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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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No. 17579

PRESIDENT'S OFFICE

No. 1867. 15 November 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 84 of 1996: South African Schools Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1867.. 15 November 1996

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 84 van 1996: Suid-Afrikaanse Skolewet, 1996.

**GENERAL EXPLANATORY NOTE:**

- [                    ]    Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

# 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;

\_\_\_\_\_  
*(English text signed by the President.)*  
*(Assented to 6 November 1996.)*  
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**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

## CHAPTER 1

### DEFINITIONS AND APPLICATION OF ACT

#### Definitions

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

**ALGEMENE VERDUIDELIKENDE NOTA:**

- [                    ]    Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.
- \_\_\_\_\_            Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

# WET

**Om voorsiening te maak vir 'n eenvormige stelsel vir die organisasie, bestuur en finansiering van skole; tot wysiging en herroeping van sekere wette wat op skole betrekking het; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

## AANHEF

NADEMAAL die bereiking van demokrasie in Suid-Afrika afstand gedoen het van die voormalige onderwysstelsel wat gebaseer was op rasse-ongelykheid en -skeiding; en

NADEMAAL hierdie land 'n behoefte het aan 'n nuwe nasionale stelsel vir *skole* wat die onregte in onderwysvoorsiening van die verlede sal regstel, onderwys van progressief hoë gehalte aan alle *leerders* sal voorsien en op hierdie wyse 'n hegte fondament vir die ontwikkeling van al ons mense se talente en bekwaamhede sal lê, die demokratiese transformasie van die gemeenskap sal bevorder, rassisme en seksisme en alle ander vorms van onregverdige diskriminasie en onverdraagsaamheid sal bekamp, tot die uitwissing van armoede en die ekonomiese welstand van die gemeenskap sal bydra, ons verskeidenheid van kulture en tale sal beskerm en bevorder, die regte van alle *leerders*, *ouers* en *opvoeders* sal handhaaf, en hul aanvaarding van verantwoordelikheid vir die organisasie, beheer en finansiering van *skole* in vennootskap met die Staat sal bevorder; en

NADEMAAL dit nodig is om eenvormige norme en standaarde vir die opvoeding van *leerders* by *skole* en die organisasie, beheer en finansiering van *skole* oor die hele Republiek van Suid-Afrika te stel;

(Engelse teks deur die President geteken.)  
(Goedgekeur op 6 November 1996.)

**W**ORD DAAR DERHALWE deur die Parlement van die Republiek van Suid-Afrika soos volg bepaal:—

## HOOFSTUK 1

### WOORDOMSKRYWING EN TOEPASSING VAN WET

#### 5 Woordoms krywing

1. In *hierdie Wet*, tensy uit die samehang anders blyk, beteken—

- (i) “**Constitution**” means the *Constitution* of the Republic of South Africa, 1993 (Act No. 200 of 1993);
- (ii) “**Council of Education Ministers**” means the *Council of Education Ministers* established by the National Education Policy Act, 1996 (Act No. 27 of 1996); (xix) 5
- (iii) “**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*; (xi)
- (iv) “**educator**” means an *educator* as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994); (xiii) 10
- (v) “**governing body**” means a *governing body* contemplated in section 16(1); (ii)
- (vi) “**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; (iv) 15
- (vii) “**Head of Department**” means the head of an *education department*; (iii)
- (viii) “**independent school**” means a *school* registered or deemed to be registered in terms of section 46; (x)
- (ix) “**learner**” means any person receiving education or obliged to receive education in terms of this Act; (vii) 20
- (x) “**member of staff**” means a person employed at a *school*; (xiv)
- (xi) “**Member of the Executive Council**” means the *Member of the Executive Council* of a *province* who is responsible for education in that *province*; (viii)
- (xii) “**Minister**” means the *Minister* of Education; (ix)
- (xiii) “**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); (i) 25
- (xiv) “**parent**” means—
- (a) the *parent* or guardian of a *learner*;
- (b) the person legally entitled to custody of a *learner*; or 30
- (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*; (xiv)
- (xv) “**principal**” means an *educator* appointed or acting as the head of a *school*; (xvi)
- (xvi) “**province**” means a *province* established by section 124 of the *Constitution*; (xviii) 35
- (xvii) “**provincial legislature**” means a *provincial legislature* contemplated in section 125 of the *Constitution*; (xvii)
- (xviii) “**public school**” means a *school* contemplated in Chapter 3; (xii)
- (xix) “**school**” means a *public school* or an *independent school* which enrolls *learners* in one or more *grades* between *grade zero* and *grade twelve*; (xx) 40
- (xx) “**this Act**” means *this Act* and all regulations promulgated under *this Act*. (vi) 45

### Application of Act

2. (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). 45
- (3) Nothing in *this Act* prevents a *provincial legislature* from enacting legislation for *school* education in a *province* in accordance with the *Constitution*. 50

## CHAPTER 2

### LEARNERS

#### Compulsory attendance

3. (1) Subject to *this Act* and any applicable provincial law, every *parent* must cause



- (i) **“beampte”** ’n werknemer van ’n *onderwysdepartement* wat aangestel is ingevolge die Wet op die Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 1994), of die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994); (xiii)
- 5 (ii) **“beheerliggaam”** ’n *beheerliggaam* beoog in artikel 16(1); (v)
- (iii) **“Departementshoof”** die hoof van ’n *onderwysdepartement*; (vii)
- (iv) **“graad”** dié gedeelte van ’n onderwysprogram wat ’n *leerder* binne die bestek van een skooljaar kan voltooi of enige ander onderwysprogram wat die *Lid van die Uitvoerende Raad* mag ag gelykwaardig daaraan te wees; (vi)
- 10 (v) **“Grondwet”** die *Grondwet* van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993);
- (vi) **“hierdie Wet”** *hierdie Wet* en alle regulasies wat kragtens *hierdie Wet* uitgevaardig word;
- (vii) **“leerder”** enige persoon wat onderwys ontvang of wat verplig is om onderwys te ontvang ingevolge *hierdie Wet*; (ix)
- 15 (viii) **“Lid van die Uitvoerende Raad”** die *Lid van die Uitvoerende Raad* van ’n *provinsie* wat verantwoordelik is vir onderwys in dié *provinsie*; (xi)
- (ix) **“Minister”** die *Minister* van Onderwys; (xii)
- (x) **“onafhanklike skool”** ’n *skool* wat geregistreer is of geag word geregistreer te wees ingevolge artikel 46; (viii)
- 20 (xi) **“onderwysdepartement”** die departement wat ingestel is by artikel 7(2) van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), wat verantwoordelik is vir onderwys in ’n *provinsie*; (iii)
- (xii) **“openbare skool”** ’n *skool* beoog in Hoofstuk 3; (xviii)
- 25 (xiii) **“opvoeder”** ’n *opvoeder* soos omskryf in die Wet op die Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 1994); (iv)
- (xiv) **“ouer”**—
- (a) die *ouer* of voog van ’n *leerder*;
- (b) die persoon met wettige aanspraak op sorg vir ’n *leerder*; of
- 30 (c) die persoon wat onderneem om die verpligtinge van ’n persoon in paragrawe (a) en (b) ten opsigte van die *leerder* se opvoeding op *skool* na te kom; (xiv)
- (xv) **“personeellid”** ’n persoon wat by ’n *skool* in diens is; (x)
- (xvi) **“prinsipaal”** ’n *opvoeder* wat as hoof van ’n *skool* aangestel is of waarneem; (xv)
- 35 (xvii) **“provinsiale wetgewer”** ’n *provinsiale wetgewer* beoog in artikel 125 van die *Grondwet*; (xvii)
- (xviii) **“provinsie”** ’n *provinsie* ingestel by artikel 124 van die *Grondwet*; (xvi)
- (xix) **“Raad van Onderwysministers”** die *Raad van Onderwysministers* wat kragtens die Wet op Nasionale Onderwysbeleid, 1996 (Wet No. 27 van 1996), ingestel is; (ii)
- 40 (xx) **“skool”** ’n *openbare skool* of ’n *onafhanklike skool* wat *leerders* in een of meer *grade* tussen *graad* nul en *graad* twaalf inskryf. (xix)

### Toepassing van Wet

- 45 2. (1) *Hierdie Wet* is op onderwys in *skole* in die Republiek van Suid-Afrika van toepassing.
- (2) ’n *Lid van die Uitvoerende Raad* en ’n *Departementshoof* moet enige bevoegdheid uitoefen wat by of kragtens *hierdie Wet* aan hulle opgedra word, nadat die toepaslike beleid wat ingevolge die Wet op Nasionale Onderwysbeleid, 1996 (Wet No. 50 27 van 1996), bepaal is, ten volle in berekening gebring is.
- (3) Geen bepaling van *hierdie Wet* belet ’n *provinsiale wetgewer* om wetgewing vir skoolonderwys in ’n *provinsie* ooreenkomstig die *Grondwet* te verorden nie.

## HOOFSTUK 2

### LEERDERS

#### 55 Verpligte bywoning

3. (1) Behoudens *hierdie Wet* en enige toepaslike provinsiale wet moet elke *ouer* elke

every *learner* for whom he or she is responsible to attend a *school* from the first *school* day of the year in which such *learner* reaches the age of seven years until the last *school* day of the year in which such *learner* reaches the age of fifteen years or the ninth *grade*, whichever occurs first.

(2) The *Minister* must, by notice in the Government Gazette, determine the ages of 5 compulsory attendance at *school* for *learners* with special education needs.

(3) Every *Member of the Executive Council* must ensure that there are enough *school* places so that every child who lives in his or her *province* can attend *school* as required by subsections (1) and (2).

