by s. 4 (b) of Act No. 31 of 2007.]

"independent school" means a *school* registered or deemed to be registered in terms of section 46;

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

"loan" means any financial obligation based on agreement, which obligation renders a *school* liable for making

payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the *governing body* in terms of section 20 (4) or (5);

[Definition of "loan" inserted by s. 4 (a) of Act No. 15 of 2011.]

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

"Member of the Executive Council" means the *Member of the Executive Council* of a *province* who is responsible for education in that *province*;

"Minister" means the *Minister* of Basic Education;

[Definition of "Minister" substituted by s. 4 (b) of Act No. 15 of 2011.]

"no fee threshold" means the level of funding per *learner* contemplated in the *norms and standards* for *school* funding applicable to a *public school* which enables the *Minister* to declare a *school* a *no fee school* in terms of *this Act*;

[Definition of "no fee threshold" inserted by s. 1 (a) of Act No. 24 of 2005.]

"norms and standards for school funding" means the national norms and standards for the funding of *schools* determined by the *Minister* in terms of section 35;

[Definition of "norms and standards for school funding" inserted by s. 1 (a) of Act No. 24 of 2005.]

"officer" means an employee of an *education department* appointed in terms of the *Educators Employment Act*, 1994 (Proclamation No. 138 of 1994), or the *Public Service Act*, 1994 (Proclamation No. 103 of 1994);

"parent" means—

(a) the biological or adoptive *parent* or legal guardian of a *learner*;
[Para. (a) substituted by s. 4 (c) of Act No. 15 of 2011.]

(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*;

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

"province" means a *province* established by section 124 of the Constitution;

"provincial legislature" means a *provincial legislature* contemplated in section 125 of the Constitution;

"public school" means a *school* contemplated in Chapter 3;

"Registrar of deeds" means the *registrar of deeds* referred to in section 2 of the *Deeds Registries Act*, 1937 (Act No. 47 of 1937);

[Definition of "Registrar of deeds" inserted by s. 1 (a) of Act No. 100 of 1997.]

"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" substituted by s. 1 (c) of Act No. 100 of 1997 and by s. 6 (b) of Act No. 48 of 1999.]

"school activity" means any official educational, cultural, recreational or social activity of the *school* within or outside the *school* premises;

[Definition of "school activity" inserted by s. 4 (c) of Act No. 31 of 2007.]

"school fees" means *school fees* contemplated in section 39 and includes any form of contribution of a monetary nature made or paid by a person or body in relation to the attendance or participation by a *learner* in any programme of a *public school*;

[Definition of "school fees" inserted by s. 1 (b) of Act No. 24 of 2005.]

"this Act" means *this Act* and all regulations promulgated under *this Act*.

[Sub-s. (1), previously s. 1, amended by s. 1 of Act No. 50 of 2002.]

(2) Footnotes appearing in *this Act* must not be used in the interpretation of any provision of *this Act*.

[Sub-s. (2) added by s. 1 of Act No. 50 of 2002.]

2. Application of Act.—(1) *This Act* applies to *school* education in the Republic of South Africa.

(2) A *Member of the Executive Council* and a *Head of Department* must exercise any power conferred upon them by or under *this Act*, after taking full account of the applicable policy determined in terms of the *National Education Policy Act*, 1996 (Act No. 27 of 1996).

(3) Nothing in *this Act* prevents a *provincial legislature* from enacting legislation for *school* education in a *province* in accordance with the Constitution and *this Act*.

(6) If the police cannot collect the *dangerous object* or *illegal drug* from the *school* immediately, the *principal* or his or her delegate must—

- (a) take the *dangerous object* or *illegal drug* to the nearest police station; and
- (b) hand the *dangerous object* or *illegal drug* over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(7) The police officer who receives the *dangerous object* or *illegal drug* must issue an official receipt for it to the *principal* or to his or her delegate.

(8) The *principal* or his or her delegate may at *random* administer a urine or other non-invasive test to any group of learners that is on fair and reasonable grounds suspected of using *illegal drugs*, after taking into account all relevant factors contemplated in subsection (3).

(9) A *learner* contemplated in subsection (8) may be subjected to a urine or other non-invasive test for *illegal drugs* only if—

- (a) the test is conducted by a person of the same gender;
- (b) it is done in a private area and not in view of another *learner*;
- (c) one adult witness, of the same gender as the *learner*, is present;
- (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (5), with the necessary changes; and
- (e) a device contemplated in subsection (11) is used.

(10) The *principal* or his or her delegate must—

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

(11) The *Minister* must—

- (a) identify the device with which the test contemplated in subsection (8) is to be done and the procedure to be followed; and
- (b) publish the name of this device, and any other relevant information about it, in the *Gazette*.