(4) If a *Member of the Executive Council* cannot comply with subsection (3) because 10 of a lack of capacity existing at the date of commencement of this Act, he or she must take steps to remedy any such lack of capacity as soon as possible and must make an annual report to the *Minister* on the progress achieved in doing so.

(5) If a *learner* who is subject to compulsory attendance in terms of subsection (1) is 15 not enrolled at or fails to attend a *school*, the *Head of Department* may—

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

(6) Subject to *this Act* and any other applicable law— 20

- (a) any *parent* who, without just cause and after a written notice from the *Head of Department*, fails to comply with subsection (1), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months; or
- (b) any other person who, without just cause, prevents a *learner* who is subject to compulsory attendance from attending a *school*, is guilty of an offence and 25 liable on conviction to a fine or to imprisonment for a period not exceeding six months.

#### Exemption from compulsory attendance

4. (1) A *Head of Department* may exempt a *learner* entirely, partially or conditionally 30 from compulsory *school* attendance if it is in the best interests of the *learner*.

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

#### Admission to public schools

5. (1) A *public school* must admit *learners* and serve their educational requirements 35 without unfairly discriminating in any way.

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

(3) No *learner* may be refused admission to a *public school* on the grounds that his or 40 her *parent*—

- (a) is unable to pay or has not paid the *school* fees determined by the *governing body* under section 39;
- (b) does not subscribe to the mission statement of the *school*; or
- (c) has refused to enter into a contract in terms of which the *parent* waives any 45 claim for damages arising out of the education of the *learner*.

(4) The *Minister* may by notice in the Government Gazette, after consultation with the *Council of Education Ministers*, determine age requirements for the admission of *learners* to a *school* or different *grades* at a *school*.

(5) Subject to *this Act* and any applicable provincial law, the admission policy of a 50 *public school* is determined by the *governing body* of such *school*.

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

*leerder* vir wie hy of sy verantwoordelik is 'n *skool* laat bywoon vanaf die eerste skooldag van die jaar waarin sodanige *leerder* die ouderdom van sewe jaar bereik tot op die laaste skooldag van die jaar waarin sodanige *leerder* die ouderdom van vyftien jaar of die negende *graad* bereik, watter een ook al eerste plaasvind.

5 (2) Die *Minister* bepaal by kennisgewing in die Staatskoerant die ouderdomme vir verpligte bywoning by *skole* vir *leerders* met spesiale onderwysbehoefes.

(3) Elke *Lid van die Uitvoerende Raad* moet verseker dat daar voldoende plek in *skole* is sodat elke kind wat in sy of haar *provinsie* woonagtig is, kan skoolgaan soos deur subartikels (1) en (2) vereis word.

10 (4) Indien 'n *Lid van die Uitvoerende Raad* nie aan subartikel (3) kan voldoen nie as gevolg van 'n gebrek aan ruimte wat op die datum van inwerkingtreding van hierdie Wet bestaan, moet hy of sy stappe doen om enige sodanige gebrek aan ruimte so gou as moontlik reg te stel, en moet hy of sy jaarliks aan die *Minister* verslag doen in verband met die vordering wat met hierdie optrede gemaak is.

15 (5) Indien 'n *leerder* wat ingevolge subartikel (1) onderworpe is aan verpligte bywoning, nie ingeskryf is by 'n *skool* nie of versuim om dit by te woon, kan die *Departementshoof*—

(a) die omstandighede van die *leerder* se afwesigheid van die *skool* ondersoek;

(b) toepaslike stappe doen om die aangeleentheid reg te stel; en

20 (c) by gebrek aan sodanige regstelling, 'n skriftelike kennisgewing aan die *ouer* van die *leerder* rig om nakoming van subartikel (1) te eis.

(6) Behoudens hierdie Wet en enige ander toepaslike wet—

(a) is enige *ouer* wat, sonder afdoende rede en ná 'n skriftelike kennisgewing van die *Departementshoof*, in gebreke bly om uitvoering te gee aan subartikel (1), skuldig aan 'n misdryf en by skuldigbevinding onderhewig aan 'n boete of aan gevangenisstraf vir 'n tydperk wat nie ses maande te bowe gaan nie; of

(b) enige ander persoon wat, sonder afdoende rede, 'n *leerder* wat aan verpligte bywoning onderhewig is, daarvan weerhou om 'n *skool* by te woon, is skuldig aan 'n misdryf en by skuldigbevinding onderhewig aan 'n boete of aan gevangenisstraf vir 'n tydperk wat nie ses maande te bowe gaan nie.

#### Vrystelling van verpligte bywoning

4. (1) 'n *Departementshoof* kan 'n *leerder* heeltemal, gedeeltelik of voorwaardelik van verpligte skoolbywoning vrystel indien dit in die beste belang van die *leerder* is.

35 (2) Elke *Departementshoof* moet 'n register hou van alle *leerders* wat van verpligte skoolbywoning vrygestel is.

#### Toelating tot openbare skole

5. (1) 'n *Openbare skool* moet *leerders* toelaat en hul opvoedkundige behoeftes dien sonder om op enige wyse onregverdig te diskrimineer.

40 (2) Die *beheerliggaam* van 'n *openbare skool* mag nie enige toets wat verband hou met die toelating van 'n *leerder* tot 'n *openbare skool* toepas, of die *prinsipaal* van die *skool* of enige ander persoon opdrag gee of magtig om sodanige toets toe te pas nie.

(3) Geen *leerder* mag toelating tot 'n *openbare skool* geweier word nie op grond daarvan dat sy of haar *ouer*—

45 (a) nie in staat is nie of versuim het om skoolgeld soos deur die *beheerliggaam* kragtens artikel 39, bepaal, te betaal;

(b) nie die missiestelling van die *skool* onderskryf nie; of

(c) geweier het om 'n kontrak waarkragtens die *ouer* afstand doen van enige eis vir skadevergoeding wat uit die opvoeding van die *leerder* voortspuit, aan te gaan.

50 (4) Die *Minister* kan, ná oorleg met die *Raad van Onderwysministers*, by wyse van kennisgewing in die Staatskoerant, ouderdomsvereistes vir die toelating van *leerders* tot 'n *skool* of tot verskillende grade in 'n *skool* vasstel.

(5) Behoudens hierdie Wet en enige toepaslike provinsiale wet word die toelatingsbeleid van 'n *openbare skool* deur die *beheerliggaam* van sodanige *skool* bepaal.

55 (6) In die bepaling van die plasing van 'n *leerder* met spesiale onderwysbehoefes moet die *Departementshoof* en die *prinsipaal* die regte en wense van die *ouer* van sodanige *leerder* in ag neem.

(7) An application for the admission of a *learner* to a *public school* must be made to the *education department* in a manner determined by the *Head of Department*.

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

(9) Any *learner* or *parent* of a *learner* who has been refused admission to a *public school* may appeal against the decision to the *Member of the Executive Council*. 5

### Language policy of public schools

6. (1) Subject to the *Constitution* and *this Act*, the *Minister* may, by notice in the *Government Gazette*, after consultation with the *Council of Education Ministers*, determine norms and standards for language policy in *public schools*. 10

(2) The *governing body* of a *public school* may determine the language policy of the *school* subject to the *Constitution*, *this Act* and any applicable provincial law.

(3) No form of racial discrimination may be practised in implementing policy determined under this section.

(4) A recognised Sign Language has the status of an official language for purposes of learning at a *public school*. 15

### Freedom of conscience and religion at public schools

7. Subject to the *Constitution* and any applicable provincial law, religious observances may be conducted at a *public school* under rules issued by the *governing body* if such observances are conducted on an equitable basis and attendance at them by *learners* and *members of staff* is free and voluntary. 20

### Code of conduct

8. (1) Subject to any applicable provincial law, a *governing body* of a *public school* must adopt a code of conduct for the *learners* after consultation with the *learners*, *parents* and *educators* of the *school*. 25

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

(3) The *Minister* may, after consultation with the *Council of Education Ministers*, determine guidelines for the consideration of *governing bodies* in adopting a code of conduct for *learners*. 30

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

(5) A code of conduct must contain provisions of due process safeguarding the interests of the *learner* and any other party involved in disciplinary proceedings. 35

### Suspension and expulsion from public school

9. (1) Subject to *this Act* and any applicable provincial law, the *governing body* of a *public school* may, after a fair hearing, suspend a *learner* from attending the *school*—

- (a) as a correctional measure for a period not longer than one week; or
- (b) pending a decision as to whether the *learner* is to be expelled from the *school* by the *Head of Department*. 40

(2) Subject to any applicable provincial law, 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 a fair hearing. 45

(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; 50

(7) 'n Aansoek om die toelating van 'n *leerder* tot 'n *openbare skool* moet aan die *onderwysdepartement* gerig word op 'n wyse wat deur die *Departementshoof* bepaal word.

(8) Indien enige aansoek ingevolge subartikel (7) geweier word, moet die *Departementshoof* die *ouer* skriftelik verwittig van sodanige weiering en die rede daarvoor.

(9) Enige *leerder* of *ouer* van 'n *leerder* wat toelating tot 'n *openbare skool* geweier is, kan teen die beslissing appèl aanteken by die *Lid van die Uitvoerende Raad*.

#### Taalbeleid van openbare skole

6. (1) Behoudens die *Grondwet* en *hierdie Wet* kan die Minister, ná oorleg met die *Raad van Onderwysministers*, by wyse van kennisgewing in die Staatskoerant norme en standaard vir taalbeleid in openbare skole vasstel.

(2) Die *beheerliggaam* van 'n *openbare skool* kan die taalbeleid van die *skool* bepaal, behoudens die *Grondwet*, *hierdie Wet* en enige toepaslike provinsiale wet.

(3) Geen vorm van rassediskriminasie mag in die uitvoering van beleid wat kragtens hierdie artikel bepaal is, plaasvind nie.