(12) A *learner* may be subjected to disciplinary proceedings if—

- (a) a *dangerous object* or *illegal drug* is found in his or her possession; or
- (b) his or her sample tested positive for an *illegal drug*.

(13) Any disciplinary proceedings in respect of a *learner* must be conducted in terms of the code of conduct contemplated in section 8.

(14) No criminal proceedings may be instituted by the *school* against a *learner* in respect of whom—

- (a) a search contemplated in subsection (2) was conducted and a *dangerous object* or *illegal drug* was found; or
- (b) a test contemplated in subsection (8) was conducted, which proved to be positive.

[S. 8A inserted by s. 7 of Act No. 31 of 2007.]

9. Suspension and expulsion from public school.—(1) The *governing body* may, on reasonable grounds and as a precautionary measure, suspend a *learner* who is suspected of serious misconduct from attending *school*, but may only enforce such suspension after the *learner* has been granted a reasonable opportunity to make representations to it in relation to such suspension.

[Sub-s. (1) amended by s. 7 of Act No. 48 of 1999 and substituted by s. 2 (a) of Act No. 24 of 2005.]

(1A) A *governing body* must conduct disciplinary proceedings in the manner contemplated in section 8 against a *learner* within seven *school* days after the suspension of such *learner*.

[Sub-s. (1A) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1B) If disciplinary proceedings are not conducted within seven *school* days after the suspension of a *learner*, the *governing body* must obtain the approval of the *Head of Department* for the continuation of the suspension of such *learner*.

[Sub-s. (1B) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1C) A *governing body* may, if a *learner* is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8—

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

(b) make a recommendation to the *Head of Department* to expel such *learner* from the *public school*.
[Sub-s. (1C) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1D) A *Head of Department* must consider the recommendation by the *governing body* referred to in subsection (1C) (b) and must decide whether or not to expel a *learner* within 14 days of receiving such recommendation.
[Sub-s. (1D) inserted by s. 2 (a) of Act No. 24 of 2005.]

(1E) A *governing body* may suspend or extend the suspension of a *learner* for a period not longer than 14 days pending the decision by the *Head of Department* whether or not to expel such *learner* from the *public school*.
[Sub-s. (1E) inserted by s. 2 (a) of Act No. 24 of 2005.]

(2) A *learner* at a *public school* may be expelled only—

(a) by the *Head of Department*; and

(b) if found guilty of serious misconduct after disciplinary proceedings contemplated in section 8 were conducted.

[Sub-s. 2 substituted by s. 2 (b) of Act No. 24 of 2005.]

(3) The *Member of the Executive Council* must determine by notice in the Provincial Gazette—

(a) the behaviour by a *learner* at a *public school* which may constitute serious misconduct;

(b) disciplinary proceedings to be followed in such cases;

(c) provisions of due process safe-guarding the interests of the *learner* and any other party involved in disciplinary proceedings.

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

[Sub-s. 4 substituted by s. 2 (c) of Act No. 24 of 2005.]

(5) If a *learner* who is subject to compulsory attendance in terms of section 3 (1) is expelled from a *public school*, the *Head of Department* must make an alternative arrangement for his or her placement at a *public school*.

(6) A *learner* who has appealed in the manner contemplated in subsection (4), must, pending the outcome of the appeal, be given access to education in the manner determined by the *Head of Department*.

[Sub-s. 6 added by s. 2 (d) of Act No. 24 of 2005.]

(7) The *Head of Department*, in determining the manner of attendance contemplated in subsection (6)—

(a) must take reasonable measures to protect the rights of other *learners* at the *public school*; and

(b) may consider an alternative method of providing education to the *learner* contemplated in subsection (6).

[Sub-s. 7 added by s. 2 (d) of Act No. 24 of 2005.]

(8) If the *Head of Department* decides not to expel a *learner* as contemplated in subsection (2), the *Head of Department* may, after consultation with the *governing body*, impose a suitable sanction on the *learner*.

[Sub-s. 8 added by s. 2 (d) of Act No. 24 of 2005.]

(9) If the *Head of Department* decides not to impose a sanction on the *learner*, the *Head of Department* must refer the matter back to the *governing body* for an alternative sanction in terms of the code of conduct contemplated in section 8, other than expulsion.

[Sub-s. 9 added by s. 2 (d) of Act No. 24 of 2005.]

(10) The *governing body* must implement the sanction contemplated in subsection (8).

[Sub-s. 10 added by s. 2 (d) of Act No. 24 of 2005.]