(4) 'n Erkende Gebaretaal het die status van 'n amptelike taal vir die doeleindes van onderrig in 'n *openbare skool*.

#### Vryheid van gewete en godsdiens in openbare skole

7. Behoudens die *Grondwet* en enige toepaslike provinsiale wet kan godsdiensbeoefening by 'n *openbare skool* gehou word ingevolge reëls wat deur die *beheerliggaam* uitgevaardig is, indien sodanige beoefening op 'n billike wyse geskied en bywoning daarvan deur *leerders* en *personeellede* vry en vrywillig is.

#### Gedragskode

8. (1) Behoudens enige toepaslike provinsiale wet moet 'n *beheerliggaam* van 'n *openbare skool* 'n gedragskode vir *leerders* aanvaar ná oorleg met die *leerders*, *ouers* en *opvoeders* van die *skool*.

(2) 'n Gedragskode beoog in subartikel (1) moet daarop gemik wees om 'n gedissiplineerde en doelgerigte skoolomgewing wat toegewy is aan die bevordering en instandhouding van die gehalte van die leerproses, te vestig.

(3) Die *Minister* kan, ná oorlegpleging met die *Raad van Onderwysministers*, riglyne bepaal vir oorweging deur *beheerliggame* in die aanvaarding van 'n gedragskode vir *leerders*.

(4) Geen bepaling van *hierdie Wet* stel 'n *leerder* vry van die verpligting om die gedragskode van die *skool* wat deur sodanige *leerder* bygewoon word, na te kom nie.

(5) 'n Gedragskode moet bepalings van 'n behoorlike regsproses bevat om die belange van die *leerder* en enige party wat by dissiplinêre handelinge betrokke is, te beskerm.

#### Skorsing en uitsetting uit openbare skool

9. (1) Behoudens *hierdie Wet* en enige toepaslike provinsiale wet, kan die *beheerliggaam* van 'n *openbare skool*, ná 'n regverdig verhoor, 'n *leerder* skors van bywoning van die *skool*—

(a) as 'n korrektiewe maatreël vir 'n tydperk wat nie een week te bowe gaan nie; of

(b) in afwagting van 'n beslissing deur die *Departementshoof* of die *leerder* uit die *skool* gesit moet word.

(2) Behoudens enige toepaslike provinsiale wet, mag 'n *leerder* by 'n *openbare skool* uit die *skool* gesit word slegs—

(a) deur die *Departementshoof*; en

(b) indien hy of sy ná 'n regverdig verhoor skuldig bevind is aan ernstige wangedrag.

(3) Die *Lid van die Uitvoerende Raad* bepaal, by kennisgewing in die Provinsiale Koerant—

(a) die gedrag van 'n *leerder* by 'n *openbare skool* wat as ernstige wangedrag beskou word;

(b) dissiplinêre prosedures wat in sodanige gevalle gevolg moet word;



(c) provisions of due process safeguarding 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*. 5

(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*.

#### Prohibition of corporal punishment

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

(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.

#### Representative council of learners

11. (1) A representative council of *learners* at the *school* must be established at every *public school* enrolling *learners* in the eighth grade and higher. 15

(2) A *Member of the Executive Council* may, by notice in the Provincial Gazette, determine guidelines for the establishment, election and functions of representative councils of *learners*.

(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*. 20

### CHAPTER 3

#### PUBLIC SCHOOLS

#### Provision of public schools 25

12. (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*. 30

(3) A *public school* may be an ordinary *public school* or a *public school* for *learners* with special education needs.

(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*. 35

(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*.

#### Public schools on State property

13. (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. 40

(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*. 45

(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— 50

(a) informed the *governing body* of the *school* of his or her intention so to act and the reasons therefor;

(c) bepalinge van 'n behoorlike regsproses om die belange van die *leerder* en enige ander party wat by dissiplinêre handeling betrokke is, te beskerm.

(4) 'n *Leerder* of die *ouer* van 'n *leerder* wat uit 'n *openbare skool* gesit is, kan teen die beslissing van die *Departementshoof* appèl aanteken by die *Lid van die Uitvoerende Raad*.

(5) Indien 'n *leerder* wat ingevolge artikel 3(1) aan verpligte bywoning onderhewig is, uit 'n *openbare skool* gesit word, moet die *Departementshoof* 'n alternatiewe reëling tref vir sy of haar plasing by 'n *openbare skool*.

#### Verbod op lyfstraf

10 10. (1) Geen persoon mag by 'n *skool* lyfstraf aan 'n *leerder* toedien nie.

(2) Enige persoon wat subartikel (1) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n vonnis wat vir aanranding opgelê kan word.

#### Verteenwoordigende raad van leerders

11. (1) 'n Verteenwoordigende raad van *leerders* van die *skool* moet by elke *openbare skool* wat *leerders* in die agtste *graad* en hoër inskryf, ingestel word.

(2) 'n *Lid van die Uitvoerende Raad* kan, by kennisgewing in die *Provinsiale Koerant*, riglyne vir die instelling, verkiesing en funksionering van verteenwoordigende rade van *leerders* vasstel.

(3) Die *Lid van die Uitvoerende Raad* kan, by kennisgewing in die *Provinsiale Koerant*, 'n *openbare skool* vir *leerders* met spesiale onderwysbehoefte vrystel van die nakoming van subartikel (1) indien dit nie prakties moontlik is om 'n verteenwoordigende raad van *leerders* by die *skool* te vestig nie.

### HOOFSTUK 3

#### OPENBARE SKOLE

#### 25 Voorsiening van openbare skole

12. (1) Die *Lid van die Uitvoerende Raad* moet *openbare skole* vir die onderwys van *leerders* voorsien uit fondse wat vir dié doel deur die *provinsiale wetgewer* bewillig is.

(2) Die voorsiening van *openbare skole* bedoel in subartikel (1) kan die voorsiening van koshuise vir die huisvesting van *leerders* insluit.

30 (3) 'n *Openbare skool* kan 'n gewone *openbare skool* of 'n *openbare skool* vir *leerders* met spesiale onderwysbehoefte wees.

(4) Die *Lid van die Uitvoerende Raad* moet, waar redelikerwys uitvoerbaar, onderwys vir *leerders* met spesiale onderwysbehoefte by gewone *openbare skole* voorsien asook toepaslike opvoedkundige ondersteuningsdienste vir sodanige *leerders*.

35 (5) Die *Lid van die Uitvoerende Raad* tref alle redelike maatreëls om te verseker dat die fisiese geriewe van *openbare skole* toeganklik is vir gestremde persone.

(6) Geen bepaling van *hierdie Wet* belet die voorsiening van geslag-spesifieke *openbare skole* nie.

#### Openbare skole op Staatseiendom

40 13. (1) In hierdie artikel sluit vaste eiendom waarvan die Staat die eienaar is eiendom wat namens 'n stam in trust gehou word deur 'n trust wat deur wetgewing geskep is, in.

(2) Behoudens artikel 20(1)(k) het 'n *openbare skool* wat vaste eiendom okkupeer wat deur die Staat besit word, die reg om, vir die duur van die *skool* se bestaan, die vaste eiendom te beset en te gebruik tot voordeel van die *skool* vir opvoedkundige doeleindes by of in verband met die *skool*.

(3) Die reg bedoel in subartikel (2) kan slegs beperk word—

(a) deur die *Lid van die Uitvoerende Raad*; en

45 (b) indien die vaste eiendom nie deur die *skool* in die belang van die onderwys benut word nie.

50 (4) Die *Lid van die Uitvoerende Raad* kan nie kragtens subartikel (3) optree nie tensy hy of sy—

(a) die *beheerliggaam* van die *skool* in kennis gestel het van sy of haar voorneme om op dié wyse op te tree en die redes daarvoor;

- (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. 5

(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 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). 10

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

#### Public schools on private property 15

14. (1) Subject to the *Constitution* and *this Act*, a *public school* may be provided on private property only in terms of an agreement between the *Member of the Executive Council* and the owner of the private property.

(2) An agreement contemplated in subsection (1) must be consistent with *this Act* and in particular must provide for— 20

- (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; 25
- (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*. 30

(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. 35

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

- (a) an application for such endorsement by the owner of the property, or the *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 40
- (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.

(6) The *Minister* must, after consultation with the *Council of Education Ministers*, 45 make regulations regarding the minimum requirements of an agreement contemplated in this section.

(7) Any transfer duty, stamp duty, fees or costs payable in respect of the registration of a right in terms of subsection (3) may be paid in full or in part from funds appropriated by the *provincial legislature* for that purpose, but the *public school* contemplated in subsection (1) is not responsible for such duties, fees or costs. 50

#### Status of public schools

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



- (b) die *beheerliggaam* van die *skool* 'n redelike geleentheid gebied het om vertoë tot hom of haar te rig in verband met sodanige optrede; en
- (c) enige sodanige vertoë wat ontvang is, behoorlik oorweeg het.
- (5) Die reg wat in subartikel (2) beoog word, is afdwingbaar teen enige regsopvolger van die eienaar van die betrokke vaste eiendom.
- (6) Geen vaste eiendom wat deur die Staat besit word en deur 'n *openbare skool* beset word, mag vervreem word nie, tensy 'n ooreenkoms beoog in artikel 14 tussen die *Lid van die Uitvoerende Raad* en die voornemende eienaar van die vaste eiendom aangegaan is.
- 10 (7) Die registrateur van enige registrasiekantoor van aktes mag nie 'n akte van oordrag ten opsigte van die betrokke vaste eiendom verly, attesteer of registreer nie, tensy die eienaar die registrateur van bewys van die ooreenkoms in subartikel (6) beoog, voorsien het.
- (8) Die bepalinge van die Wet op die Registrasie van Aktes, 1937 (Wet No. 47 van 15 1937), is nie van toepassing op die reg beoog in subartikel (2) nie.