(11) (a) If an appeal in terms of subsection (4) by a *learner* who has been expelled from a *public school* is upheld by the *Member of the Executive Council*, the *Member of the Executive Council* must ensure that a suitable sanction is then imposed on the *learner* within 14 days of the date on which the appeal was upheld.

(b) For the purposes of the imposition of a suitable sanction contemplated in paragraph (a), the provisions of subsections (8) and (9) apply with the changes required by the context.

[Sub-s. (11) added by s. 7 of Act No. 15 of 2011.]

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

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

10A. Prohibition of initiation practices.—(1) A person may not conduct or participate in any initiation

practices against a *learner* at a *school* or in a hostel accommodating *learners* of a *school*.

(2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of *this Act* and Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998).

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

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

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

(4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (3), the relevant disciplinary authority referred to in subsection (2) (a) must take into account the right of the *learner* not to be subjected to such practices.

[S. 10A inserted by s. 5 of Act No. 50 of 2002.]

11. Representative council of learners.—(1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth *grade* or higher, and such council is the only recognised and legitimate representative *learner* body at the *school*.

[Sub-s. (1) substituted by s. 3 of Act No. 100 of 1997 and by s. 1 (a) of Act No. 57 of 2001.]

(2) Subject to policy made in terms of section 3 (4) (g) of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Member of the Executive Council must, by notice in the Provincial Gazette, determine the functions and the procedures for the establishment and election of representative councils of *learners*.

[Sub-s. (2) substituted by s. 1 (b) of Act No. 57 of 2001.]

(3) The *Member of the Executive Council* may, by notice in the Provincial Gazette, exempt a *public school* for *learners* with special education needs from complying with subsection (1) if it is not practically possible for a representative council of *learners* to be established at the *school*.

CHAPTER 3 PUBLIC SCHOOLS

12. Provision of public schools.—(1) The *Member of the Executive Council* must provide *public schools* for the education of *learners* out of funds appropriated for this purpose by the *provincial legislature*.

(2) The provision of *public schools* referred to in subsection (1) may include the provision of hostels for the residential accommodation of *learners*.

(3) (a) A *public school* may be—

- (i) ordinary *public school*;
- (ii) *public school* for *learners* with special education needs; or
- (iii) *public school* that provides education with a specialised focus on talent, including sport, performing arts or creative arts.

(b) Subject to the relevant provisions of *this Act*, the *Minister* must determine *norms and standards* for *school funding* and norms and standards for governance and educator provisioning for *public schools* contemplated in paragraph (a) (iii).

[Sub-s. (3) substituted by s. 8 of Act No. 15 of 2011.]

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

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

(6) Nothing in this Act prohibits the provision of gender-specific *public schools*.

12A. Merger of public schools.—(1) Subject to subsection (2), the *Member of the Executive Council* may, by

notice in the *Provincial Gazette*, merge two or more *public schools* into a single *school*.

(2) Before merging two or more *public schools* the *Member of the Executive Council* must—

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

(3) If one or more of the *schools* that are to be merged in terms of subsection (1) are *public schools* on private property, the *Member of the Executive Council* must also—

- (a) notify the owner of the private property of his or her intention to merge the *schools* in question;
- (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
- (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of section 14 if the single *school* contemplated in subsection (1) is to be situated on private property.

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

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

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

(b) The interim *governing body* must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new *governing body* is constituted in terms of sections 23 and 28.

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

[S. 12A inserted by s. 8 of Act No. 48 of 1999.]

13. Public schools on State property.—(1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.

(2) Subject to section 20 (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*.

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

- (a) by the *Member of the Executive Council*; and
- (b) if the immovable property is not utilised by the *school* in the interests of education.

(4) The *Member of the Executive Council* may not act under subsection (3) unless he or she has—

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

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

(6) No immovable property owned by the State and occupied by a *public school* may be alienated unless an agreement contemplated in section 14 has been concluded between the *Member of the Executive Council* and the prospective owner of the immovable property.

(7) 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 of deeds* with proof of the agreement contemplated in subsection (6).

[Sub-s. (7) substituted by s. 4 (a) of Act No. 100 of 1997.]

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

(9) On application by the owner and on production of the owner's copy of the title deed, the *Registrar of*

deeds must endorse on the title deed and in his or her records the fact that a *public school* has been established on the land in terms of *this Act*.

[Sub-s. (9) added by s. 4 (c) of Act No. 100 of 1997.]

14. Public schools on private property.—(1) Subject to the Constitution and an expropriation in terms of section 58 of land or a real right to use the property on which the *public school* is situated, a *public school* may be provided on private property only in terms of an agreement between the *Member of the Executive Council* and the owner of the private property.

[Sub-s. (1) substituted by s. 2 of Act No. 53 of 2000.]

(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;
- (f) protection of the owner's rights in respect of the property occupied, affected or used by the *school*.

(3) The provisions of the Deeds Registries Act, 1937 (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) The 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 contemplated in this section, if the *Registrar of deeds* receives—

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

[Sub-s. (5) amended by s. 5 (a) of Act No. 100 of 1997 (English only).]

(6) The *Minister* must, after consultation with the *Council of Education Ministers*, make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) 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 *Member of the Executive Council* of the province in which the *public school* is situated to the effect that such *public school* has been closed in terms of section 33.

[Sub-s. (7) inserted by s. 5 (b) of Act No. 100 of 1997.]

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

[Sub-s. (8), previously sub-s. (7), renumbered by s. 5 (b) of Act No. 100 of 1997.]

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

16. Governance and professional management of public schools.—(1) Subject to this Act, the governance of every public school is vested in its governing body and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.

[Sub-s. (1) substituted by s. 2 of Act No. 57 of 2001.]

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

(3) Subject to *this Act* and any applicable provincial law, the professional management of a *public school* must be undertaken by the *principal* under the authority of the *Head of Department*.

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

[Sub-s. (4) added by s. 9 of Act No. 48 of 1999.]

(5) When the *Head of Department* decides that the *school* should be re-opened, he or she must inform the

governing body and the *principal* of the date on which the *school* must reopen.

[Sub-s. (5) added by s. 9 of Act No. 48 of 1999.]

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

[Sub-s. (6) added by s. 9 of Act No. 48 of 1999.]

(7) If a new *public school* is provided in terms of section 12, the governance of that *school* vests in the *Head of Department* until a *governing body* has been constituted in terms of *this Act*.

[Sub-s. (7) added by s. 3 of Act No. 53 of 2000.]

16A. Functions and responsibilities of principal of public school.—(1) (a) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23 (1) (b) and 24 (1) (j).

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

- (i) the academic performance of that *school* in relation to minimum outcomes and standards and procedures for assessment determined by the *Minister* in terms of section 6A; and
- (ii) the effective use of available resources.

(c) (i) The *principal* of a *public school* identified by the *Head of Department* in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the *school* will be improved.

(ii) The academic performance improvement plan must be—

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

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

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

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

(2) The *principal* must—

- (a) in undertaking the professional management of a *public school* as contemplated in section 16 (3), carry out duties which include, but are not limited to—
 - (i) the implementation of all the educational programmes and curriculum activities;
 - (ii) the management of all educators and support staff;
 - (iii) the management of the use of learning support material and other equipment;
 - (iv) the performance of functions delegated to him or her by the *Head of Department* in terms of this Act;
 - (v) the safekeeping of all school records; and
 - (vi) the implementation of policy and legislation;
- (b) attend and participate in all meetings of the *governing body*;
- (c) provide the *governing body* with a report about the professional management relating to the *public school*;
- (d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;
- (e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;
- (f) inform the *governing body* about policy and legislation;

[Para. (f) amended by s. 9 of Act No. 15 of 2011.]

(g) provide accurate data to the *Head of Department* when requested to do so; and;

[Para. (g) amended by s. 9 of Act No. 15 of 2011.]

(h) assist the *governing body* with the management of the *school's* funds, which assistance must include—

- (i) the provision of information relating to any conditions imposed or directions issued by the *Minister*, the *Member of the Executive Council* or the *Head of Department* in respect of all financial matters of the *school* contemplated in Chapter 4; and

(ii) the giving of advice to the *governing body* on the financial implications of decisions relating to the financial matters of the *school*;

[Para. (h) added by s. 9 of Act No. 15 of 2011.]

(h) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or by the *governing body* of the *school*;

[Para. (i) added by s. 9 of Act No. 15 of 2011.]

(j) be a member of a finance committee or delegation of the *governing body* in order to manage any matter that has financial implications for the *school*; and

[Para. (j) added by s. 9 of Act No. 15 of 2011.]

(k) report any maladministration or mismanagement of financial matters to the *governing body* of the *school* and to the *Head of Department*.

[Para. (k) added by s. 9 of Act No. 15 of 2011.]

17. Governing body serving two or more schools.—(1) The *Member of the Executive Council* may determine that the governance of two or more *public schools* must vest in a single *governing body* if it is in the best interests of education at the *schools* in question.

(2) The *Member of the Executive Council* 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) considered all such submissions.

18. Constitution of governing body.—(1) Subject to *this Act* and any applicable provincial law, the *governing body* of a *public school* must function in terms of a constitution which complies with minimum requirements determined by the *Member of the Executive Council* 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 Department*; 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 Department* within 90 days of its election.