### Openbare skole op private eiendom

14. (1) Behoudens die *Grondwet* en *hierdie Wet* kan 'n *openbare skool* op private eiendom voorsien word slegs ingevolge 'n ooreenkoms tussen die *Lid van die Uitvoerende Raad* en die eienaar van die private eiendom.
- 20 (2) 'n Ooreenkoms in subartikel (1) beoog, moet strook met *hierdie Wet* en moet in die besonder voorsiening maak vir—
- (a) die verskaffing van onderwys en die verrigting van die gewone werksaamhede van 'n *openbare skool*;
- 25 (b) beheer van die *skool*, met inbegrip van die verhouding tussen die *beheerliggaam* van die *skool* en die eienaar;
- (c) toegang tot die eiendom waarop die *skool* staan, deur alle belanghebbendes;
- (d) die sekerheid van okkupasie en gebruik van die eiendom deur die *skool*;
- (e) instandhouding en verbetering van die skoolgeboue en die eiendom waarop
- 30 (f) die beskerming van die eienaar se regte met betrekking tot die eiendom wat deur die *skool* geokkupeer, geaffekteer of gebruik word.
- (3) Die bepalinge van die Wet op die Registrasie van Aktes, 1937 (Wet No. 47 van 1937), is nie van toepassing op 'n saaklike reg, met uitsluiting van eiendomsreg, wat deur die Staat, 'n *openbare skool* of 'n ander party verkry word ingevolge 'n
- 35 ooreenkoms in hierdie artikel beoog nie.
- (4) Die reg beoog in subartikel (3) is afdwingbaar teen enige regsopvolger van die eienaar van die betrokke eiendom.
- (5) Ondanks subartikel (3) moet 'n registrateur van aktes op die eiendomsakte van die geaffekteerde eiendom 'n endossement aanbring dat die eiendom onderworpe is aan
- 40 'n ooreenkoms in hierdie artikel beoog, indien die registrateur in ontvangs is van—
- (a) 'n aansoek om sodanige endossement deur die eienaar van die eiendom, of die *Lid van die Uitvoerende Raad* of enige ander houër van 'n reg beoog in subartikel (3), tesame met die eiendomsakte van die eiendom; en
- 45 (b) beëdigde verklaringe van die eienaar van die eiendom en die *Lid van die Uitvoerende Raad* wat verklaar dat 'n ooreenkoms beoog in hierdie artikel gesluit is.
- (6) Ná oorleg met die *Raad van Onderwysministers* moet die *Minister* regulasies uitvaardig ten aansien van die minimumvereistes vir 'n ooreenkoms beoog in hierdie artikel.
- 50 (7) Enige hereregte, seëlregte, gelde of kostes wat ten opsigte van die registrasie van 'n reg ingevolge subartikel (3) betaalbaar is, kan ten volle of gedeeltelik uit fondse wat vir dié doel deur die provinsiale wetgewer bewillig is, betaal word, maar die *openbare skool* beoog in subartikel (1) is nie aanspreeklik vir sodanige regte, gelde of kostes nie.

### Status van openbare skole

- 55 15. Elke *openbare skool* is 'n regspersoon met die wetlike bevoegdheid om sy werksaamhede ingevolge hierdie Wet te verrig.

### Governance and professional management of public schools

16. (1) Subject to *this Act*, the governance of every *public school* is vested in its *governing body*.

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

(3) Subject to *this Act* 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*. 5

### Governing body serving two or more schools

17. (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. 10

(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 15
- (c) considered all such submissions.

### Constitution of governing body

18. (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. 20

(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; 25
- (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. 30

(3) The *governing body* must submit a copy of its constitution to the *Head of Department* within 90 days of its election.

### Enhancement of capacity of governing bodies

19. (1) Out of funds appropriated for this purpose by the *provincial legislature*, the *Head of Department* must establish a programme to— 35

- (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. 40

(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*.

### Functions of all governing bodies

20. (1) Subject to *this Act*, the *governing body* of a *public school* must— 45

- (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*; 50

**Beheer en professionele bestuur van openbare skole**

16. (1) Behoudens *hierdie Wet* setel die beheer van elke *openbare skool* in sy *beheerliggaam*.

(2) 'n *Beheerliggaam* staan in 'n vertrouensposisie teenoor die *skool*.

5 (3) Behoudens *hierdie Wet* en enige toepaslike provinsiale wet, moet die professionele bestuur van 'n *openbare skool* deur die *prinsipaal* onder die gesag van die *Departementshoof* onderneem word.

**Beheerliggaam wat twee of meer skole bedien**

17. (1) Die *Lid van die Uitvoerende Raad* kan bepaal dat die beheer oor twee of meer  
10 *skole* in 'n enkele *beheerliggaam* moet setel indien dit in die beste belang van onderwys by die betrokke *skole* is.

(2) Die *Lid van die Uitvoerende Raad* tree nie ingevolge subartikel (1) op nie tensy hy of sy—

- 15 (a) in die Provinsiale Koerant kennis gegee het van sy of haar voorneme om op dié wyse op te tree;  
(b) aan belanghebbendes die geleentheid gebied het om binne 'n tydperk van minstens 30 dae skriftelike versoë te rig; en  
(c) alle sodanige versoë oorweeg het.

**Grondwet van beheerliggaam**

20 18. (1) Behoudens *hierdie Wet* en enige toepaslike provinsiale wet, moet die *beheerliggaam* van 'n *openbare skool* ingevolge 'n grondwet wat aan die minimumvereistes deur die *Lid van die Uitvoerende Raad* by kennisgewing in die Provinsiale Koerant bepaal, funksioneer.

(2) 'n *Grondwet* beoog in subartikel (1) moet voorsiening maak vir—

- 25 (a) 'n vergadering van die *beheerliggaam* minstens een keer elke skoolkwartaal;  
(b) vergaderings van die *beheerliggaam* met *ouers*, *leerders*, *opvoeders* en ander personeel, onderskeidelik, minstens een keer per jaar;  
(c) die afneem en hou van notules van vergaderings van die *beheerliggaam*;  
(d) die beskikbaarstelling van sodanige notules vir inspeksie deur die *Departementshoof*; en  
30 (e) die lewering van 'n verslag oor sy aktiwiteite aan *ouers*, *leerders*, *opvoeders* en ander personeel van die *skool* minstens een keer per jaar.

(3) Die *beheerliggaam* moet binne 90 dae ná sy verkiesing 'n afskrif van sy grondwet aan die *Departementshoof* voorlê.

**35 Opbou van vermoë van beheerliggame**

19. (1) Die *Departementshoof* moet, uit fondse wat vir *hierdie* doel deur die *provinsiale wetgewer* bewillig is, 'n program vestig om—

- (a) inleidende opleiding aan nuut verkose *beheerliggame* te voorsien om hulle in staat te stel om hul werksaamhede te verrig; en  
40 (b) voortgesette opleiding aan *beheerliggame* te voorsien ten einde die doeltreffende verrigting van hul werksaamhede te bevorder of om hulle in staat te stel om bykomende werksaamhede aan te neem.

(2) Die *Departementshoof* moet verseker dat *prinsipale* en ander beamptes van die *onderwysdepartement* alle nodige hulp aan *beheerliggame* by die verrigting van hul  
45 werksaamhede ingevolge *hierdie Wet* voorsien.

**Werksaamhede van alle beheerliggame**

20. (1) Behoudens *hierdie Wet* moet die *beheerliggaam* van 'n *openbare skool*—

- (a) die beste belange van die *skool* bevorder en poog om die ontwikkeling daarvan te verseker deur die voorsiening van onderwys van gehalte aan alle  
50 *leerders* in die *skool*;  
(b) 'n grondwet aanvaar;  
(c) die missiestelling van die *skool* ontwikkel;  
(d) 'n gedragskode vir *leerders* by die *skool* aanvaar;

- (e) support the *principal, educators* and other staff of the *school* in the performance of their professional functions;
- (f) determine times of the *school* day consistent with any applicable conditions of employment of staff at the *school*;
- (g) administer and control the *school's* property, and buildings and grounds 5 occupied by the *school*, including *school* hostels, if applicable;
- (h) encourage *parents, learners, educators* and other staff at the *school* to render voluntary services to the *school*;
- (i) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the Educators Employment Act, 1994 (Proclamation No. 10 138 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (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);
- (k) at the request of the *Head of Department*, allow the reasonable use under fair 15 conditions of the facilities of the *school* for educational programmes not conducted by the *school*;
- (l) discharge all other functions imposed upon the *governing body* by or under *this Act*; and
- (m) discharge other functions consistent with *this Act* as determined by the 20 *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 25 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.

#### Allocated functions of governing bodies

21. (1) Subject to *this Act*, a *governing body* may apply to the *Head of Department* in 30 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; 35
- (c) to purchase textbooks, educational materials or equipment for the *school*;
- (d) to pay for services to the *school*; or
- (e) other functions consistent with *this Act* and any applicable provincial law.

(2) The *Head of Department* may refuse an application contemplated in subsection (1) only if the *governing body* concerned does not have the capacity to perform such 40 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. 45

(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— 50

- (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.