18A. Code of conduct of governing body.—(1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine a code of conduct for the members of the *governing body* of a *public school* after consultation with associations of *governing bodies* in that province, if applicable.

(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 a quality governance structure at a *public school*.

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

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

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

(6) A member of the *governing body* may appeal to the *Member of the Executive Council* against a decision of a *Head of Department* regarding the suspension or termination of his or her membership as a *governing body* member.

[S. 18A inserted by s. 6 of Act No. 50 of 2002.]

19. Enhancement of capacity of governing bodies.—(1) Out of funds appropriated for this purpose by the *provincial legislature*, the *Head of Department* must establish a programme to—

(a) provide introductory training for newly elected *governing bodies* to enable them to perform their functions; and

(b) provide continuing training to *governing bodies* to promote the effective performance of their functions

or to enable them to assume additional functions.

(2) The *Head of Department* 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*.

(3) The *norms and standards for school funding* must include—

- (a) criteria for authorising a *governing body* association to perform the functions contemplated in subsection (4);
- (b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the *Head of Department* in relation to the performance of the functions contemplated in subsection (4);
- (c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4); and
- (d) criteria for granting a *governing body* an allocation for contribution towards membership of a recognised *governing body* association.

[Sub s. (3) added by s. 10 of Act No. 15 of 2011.]

(4) (a) The *Head of Department* may request a recognised *governing body* association or other appropriate training authority to train members of a *governing body* of a particular *school* or group of *schools* and to build the capacity contemplated in section 25 (4).

(b) For the purposes of paragraph (a), the *Head of Department*—

- (i) must enter into an agreement with the *governing body* association;
- (ii) must specify the nature, content, extent, duration and financial implications of the training in the agreement contemplated in subparagraph (i); and
- (iii) may include a request for the training of members of a *governing body* of a *school* that is not a member of the *governing body* association requested to conduct the training in the agreement contemplated in subparagraph (ii).

[Sub s. (4) added by s. 10 of Act No. 15 of 2011.]

20. 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;
- (eA) adhere to any actions taken by the Head of Department in terms of section 16 of the Employment of Educators Act, 1998 (Act No. 76 of 1998), to address the incapacity of a *principal* or *educator* to carry out his or her duties effectively;

[Para. (eA) inserted by s. 9 (a) of Act No. 31 of 2007.]

- (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, but the exercise of this power must not in any manner interfere with or otherwise hamper the implementation of a decision made by the *Member of the Executive Council* or *Head of Department* in terms of any law or policy;

[Para. (g) substituted by s. 9 (b) of Act No. 31 of 2007.]

- (h) encourage *parents*, *learners*, *educators* and other staff at the *school* to render voluntary services to the *school*;
- (i) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

[Para. (i) substituted by s. 3 of Act No. 57 of 2001.]

- (j) recommend to the *Head of Department* the appointment of non-educator staff at the *school*, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

- (jA) make the recommendation contemplated in paragraph (j) within the time frames contemplated in

section 6 (3) (l) of the Employment of Educators Act, 1998 (Act No. 76 of 1998).

[Para. (jA) inserted by s. 9 (c) of Act No. 31 of 2007.]

- (k) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the *school* for educational programmes not conducted by the *school*;

[Para. (k) substituted by s. 4 of Act No. 53 of 2000.]

- (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 *Minister* by notice in the Government Gazette, or by the *Member of the Executive Council* by notice in the Provincial Gazette.

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

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

(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 *Member of the Executive Council* in terms of section 3 (1) of the Educators' Employment Act, 1994.

[Sub-s. (4) added by s. 6 of Act No. 100 of 1997.]

(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).

[Sub-s. (5) added by s. 6 of Act No. 100 of 1997.]

(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.

[Sub-s. (6) added by s. 6 of Act No. 100 of 1997.]

(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.

[Sub-s. (7) added by s. 6 of Act No. 100 of 1997.]

(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 representivity.

[Sub-s. (8) added by s. 6 of Act No. 100 of 1997.]

(9) When presenting the annual budget contemplated in section 38, 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 manner in which it is proposed that such costs will be met.

[Sub-s. (9) added by s. 6 of Act No. 100 of 1997.]

(10) Despite section 60, 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) added by s. 6 of Act No. 100 of 1997.]

(11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the *Minister* may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.

[Sub-s. (11) added by s. 6 of Act No. 100 of 1997.]

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

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

- (c) to purchase textbooks, educational materials or equipment for the *school*;
- (d) to pay for services to the *school*;
- (dA) to provide an adult basic education and training class or centre subject to any applicable law; or
[Para. (dA) inserted by s. 10 (b) of Act No. 48 of 1999.]
- (e) other functions consistent with *this Act* and any applicable provincial law.

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

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

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

(5) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal to the *Member of the Executive Council*.

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

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

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

(2) The *Head of Department* may not take action under subsection (1) unless he or she has—

- (a) informed the *governing body* of his or her intention so to act and the reasons therefor;
- (b) granted the *governing body* a reasonable opportunity to make representations to him or her relating to such intention; and
- (c) given due consideration to any such representations received.

(3) In cases of urgency, the *Head of Department* may act in terms of subsection (1) without prior communication to such *governing body*, if the *Head of Department* thereafter—

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

(4) The *Head of Department* may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).

(5) Any person aggrieved by a decision of the *Head of Department* in terms of this section may appeal against the decision to the *Member of the Executive Council*.

23. Membership of governing body of ordinary public school.—(1) Subject to *this Act*, the membership of the *governing body* of an ordinary *public school* comprises—

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

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

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

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

(4) The representative council of *learners* referred to in section 11 (1) 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 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 14 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*.
[Sub-s. (8) substituted by s. 11 (a) of Act No. 48 of 1999.]

(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 temporarily co-opt *parents* with voting rights.
[Sub-s. (10) added by s. 11 (b) of Act No. 48 of 1999.]

(11) If a *parent* is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28 (d) within 90 days after the vacancy has occurred.
[Sub-s. (11) added by s. 11 (b) of Act No. 48 of 1999.]

(12) If a person elected as a member of a *governing body* as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the *governing body*.
[Sub-s. (12) added by s. 11 (b) of Act No. 48 of 1999.]

24. Membership of governing body of public school for learners with special education needs.—(1) The following categories of persons must be represented on a *governing body* of a *public school* for *learners* with special education needs, in each case by a member or members of the respective category:

- (a) *Parents of learners 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 disabled persons, if applicable;
- (h) disabled persons, if applicable; and
- (i) experts in appropriate fields of special needs education.
- (j) the *principal* in his or her official capacity.

[Para. (j) added by s. 7 of Act No. 100 of 1997.]

(2) Subject to *this Act*, the *Member of the Executive Council* 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 *public school* for *learners* with special education needs within his or her *province*.

(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 *Member of the Executive Council* must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

25. Failure by governing body to perform functions.—(1) If the Head of Department determines on reasonable grounds that a *governing body* has ceased to perform functions allocated to it in terms of *this Act* or has failed to perform one or more of such functions, he or she must appoint sufficient persons to perform all such functions or one or more of such functions, as the case may be, for a period not exceeding three months.

[Sub-s. (1) substituted by s. 4 (a) of Act No. 57 of 2001.]

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

(3) If a *governing body* has ceased to perform its functions, the *Head of Department* 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).

[Sub-s. (3) substituted by s. 4 (b) of Act No. 57 of 2001.]

(4) If a *governing body* fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the *governing body* performs its functions.

[Sub-s. (4) added by s. 4 (c) of Act No. 57 of 2001.]

26. 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.

27. 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.

28. Election of members of governing body.—Subject to *this Act* and any applicable provincial law, the *Member of the Executive Council* must, by notice in the Provincial Gazette, determine—

- (a) the term of office of members and office-bearers of a *governing body*;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the *governing body*;
- (c) the procedure for the disqualification or removal of a member of the *governing body* or the dissolution of a *governing body*, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the *governing body*;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the *governing body*;
- (f) a formula or formulae for the calculation of the number of members of the *governing body* to be elected in each of the categories referred to in section 23 (2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of *public schools*; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the *governing body*.

29. 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) In the case of a *public school* for *learners* with special education needs any member of the *governing body* elected from the categories of persons referred to in section 24 (1) (a), (e), (f), (g), (h) and (i) may serve as the chairperson of that *governing body*.

[Sub-s. (3) added by s. 12 of Act No. 48 of 1999.]

30. 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.

31. 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.

32. 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 *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*.

33. Closure of public schools.—(1) The *Member of the Executive Council* may, by notice in the Provincial Gazette, close a *public school*.

(2) The *Member of the Executive Council* may not act under subsection (1) unless he or she has—

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

(3) If a *public school* is closed in terms of subsection (1) all assets and liabilities of such *school* must, subject to the conditions of any donation, bequest or trust contemplated in section 37 (4), devolve on the State unless otherwise agreed between the *Member of the Executive Council* and the *governing body* of the *school*.

33A. Prohibition of political activities during school time.—(1) No party-political activities may be conducted at a *school* during *school* time determined by the *governing body* of the *school* in terms of section 20 (1) (f).