- (e) die *prinsipaal*, *opvoeders* en ander personeel van die *skool* ondersteun in die verrigting van hul professionele werksaamhede;
- (f) die tye van die skooldag bepaal in ooreenstemming met enige toepaslike diensvoorwaardes van personeel by die *skool*;
- 5 (g) die *skool* se eiendom, asook die geboue en gronde deur die *skool* beset, met inbegrip van koshuise, indien van toepassing, administreer en beheer;
- (h) *ouers*, *leerders*, *opvoeders* en ander personeel van die *skool* aanmoedig om vrywillige dienste aan die *skool* te lewer;
- 10 (i) die aanstelling van *opvoeders* by die *skool* by die *Departementshoof* aanbeveel, behoudens die Wet op die Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 1994), en die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995);
- (j) die aanstelling van nie-opvoederpersoneel by die *skool* by die *Departementshoof* aanbeveel, onderworpe aan die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), en die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995);
- 15 (k) op versoek van die *Departementshoof* die redelike gebruik onder regverdige omstandighede van die fasiliteite van die *skool* toelaat vir opvoedkundige programme wat nie deur die *skool* aangebied word nie;
- 20 (l) alle ander werksaamhede wat by of kragtens *hierdie Wet* aan die *beheerliggaam* opgelê word, verrig; en
- (m) ander werksaamhede in ooreenstemming met *hierdie Wet* uitvoer, soos deur die *Minister* by kennisgewing in die Staatskoerant bepaal, of deur die *Lid van die Uitvoerende Raad* by kennisgewing in die Provinsiale Koerant.
- 25 (2) Die *beheerliggaam* kan die redelike gebruik van die fasiliteite van die *skool* vir gemeenskaps-, sosiale en skoolfonds-insamelingsdoeleindes toelaat, onderworpe aan sodanige redelike en billike voorwaardes as wat die *beheerliggaam* mag bepaal, wat die heffing van gelde of tariewe vir die *skool* se voordeel kan insluit.
- (3) Die *beheerliggaam* kan by 'n vrywillige vereniging wat *beheerliggame* van  
30 *openbare skole* verteenwoordig, aansluit.

### Toegewese werksaamhede van beheerliggame

21. (1) Behoudens *hierdie Wet*, kan 'n *beheerliggaam* skriftelik by die *Departementshoof* aansoek doen om enige van die volgende werksaamhede toegewys te word:
- 35 (a) Die instandhouding en verbetering van die *skool* se eiendom, asook die geboue en gronde deur die *skool* beset, met inbegrip van koshuise, indien van toepassing;
- (b) die bepaling van die buitemuurse kurrikulum van die *skool* en die keuse van vak-opsies ingevolge die provinsiale kurrikulumbeleid;
- 40 (c) die aankoop van handboeke, opvoedkundige materiaal of uitrusting vir die *skool*;
- (d) betaling vir dienste aan die *skool*; of
- (e) ander werksaamhede in ooreenstemming met *hierdie Wet* en enige toepaslike provinsiale wet.
- (2) Die *Departementshoof* kan 'n aansoek in subartikel (1) beoog, weier slegs indien  
45 die betrokke *beheerliggaam* nie oor die vermoë beskik om sodanige werksaamheid doeltreffend te kan verrig nie.
- (3) Die *Departementshoof* kan sodanige aansoek onvoorwaardelik of onderhewig aan voorwaardes goedkeur.
- (4) Die beslissing van die *Departementshoof* oor sodanige aansoek moet skriftelik  
50 aan die betrokke *beheerliggaam* oorgedra word, met opgawe van redes.
- (5) Enige persoon wat deur 'n beslissing van die *Departementshoof* ingevolge hierdie artikel gegrief is, kan teen die beslissing by die *Lid van die Uitvoerende Raad* appelleer.
- (6) Die *Lid van die Uitvoerende Raad* kan, by kennisgewing in die Provinsiale  
55 Koerant, bepaal dat sekere *beheerliggame* een of meer werksaamhede kan uitoefen sonder om 'n aansoek bedoel in subartikel (1) in te dien, indien—
- (a) hy of sy tevrede is dat die betrokke *beheerliggame* in die vermoë is om sodanige werksaamhede doeltreffend uit te voer; en
- (b) daar 'n redelike en billike basis daarvoor bestaan.

**Withdrawal of functions from governing bodies**

22. (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— 5

- (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. 10

(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 15
- (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*. 20

**Membership of governing body of ordinary public school**

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

- (a) elected members; 25
- (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*; 30
- (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). 35

(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*. 40

(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. 45

(8) Co-opted members do not have voting rights on the *governing body*.

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

**Membership of governing body of public school for learners with special education needs** 50

24. (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*; 55
- (c) members of staff at the *school* who are not *educators*;



**Terugtrekking van werksaamhede van beheerliggame**

22. (1) Die *Departementshoof* kan, op redelike gronde, 'n werksaamheid van 'n *beheerliggaam* intrek.

(2) Die *Departementshoof* kan nie ingevolge subartikel (1) optree nie, tensy hy of sy—

(a) die *beheerliggaam* in kennis gestel het van sy of haar voorneme om op hierdie wyse op te tree en die redes daarvoor;

(b) aan die *beheerliggaam* 'n redelike geleentheid gebied het om vertoë tot hom of haar te rig in verband met sodanige voorneme; en

(c) enige sodanige vertoë wat ontvang is, behoorlik oorweeg het.

(3) In dringende gevalle kan die *Departementshoof* ingevolge subartikel (1) optree sonder vooraf skakeling met sodanige *beheerliggaam*, indien die *Departementshoof* daarna—

(a) aan die *beheerliggaam* redes vir sy of haar optrede verstrek;

(b) aan die *beheerliggaam* 'n redelike geleentheid bied om vertoë in verband met sodanige optrede te rig; en

(c) enige sodanige vertoë wat ontvang word, behoorlik oorweeg.

(4) Die *Departementshoof* kan, met afdoende redes, sy of haar optrede ingevolge subartikel (3) herroep of opskort.

(5) Enige persoon wat veronreg voel deur 'n besluit van die *Departementshoof* ingevolge hierdie artikel kan teen die besluit appèl aanteken by die *Lid van die Uitvoerende Raad*.

**Lidmaatskap van beheerliggaam van gewone openbare skool**

23. (1) Behoudens *hierdie Wet*, bestaan die lidmaatskap van 'n *beheerliggaam* van 'n gewone *openbare skool* uit—

(a) verkose lede;

(b) die *prinsipaal*, in sy of haar amptelike hoedanigheid; en

(c) gekoöpteerde lede.

(2) Verkose lede van die *beheerliggaam* bestaan uit 'n lid of lede van elk van die volgende kategorieë:

(a) *Ouers* van *leerders* by die *skool*;

(b) *opvoeders* by die *skool*;

(c) personeellede by die *skool* wat nie *opvoeders* is nie; en

(d) *leerders* in die agtste *graad* of hoër by die *skool*.

(3) 'n *Ouer* wat by die *skool* in diens is, kan nie ingevolge subartikel (2)(a) *ouers* op die *beheerliggaam* verteenwoordig nie.

(4) 'n Verteenwoordigende raad van *leerders* bedoel in artikel 11(1) moet 'n *leerder* of *leerders* bedoel in subartikel (2)(d) verkies.

(5) Die *beheerliggaam* van 'n gewone *openbare skool* wat onderwys verskaf aan *leerders* met spesiale onderwysbehoefte moet, waar prakties moontlik, 'n persoon of persone koöpteer met kundigheid ten aansien van die spesiale onderwysbehoefte van sodanige *leerders*.

(6) 'n Beheerliggaam kan 'n lid of lede van die gemeenskap koöpteer om behulpsaam te wees met die verrigting van sy werksaamhede.

(7) Die *beheerliggaam* van 'n *openbare skool* beoog in artikel 14 kan die eienaar van die eiendom waarop die *skool* gevestig is of die genomineerde verteenwoordiger van sodanige eienaar koöpteer.

(8) Gekoöpteerde lede het nie stemreg op die *beheerliggaam* nie.

(9) Die aantal ouerlede moet een meer as die gesamentlike totaal van die ander lede van die *beheerliggaam* wat stemreg het, uitmaak.

**Lidmaatskap van beheerliggaam van openbare skool vir leerders met spesiale onderwysbehoefte**

24. (1) Die volgende kategorieë van persone moet in die *beheerliggaam* van 'n *openbare skool* vir *leerders* met spesiale onderwysbehoefte verteenwoordig word, in elke geval deur 'n lid of lede van die bepaalde kategorie:

(a) *Ouers* van *leerders* van die *skool*, indien redelik uitvoerbaar;

(b) *opvoeders* by die *skool*;

(c) personeellede van die *skool* wat nie *opvoeders* is nie;

- (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; 5
- (h) disabled persons, if applicable; and
- (i) experts in appropriate fields of special needs education.

(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*. 10

(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). 15

#### Failure by governing body to perform functions

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

(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. 20

(3) 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).

#### Recusal by members of governing body 25

26. 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.

#### Reimbursement of members of governing body

27. (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*. 30

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

#### Election of members of governing body

28. Subject to *this Act* and any applicable provincial law, the *Member of the Executive Council* must, by notice in the Provincial Gazette, determine— 35

- (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; 40
- (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*; 45
- (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 50
- (g) any other matters necessary for the election, appointment or assumption of office of members of the *governing body*.



- (d) *leerders* in die agtste *graad* of hoër, indien redelik uitvoerbaar;
  - (e) verteenwoordigers van borgliggame, indien toepaslik;
  - (f) verteenwoordigers van organisasies van *ouers* van *leerders* met spesiale onderwysbehoefte, indien toepaslik;
  - 5 (g) verteenwoordigers van organisasies vir gestremde persone, indien toepaslik;
  - (h) gestremde persone, indien toepaslik; en
  - (i) deskundiges in toepaslike velde van spesiale behoefte-onderwys.
- (2) Behoudens *hierdie Wet*, bepaal die *Lid van die Uitvoerende Raad* by kennisgewing in die Provinsiale Koerant die getal lede in elke kategorie waarna verwys word
- 10 in subartikel (1) en die wyse van verkiesing of aanstelling van sodanige lede by elke *openbare skool* vir *leerders* met spesiale onderwysbehoefte in sy of haar *provinsie*.
- (3) 'n Kennisgewing beoog in subartikel (2) moet aan belanghebbendes die geleentheid bied om binne 'n tydperk van minstens 30 dae skriftelike vertoë te rig.
- (4) Die *Lid van die Uitvoerende Raad* moet alle sodanige vertoë oorweeg, en kan
- 15 daarna die kennisgewing beoog in subartikel (2) wysig.

#### Versuim deur beheerliggaam om werksaamhede te verrig

25. (1) Indien 'n *beheerliggaam* opgehou het om sy werksaamhede te verrig, moet die *Departementshoof* voldoende persone aanstel om daardie werksaamhede vir 'n tydperk van hoogstens drie maande te verrig.
- 20 (2) Die *Departementshoof* kan die tydperk bedoel in subartikel (1) met verdere tydperke van hoogstens drie maande elk verleng, maar die totale tydperk mag nie een jaar oorskry nie.
- (3) Die *Departementshoof* moet seker maak dat 'n *beheerliggaam* kragtens hierdie *Wet* verkies word binne een jaar ná die aanstelling van persone in subartikel (1) beoog.

#### 25 Onttrekking deur lede van beheerliggaam

26. 'n *Lid* van 'n *beheerliggaam* moet van 'n vergadering van die *beheerliggaam* onttrek vir die duur van die bespreking van en die besluitneming oor enige aangeleentheid waarby die lid 'n persoonlike belang het.

#### Terugbetaling van lede van beheerliggaam

- 30 27. (1) Noodsaaklike onkoste deur 'n lid van 'n *beheerliggaam* in die uitvoering van sy of haar pligte aangegaan, mag vergoed word.
- (2) Geen lid van 'n *beheerliggaam* mag op enige wyse vergoed word deur die *beheerliggaam* vir die uitvoering van sy of haar pligte nie.

#### Verkiesing van lede van beheerliggaam

- 35 28. Behoudens *hierdie Wet* en enige toepaslike provinsiale wet, bepaal die *Lid van die Uitvoerende Raad* by kennisgewing in die Provinsiale Koerant—
- (a) die ampstermyn van lede en ampsdraers van 'n *beheerliggaam*;
  - (b) die aanwysing van 'n amptenaar om die proses van die nominasie en verkiesing van lede van die *beheerliggaam* te hanteer;
  - 40 (c) die prosedure vir die diskwalifikasie of verwydering van 'n lid van 'n *beheerliggaam* of die ontbinding van 'n *beheerliggaam*, met afdoende rede in elke geval;
  - (d) die prosedure vir die vul van 'n vakature op die *beheerliggaam*;
  - (e) riglyne ter bereiking van die hoogste praktiese vlak van verteenwoordigheid van lede van 'n *beheerliggaam*;
  - 45 (f) 'n formule of formules vir die berekening van die aantal lede van die *beheerliggaam* wat in elk van die kategorieë bedoel in artikel 23(2) verkies moet word, maar sodanige formule of formules moet in staat wees tot toepassing op die verskillende omvang van en omstandighede by openbare
  - 50 (g) enige ander aangeleenthede wat vereis word deur die verkiesing, aanwysing of ampsaanvaarding van lede van die *beheerliggaam*.

**Office-bearers of governing bodies**

29. (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*. 5

**Committees of governing body**

30. (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. 10

(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.

**Term of office of members and office-bearers of governing bodies** 15

31. (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. 20

(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.

**Status of minors on governing bodies of public schools**

32. (1) A member of a *governing body* who is a minor may not contract on behalf of a *public school*. 25

(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*. 30

**Closure of public schools**

33. (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— 35

- (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 40
- (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*. 45

**Ampsdraers van beheerliggame**

29. (1) 'n *Beheerliggaam* moet uit sy geledere ampsdraers verkies wat minstens 'n voorsitter, 'n tesourier en 'n sekretaris moet insluit.

(2) Slegs 'n ouerlid van 'n *beheerliggaam* wat nie by die *openbare skool* werksaam is nie mag as die voorsitter van die *beheerliggaam* dien.

**Komitees van beheerliggaam**

30. (1) 'n *Beheerliggaam* kan—

(a) komitees instel, met inbegrip van 'n uitvoerende komitee; en

(b) persone wat nie lede van die *beheerliggaam* is nie, in sodanige komitees aanstel op grond van kundigheid, maar 'n lid van die *beheerliggaam* moet as voorsitter van elke komitee optree.

(2) Die *beheerliggaam* van 'n gewone *openbare skool* wat onderwys verskaf aan *leerders* met spesiale onderwysbehoefte, moet 'n komitee vir spesiale onderwysbehoefte instel.

**15 Ampstermyn van lede en ampsdraers van beheerliggame**

31.(1) Die ampstermyn van 'n lid van 'n *beheerliggaam* wat nie 'n *leerder* is nie, mag nie drie jaar te bowe gaan nie.

(2) Die ampstermyn van 'n lid van 'n *beheerliggaam* wat 'n *leerder* is, mag nie een jaar te bowe gaan nie.

(3) Die ampstermyn van 'n ampsdraer van 'n *beheerliggaam* mag nie een jaar te bowe gaan nie.

(4) 'n Lid of ampsdraer van 'n *beheerliggaam* kan herverkies of gekoöpteer word, na gelang van die geval, ná verstryking van sy of haar ampstermyn.

**Status van minderjarige lede van beheerliggame van openbare skole**

32. (1) 'n Lid van 'n *beheerliggaam* wat 'n minderjarige is, mag nie namens 'n *openbare skool* kontrakteer nie.

(2) 'n Lid van 'n *beheerliggaam* wat 'n minderjarige is, mag nie stem oor besluite van 'n *beheerliggaam* wat aanspreeklikheid op derde partye of op die *skool* plaas nie.

(3) 'n Lid van 'n *beheerliggaam* wat 'n minderjarige is, loop geen persoonlike aanspreeklikheid vir enige gevolg van sy of haar lidmaatskap van die *beheerliggaam* op nie.

**Sluiting van openbare skole**

33. (1) Die *Lid van die Uitvoerende Raad* kan, by kennisgewing in die Provinsiale Koerant, 'n *openbare skool* sluit.

(2) Die *Lid van die Uitvoerende Raad* kan nie kragtens subartikel (1) optree nie, tensy hy of sy—

(a) die *beheerliggaam* van die *skool* in kennis gestel het van sy of haar voorneme om op dié wyse op te tree en sy of haar redes daarvoor;

(b) die *beheerliggaam* van die *skool* 'n redelike geleentheid gebied het om vertoë in verband met sodanige optrede tot hom of haar te rig;

(c) 'n openbare verhoor belê het met redelike kennisgewing, ten einde die gemeenskap in staat te stel om vertoë in verband met sodanige optrede tot hom of haar te rig; en

(d) enige sodanige vertoë wat ontvang is, behoorlik oorweeg het.

(3) Indien 'n *openbare skool* ingevolge subartikel (1) gesluit word, moet alle bates en laste van sodanige *skool*, behoudens die voorwaardes van enige skenking, bemaking of trust beoog in artikel 37(4), die Staat toeval tensy 'n andersluidende ooreenkoms tussen die *Lid van die Uitvoerende Raad* en die *beheerliggaam* van die *skool* aangegaan is.

## CHAPTER 4

## FUNDING OF PUBLIC SCHOOLS

**Responsibility of State**

34. (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. 5

(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.

**Norms and standards for funding of public schools** 10

35. Subject to the *Constitution* and *this Act*, the *Minister* must determine norms and minimum standards for the funding of *public schools* after consultation with the *Council of Education Ministers*, the Financial and Fiscal Commission and the Minister of Finance.

**Responsibility of governing body** 15

36. 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*.

**School funds and assets of public schools**

37. (1) The *governing body* of a *public school* must establish a *school fund* and administer it in accordance with directions issued by the *Head of Department*. 20

(2) Subject to subsection (3), all money received by a *public school* including *school fees* and voluntary contributions must be paid into the *school fund*.

(3) The *governing body* of a *public school* must open and maintain a banking account.

(4) Money or other goods donated or bequeathed to or received in trust by a *public school* must be applied in accordance with the conditions of such donation, bequest or trust. 25

(5) All assets acquired by a *public school* on or after the commencement of this Act are the property of the *school*.

(6) The *school fund*, all proceeds thereof and any other assets of the *public school* must be used only for— 30

(a) educational purposes, at or in connection with such *school*;

(b) educational purposes, at or in connection with another *public school*, by agreement with such other *public school* and with the consent of the *Head of Department*; 35

(c) the performance of the functions of the *governing body*; or

(d) another educational purpose agreed between the *governing body* and the *Head of Department*.

**Annual budget of public school**

38. (1) A *governing body* of a *public school* must prepare a budget each year, according to guidelines determined by the *Member of the Executive Council*, which shows the estimated income and expenditure of the *school* for the following financial year. 40

(2) Before a budget referred to in subsection (1) is approved by the *governing body*, it must be presented to a general meeting of *parents* convened on at least 30 days' notice, for consideration and approval by a majority of *parents* present and voting. 45

## HOOFTUK 4

### BEFONDSING VAN OPENBARE SKOLE

#### Verantwoordelikheid van Staat

34. (1) Die Staat finansier *openbare skole* uit openbare inkomste op 'n billike basis  
5 ten einde die behoorlike uitoefening van die regte van *leerders* op onderwys en die  
regstelling van ongelykhede van die verlede in die voorsiening van onderwys te  
verseker.

(2) Die Staat moet, op 'n jaarlikse basis, voldoende inligting in verband met die  
befondsing bedoel in subartikel (1) aan *openbare skole* voorsien om *openbare skole* in  
10 staat te stel om hul begrotings vir die volgende boekjaar voor te berei.