(2) The party-political activities contemplated in subsection (1) include, but are not limited to—

- (a) campaigning;
- (b) the conducting of rallies;
- (c) the distribution of pamphlets and fliers; and
- (d) the hanging or putting up of posters and banners.

(3) A member of a political party may not, for the purposes of conducting party-political activities, encroach on the *school* time.

(4) A *school* may not allow the display of material of a party-political nature on its premises unless such party-political material is related to the curriculum at the *school*.

[S. 33A inserted by s. 11 of Act No. 15 of 2011.]

CHAPTER 4 FUNDING OF PUBLIC SCHOOLS

34. Responsibility of State.—(1) The State must fund *public schools* from public revenue 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 State must, on an annual basis, provide sufficient information to *public schools* regarding the funding referred to in subsection (1) to enable *public schools* to prepare their budgets for the next financial year.

35. Norms and standards for school funding.—(1) Subject to the Constitution and *this Act*, the *Minister* must determine national quintiles for *public schools* and *national norms and standards for school funding* after consultation with the *Council of Education Ministers* and the Minister of Finance.

(2) The *norms and standards for school funding* contemplated in subsection (1) must—

- (a) set out criteria for the distribution of state funding to all *public schools* in a fair and equitable manner;
- (b) provide for a system in terms of which *learners* at all *public schools* can be placed into quintiles, referred to as national quintiles for *learners*, according to financial means;
- (c) provide for a system in terms of which all *public schools* in the Republic can be placed into quintiles referred to as national quintiles for *public schools*, according to the distribution of *learners* in the national quintiles for *learners*; and
- (d) determine the procedure in terms of which the *Member of the Executive Council* must apply the criteria contemplated in paragraph (a).

[S. 35 substituted by s. 3 of Act No. 24 of 2005.]

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

(2) Despite subsection (1), a *governing body* may not enter into any loan or overdraft agreement so as to supplement the *school* fund, without the written approval of the *Member of the Executive Council*.

[Sub-s. (2) added by s. 5 of Act No. 57 of 2001.]

WESTERN CAPE PROVINCIAL SCHOOL EDUCATION ACT NO. 12 OF 1997

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

[DATE OF COMMENCEMENT: 16 JANUARY, 1998]

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

as amended by

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

Western Cape Provincial School Education Amendment Act, No. 4 of 2018 (with effect from 01 March, 2019, unless otherwise indicated. Sections 11A to 11H and section 58 (aA) with effect from 12 April, 2019.)

General Note

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

ACT

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

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3. Determination of provincial education policy.
4. General functions of the *Provincial Minister*.
5. Authority of the *Provincial Minister* regarding governing bodies.
6. Enhancement of capacity of governing bodies.
7. General functions of Head of Department.
- 7A. *Repealed.*
8. Authority of Head of Department regarding governing bodies.
- 8A. Procurement of goods and services
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- 9A. Monitoring and support of curriculum delivery
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11. Establishment and functions of Education Council.
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- 11D. Functions of Schools Evaluation Authority
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PREAMBLE

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

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

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

CHAPTER 1 APPLICATION OF ACT

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

"**adult education**" ;

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

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

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

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

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

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

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

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

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

"dangerous object" means-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Provincial Parliament"

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

"Member of the Executive Council"

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

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

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

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

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

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

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

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

"organised teaching profession"

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

"parent" means-

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

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

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

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

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

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

"province" means the Province of the Western Cape;

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

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

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

"regulation" means a regulation made under this Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

perform its functions, including administrative support and infrastructure support.

(2) The Head of Department shall designate officials of the Western Cape Education Department to provide administrative support to the Schools Evaluation Authority as contemplated in subsection (1).

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

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

[Date of commencement: 12 April 2019]

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

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

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

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

[Date of commencement: 12 April 2019]

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

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

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

[Date of commencement: 12 April 2019]

CHAPTER 3 PUBLIC SCHOOLS

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

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

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

[Date of commencement: 01 March, 2019.]

- (eB) donor funded public schools;

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

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

(2) The following types of schools-

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

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

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

(3) Transitional provisions

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

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

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

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

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

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

- (a) give written notice to the *schools* in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;
- (c) give the *governing bodies* of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred

to in paragraph (b);

- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.

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

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

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

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

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

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

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

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

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

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

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

- (b) withdrawing the functions of the *governing body* in terms of section 8 (5) of *this Act*; or
- (c) appointing persons in terms of section 25 of the *South African Schools Act*, to perform the functions or specified functions of the *governing body*.