#### Norme en standaard vir befondsing van openbare skole

35. Behoudens die *Grondwet* en *hierdie Wet*, moet die *Minister*, ná oorleg met die  
*Raad van Onderwysministers*, die Finansiële en Fiskale Kommissie en die Minister van  
Finansies, norme en minimumstandaarde vir die befondsing van *openbare skole* bepaal.

#### 15 Verantwoordelikheid van beheerliggaam

36. 'n *Beheerliggaam* van 'n *openbare skool* moet alle redelike maatreëls binne sy  
vermoë tref om die hulpbronne deur die Staat voorsien aan te vul ten einde die gehalte  
van onderwys wat deur die *skool* aangebied word aan alle *leerders* by die *skool*, te  
verhoog.

#### 20 Skooldfondse en bates van openbare skole

37. (1) Die *beheerliggaam* van 'n *openbare skool* moet 'n skooldfonds instel en dit  
administreer ooreenkomstig voorskrifte deur die *Departementshoof* uitgereik.

(2) Behoudens subartikel (3) moet alle geld wat deur 'n *openbare skool* ontvang  
word, met inbegrip van skoolgeld en vrywillige bydraes, in die skooldfonds gestort  
25 word.

(3) Die *beheerliggaam* van 'n *openbare skool* moet 'n bankrekening open en in stand  
hou.

(4) Geld of ander goedere wat aan 'n *openbare skool* geskenk of bemaak word of in  
trust ontvang word, moet ooreenkomstig die voorwaardes verbonde aan sodanige  
30 skenking, bemaking of trust aangewend word.

(5) Alle bates deur 'n *openbare skool* verwerf op of ná die inwerkingtreding van  
*hierdie Wet* is die eiendom van die *skool*.

(6) Die skooldfonds, alle opbrengste daaruit en alle ander bates van die *openbare  
skool* mag slegs gebruik word vir—

- 35 (a) opvoedkundige doeleindes by of in verband met sodanige *skool*;  
(b) opvoedkundige doeleindes by of in verband met 'n ander *openbare skool*,  
volgens ooreenkoms met sodanige ander *openbare skool* en met die instem-  
ming van die *Departementshoof*;  
(c) die uitvoering van die werksaamhede van die *beheerliggaam*; of  
40 (d) 'n ander opvoedkundige doel soos ooreengekom tussen die *beheerliggaam*  
en die *Departementshoof*.

#### Jaarlikse begroting van openbare skool

38. (1) 'n *Beheerliggaam* van 'n *openbare skool* moet elke jaar, in ooreenstemming  
met riglyne deur die *Lid van die Uitvoerende Raad* bepaal, 'n begroting voorberei wat  
45 die beraamde inkomste en uitgawe van die *skool* in die volgende boekjaar uiteensit.

(2) Voordat 'n begroting bedoel in subartikel (1) deur die *beheerliggaam* goedgekeur  
word, moet dit aan 'n vergadering van *ouers* wat met minstens 30 dae kennisgewing  
belê is, voorgelê word vir oorweging en goedkeuring deur 'n meerderheid van *ouers*  
teenwoordig wat stem.

**School fees at public schools**

- 39.** (1) Subject to *this Act*, school fees may be determined and charged at a *public school* only if a resolution to do so has been adopted by a majority of *parents* attending the meeting referred to in section 38(2).
- (2) A resolution contemplated in subsection (1) must provide for— 5
- (a) the amount of fees to be charged; and
- (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school* fees.
- (3) The *governing body* must implement a resolution adopted at the meeting contemplated in subsection (1). 10
- (4) The *Minister* must, after consultation with the *Council of Education Ministers* and the Minister of Finance, make regulations regarding the equitable criteria and procedures referred to in subsection (2)(b).

**Parent's liability for payment of school fees**

- 40.** (1) A *parent* is liable to pay the *school* fees determined in terms of section 39 15 unless or to the extent that he or she has been exempted from payment in terms of *this Act*.
- (2) A *parent* may appeal to the *Head of Department* against a decision of a *governing body* regarding the exemption of such *parent* from payment of *school* fees.
- (3) In deciding an appeal referred to in subsection (2), the *Head of Department* must 20 follow due process which safeguards the interests of the *parent* and the *governing body*.

**Enforcement of payment of school fees**

- 41.** The *governing body* of a *public school* may by process of law enforce the payment of *school* fees by *parents* who are liable to pay in terms of section 40.

**Financial records and statements of public schools** 25

- 42.** The *governing body* of a *public school* must—
- (a) keep records of funds received and spent by the *public school* and of its assets, liabilities and financial transactions; and
- (b) as soon as practicable, but not later than three months after the end of each financial year, draw up annual financial statements in accordance with the 30 guidelines determined by the *Member of the Executive Council*.

**Audit or examination of financial records and statements**

- 43.** (1) The *governing body* of a *public school* must appoint a person registered as an accountant and auditor in terms of the Public Accountants and Auditors Act, 1991 (Act No. 80 of 1991), to audit the records and financial statements referred to in section 42. 35
- (2) If the audit referred to in subsection (1) is not reasonably practicable, the *governing body* of a *public school* must appoint a person to examine and report on the records and financial statements referred to in section 42, who—
- (a) is qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporations Act, 1984 (Act No. 69 of 1984); or 40
- (b) is approved by the *Member of the Executive Council* for this purpose.
- (3) No person who has a financial interest in the affairs of the *public school* may be appointed under this section.
- (4) If the *Member of the Executive Council* deems it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a 45 *public school*.
- (5) A *governing body* must submit to the *Head of Department*, within six months after the end of each financial year, a copy of the annual financial statements, audited or examined in terms of this section.



**Skoolgeld by openbare skole**

39. (1) Ingevolge *hierdie Wet* kan skoolgeld by 'n *openbare skool* vasgestel en gehef word alleenlik indien 'n besluit om dit te doen deur 'n meerderheid van *ouers* tydens 'n vergadering bedoel in artikel 38(2) aanvaar is.

- 5 (2) 'n Besluit beoog in subartikel (1) moet voorsiening maak vir—
- (a) die bedrag van gelde wat gehef staan te word; en
  - (b) billike maatstawwe en prosedures vir die algehele, gedeeltelike of voorwaardelike vrystelling deur die *beheerliggaam* van *ouers* wat nie in staat is om skoolgeld te betaal nie.
- 10 (3) Die *beheerliggaam* moet 'n besluit by 'n vergadering beoog in subartikel (1) geneem, in werking stel.
- (4) Die *Minister*, na oorlegpleging met die *Raad van Onderwysministers* en die Minister van Finansies, vaardig regulasies uit ten opsigte van die billike maatstawwe en prosedures bedoel in subartikel (2)(b).

**15 Verpligting op ouer om skoolgeld te betaal**

40. (1) 'n *Ouer* is aanspreeklik vir die betaling van die skoolgeld ingevolge artikel 39 bepaal, tensy en tot die mate waartoe hy of sy van betaling vrygestel is kragtens *hierdie Wet*.

- (2) 'n *Ouer* kan by die *Departementshoof* appelleer teen 'n beslissing van 'n *beheerliggaam* in verband met die vrystelling van sodanige *ouer* van die betaling van skoolgeld.
- 20 (3) In die beslissing oor 'n appél bedoel in subartikel (2) moet die *Departementshoof* 'n behoorlike regsproses volg om die belange van die *ouer* en die *beheerliggaam* te beskerm.

**25 Afdwing van betaling van skoolgeld**

41. Die *beheerliggaam* van 'n *openbare skool* kan die betaling van skoolgeld deur *ouers* wat ingevolge artikel 40 daarvoor aanspreeklik is, deur regsproses afdwing.

**Finansiële rekords en state van openbare skole**

42. Die *beheerliggaam* van 'n *openbare skool* moet—
- 30 (a) rekord hou van fondse ontvang en bestee deur die *openbare skool*, en van sy bates, laste en finansiële transaksies; en
- (b) so spoedig as moontlik, maar nie later nie as drie maande ná die einde van elke boekjaar, jaarlikse finansiële state opstel ooreenkomstig die riglyne wat deur die *Lid van die Uitvoerende Raad* bepaal is.

**35 Ouditering of ondersoek na finansiële rekords en state**

43. (1) Die *beheerliggaam* van 'n *openbare skool* moet 'n persoon wat ingevolge die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991), as rekenmeester en ouditeur geregistreer is, aanstel om die rekords en finansiële state bedoel in artikel 42 te ouditeer.
- 40 (2) Indien die oudit bedoel in subartikel (1) nie redelikerwys uitvoerbaar is nie, moet die *beheerliggaam* van 'n *openbare skool* 'n persoon aanstel om die rekords en finansiële state bedoel in artikel 42 te ondersoek en daarvoor verslag te doen, welke persoon—
- 45 (a) bevoeg is om die pligte van 'n rekenpligtige beampte ingevolge die bepalings van artikel 60 van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), uit te voer; of
- (b) deur die *Lid van die Uitvoerende Raad* vir hierdie doel goedgekeur is.
- (3) Geen persoon wat 'n finansiële belang in die sake van die *openbare skool* het, mag kragtens hierdie artikel aangestel word nie.
- 50 (4) Indien die *Lid van die Uitvoerende Raad* dit nodig ag, kan hy of sy die Ouditeur-Generaal versoek om 'n oudit van die rekords en finansiële state van 'n *openbare skool* te onderneem.
- (5) 'n *Beheerliggaam* moet binne ses maande ná die einde van elke boekjaar 'n afskrif van die jaarlikse finansiële state, geouditeer of ondersoek kragtens hierdie
- 55 artikel, aan die *Departementshoof* voorlê.

(6) At the request of an interested person, the *governing body* must make the records referred to in section 42, and the audited or examined financial statements referred to in this section, available for inspection.