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) The *Western Cape Education Department* must maintain the employment of *educators* and non-educators

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

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

- (a) posts contemplated in subsection (11) which become vacant;
- (b) new posts determined by the Head of Department for-
 - (i) educators in terms of section 5(2) of the *Employment of Educators Act*;
 - (ii) non-educators in terms of the Western Cape Education Department's Norms and Standards for Support Staff Provision at Ordinary Public Schools,

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

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

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

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

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

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

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

(7) The membership of the *governing body* of a *donor funded public school* may include representatives of the

donor, with voting rights, up to a maximum of 50 per cent;

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

(6) No immovable property owned by the State and occupied by a *public school* may be alienated unless an agreement has been concluded between the *Provincial Minister*, with the concurrence of the *Provincial Minister responsible for public works*, and the prospective owner of the immovable property.

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

[Date of commencement: 01 March, 2019.]

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

(8) The provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), do not apply to the right contemplated in subsection (2).

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

[S. 17 amended by s. 27 of Act No. 7 of 2010.]

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

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

[Date of commencement: 01 March, 2019.]

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

(2) The provisions of the State Liability Act, 1957 (Act 20 of 1957), apply to any claim under subsection (1).

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

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

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

- (a) a special *school* to provide *education* to *learners* with barriers to learning; or
- (b) a special *school* which provides *education* with a specialised focus.

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

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

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

- (a) *school* infrastructure;
- (b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and
- (c) the provision of learning and teaching support material.

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

[Date of commencement: 01 March, 2019.]

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

prescribed by the National Minister under section 5A of the South African Schools Act.

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

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

CHAPTER 4 GOVERNING BODIES

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

[Date of commencement: 01 March 2019]

21A. Functions of all governing bodies.—(1) Subject to *this Act* and the South African Schools Act, the governing body of a public school shall—

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

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

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

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

(4) Subject to *this Act*, the Labour Relations Act, 1995, and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Provincial Minister* in terms of section 5 (1) of the *Employment of Educators Act*.

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

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

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

(7)

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The code of conduct referred to in subsection (1) shall be aimed at establishing a disciplined and purposeful *school* environment dedicated to the improvement and maintenance of a quality governance structure at a *public school*.

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

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

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

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

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

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

[Date of commencement: 01 March, 2019.]

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

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

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

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

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

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

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

- (a) the management and control of hostels and public schools and the control over the immovable property and equipment of the Western Cape Education Department;
- (b) (i) the receipt and use of funds or other goods by public schools and hostels attached to such public schools, and the books, records and statements to be kept in connection therewith by the bodies or persons mentioned in the regulations; and
(ii) the manner in which such books, records and statements are to be kept, the auditing thereof and the returns and reports to be submitted in connection therewith;

(c) the duties of school attendance officers;

(cA) effective performance evaluation of *schools, educators and learners*;
[Para. (cA) inserted by s. 26 (b) of Act No. 7 of 2010.]

(cB) performance agreements between the *Head of Department* and *principals, deputy principals* and office based *educators*;
[Para. (cB) inserted by s. 26 (b) of Act No. 7 of 2010.]

(cC) minimum teaching hours per *school week* and *school day*;
[Para. (cC) inserted by s. 26 (b) of Act No. 7 of 2010.]

- (cD) the declaration of personal interest of members of *governing bodies* in the procurement of goods and services for *schools*;
[Para. (cD) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cE) disciplining, suspension and expulsion of *learners*;
[Para. (cE) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cF) norms and standards for basic infrastructure and capacity in *public schools*;
[Para. (cF) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cG) the visitation and assessment of *schools*;
[Para. (cG) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cH) the issuing by the *Head of Department* of performance indicators binding on all *schools*;
[Para. (cH) inserted by s. 26 (b) of Act No. 7 of 2010.]
- (cI) the funding and governance models for collaboration schools and donor funded public schools;
[Para. (cI) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cJ) the norms and standards for the granting of subsidies to independent schools;
[Para. (cJ) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cK) the promotion and progression of learners at public schools;
[Para. (cK) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cL) the norms and standards for an intervention facility;
[Para. (cL) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cM) the admission of learners to public schools;
[Para. (cM) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cN) the procurement of goods and services relating to education in the province;
[Para. (cN) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cO) the monitoring of, and access to, an independent school;
[Para. (cO) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (cP) the procedure for registration as an independent school;
[Para. (cP) inserted by s. 28 (b) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]
- (d) any matter which shall or may be prescribed by regulation under this Act; and
- (e) in general any matter which the *Provincial Minister* may deem necessary or expedient to prescribe in order to achieve the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraphs.
[Sub-s. (1) amended by s. 26 (a) and s. 27 of Act No. 7 of 2010 and by s. 28 (a) of Act No. 4 of 2018.]
[Date of commencement: 01 March, 2019.]

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

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