#### Financial year of public school

44. The financial year of a *public school* commences on the first day of January and ends on the last day of December of each year. 5

### CHAPTER 5

#### INDEPENDENT SCHOOLS

##### Establishment of independent school

45. Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an *independent school*. 10

##### Registration of independent school

46. (1) No person may establish or maintain an *independent school* unless it is registered by the *Head of Department*.

(2) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine the grounds on which the registration of an *independent school* may be granted or withdrawn by the *Head of Department*. 15

(3) A *Head of Department* must register an *independent school* if he or she is satisfied that—

- (a) the standards to be maintained by such *school* will not be inferior to the standards in comparable *public schools*; 20
- (b) the admission policy of the *school* does not discriminate on the grounds of race; and
- (c) the *school* complies with the grounds for registration contemplated in subsection (2). 25

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

##### Withdrawal of registration of independent school

47. (1) No withdrawal of the registration of an *independent school* is valid unless—

- (a) the owner of such *independent school* has been furnished by the *Head of Department* with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated; 30
- (b) the owner of such *independent school* has been granted an opportunity to make written representations to the *Head of Department* as to why the registration of the *independent school* should not be withdrawn; and 35
- (c) any such representations received have been duly considered.

(2) The owner of an *independent school* may appeal to the *Member of the Executive Council* against the withdrawal of the registration of such *independent school*.

##### Subsidies to registered independent schools

48. (1) The *Minister* may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to *independent schools* after consultation with the *Council of Education Ministers* and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance. 40

(2) The *Member of the Executive Council* may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an *independent school*. 45

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

(4) The *Head of Department* may not terminate or reduce a subsidy under subsection (3) unless— 50



(6) Op versoek van 'n belanghebbende persoon moet die *beheerliggaam* die rekords bedoel in artikel 42 en die geouditeerde of ondersoekte finansiële state beskikbaar stel vir inspeksie.

#### Boekjaar van openbare skool

- 5 44. Die boekjaar van 'n *openbare skool* begin op die eerste dag van Januarie en eindig op die laaste dag van Desember van elke jaar.

### HOOFSTUK 5

#### ONAFHANKLIKE SKOLE

##### Stigting van onafhanklike skool

- 10 45. Behoudens *hierdie Wet* en enige toepaslike provinsiale wet kan elke persoon of sy of haar eie koste 'n *onafhanklike skool* stig en onderhou.

##### Registrasie van onafhanklike skool

46. (1) Geen persoon kan 'n *onafhanklike skool* stig of onderhou nie tensy dit deur die *Departementshoof* geregistreer is.
- 15 (2) Die *Lid van die Uitvoerende Raad* moet, by kennisgewing in die Provinsiale Koerant, die gronde bepaal waarop die registrasie van 'n *onafhanklike skool* deur die *Departementshoof* toegestaan of ingetrek kan word.
- (3) 'n *Departementshoof* moet 'n *onafhanklike skool* registreer indien hy of sy oortuig is dat—
- 20 (a) die standaard wat in sodanige *skool* gehandhaaf staan te word, nie minderwaardig in vergelyking met standaard in vergelykbare *openbare skole* is nie;
- (b) die *skool* se toelatingsbeleid nie op grond van ras diskrimineer nie; en
- (c) die *skool* voldoen aan die voorwaardes vir registrasie beoog in subartikel (2).
- 25 (4) Enige persoon wat subartikel (1) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of gevangenisstraf vir 'n tydperk van drie maande.

##### Intrekking van registrasie van onafhanklike skool

47. (1) Geen intrekking van die registrasie van 'n *onafhanklike skool* is geldig nie tensy—
- 30 (a) die eienaar van sodanige *onafhanklike skool* deur die *Departementshoof* van 'n kennisgewing van voorneme om die registrasie in te trek, voorsien is met uiteensetting van redes waarom sodanige intrekking beoog word;
- (b) die eienaar van sodanige *onafhanklike skool* die geleentheid gebied is om skriftelike verhoë tot die *Departementshoof* te rig met opgawe van redes
- 35 waarom die registrasie van die *onafhanklike skool* nie ingetrek behoort te word nie; en
- (c) enige sodanige verhoë wat ontvang is, behoorlik oorweeg is.
- (2) Die eienaar van 'n *onafhanklike skool* kan by die *Lid van die Uitvoerende Raad* appèl aanteken teen die intrekking van die registrasie van sodanige *onafhanklike skool*.

##### 40 Subsidies aan geregistreerde onafhanklike skole

48. (1) Die *Minister* kan, by kennisgewing in die Staatskoerant, na oorleg met die *Raad van Onderwysministers* en die Finansiële en Fiskale Kommissie en met die instemming van die Minister van Finansies, norme en minimumstandaarde vir die toestaan van subsidies aan *onafhanklike skole* bepaal.
- 45 (2) Die *Lid van die Uitvoerende Raad* kan, uit geld wat vir daardie doel deur die *provinsiale wetgewer* bewillig is, 'n subsidie aan 'n *onafhanklike skool* toestaan.
- (3) Indien daar nie aan 'n voorwaarde onderworpe waaraan 'n subsidie toegeken is, voldoen word nie, kan die *Departementshoof* die subsidie staak of verminder met ingang van 'n datum deur hom of haar bepaal.
- 50 (4) Die *Departementshoof* kan nie 'n subsidie ingevolge subartikel (3) staak of verminder nie, tensy—

- (a) the owner of such *independent school* has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
  - (b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
  - (c) any such representations received have been duly considered. 5
- (5) The owner of an *independent school* may appeal to the *Member of the Executive Council* against the termination or reduction of a subsidy to such *independent school*.

#### **Declaration of independent school as public school**

49. (1) The *Member of the Executive Council* may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an *independent school* in terms whereof such *independent school* is declared to be a *public school*. 10

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

#### **Duties of Member of Executive Council relating to independent schools** 15

50. (1) The *Member of the Executive Council* must, by notice in the Provincial Gazette, determine requirements for—

- (a) the admission of *learners* of an *independent school* to examinations conducted by or under the supervision of the *education department*;
- (b) the keeping of registers and other documents by an *independent school*; 20
- (c) criteria of eligibility, conditions and manner of payment of any subsidy to an *independent school*; and
- (d) any other matter relating to an *independent school* which must or may be prescribed in terms of *this Act*.

(2) Different requirements may be made under subsection (1) in respect of different *independent schools*. 25

(3) The *Member of the Executive Council* must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

#### **Registration of learner for education at home** 30

51. (1) A *parent* may apply to the *Head of Department* for the registration of a *learner* to receive education at the *learner's* home.

(2) The *Head of Department* must register a *learner* as contemplated in subsection (1) if he or she is satisfied that—

- (a) the registration is in the interests of the *learner*; 35
- (b) the education likely to be received by the *learner* at home—
  - (i) will meet the minimum requirements of the curriculum at *public schools*; and
  - (ii) will be of a standard not inferior to the standard of education provided at *public schools*; and 40
- (c) the *parent* will comply with any other reasonable conditions set by the *Head of Department*.

(3) The *Head of Department* may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The *Head of Department* may not withdraw the registration until he or she— 45

- (a) has informed the *parent* of his or her intention so to act and the reasons therefor;
- (b) has granted the *parent* an opportunity to make representations to him or her in relation to such action; and
- (c) has duly considered any such representations received. 50

(5) A *parent* may appeal to the *Member of the Executive Council* against the withdrawal of a registration or a refusal to register a *learner* in terms of *this Act*.

- (a) die eienaar van sodanige *onafhanklike skool* van 'n kennisgewing van die voorneme om die subsidie te staak of te verminder en die redes daarvoor voorsien is;
- 5 (b) sodanige eienaar die geleentheid gebied is om skriftelike verstoë te rig met opgawe van redes waarom die subsidie nie gestaak of verminder moet word nie; en
- (c) enige sodanige verstoë wat ontvang is, behoorlik oorweeg is nie.
- (5) Die eienaar van 'n *onafhanklike skool* kan by die *Lid van die Uitvoerende Raad* appèl aanteken teen die staking of vermindering van 'n subsidie aan sodanige  
10 *onafhanklike skool*.

#### Verklaring van onafhanklike skool tot openbare skool

49. (1) Die *Lid van die Uitvoerende Raad* kan, met die instemming van die *Lid van die Uitvoerende Raad* verantwoordelik vir finansies, 'n ooreenkoms met die eienaar van 'n *onafhanklike skool* aangaan ingevolge waarvan sodanige *onafhanklike skool* tot  
15 *openbare skool* verklaar word.
- (2) Kennisgewing van die verandering in status in subartikel (1) beoog moet in die Provinsiale Koerant gepubliseer word.

#### Pligte van Lid van Uitvoerende Raad ten opsigte van onafhanklike skole

50. (1) Die *Lid van die Uitvoerende Raad* moet, by kennisgewing in die Provinsiale  
20 Koerant, die vereistes bepaal vir—
- (a) die toelating van *leerders* van 'n *onafhanklike skool* tot eksamens wat deur of onder die toesig van die *onderwysdepartement* afgeneem word;
- (b) die byhou van registers en ander dokumente deur 'n *onafhanklike skool*;
- 25 (c) die kriteria vir geskiktheid, die voorwaardes en die wyse van betaling van enige subsidie aan 'n *onafhanklike skool*; en
- (d) enige ander aangeleentheid wat betrekking het op 'n *onafhanklike skool* en wat ingevolge hierdie Wet voorgeskryf moet of kan word.
- (2) Verskillende vereistes kan ingevolge subartikel (1) ten opsigte van verskillende *onafhanklike skole* gestel word.
- 30 (3) Die *Lid van die Uitvoerende Raad* moet aan die geaffekteerde partye 'n redelike tyd toestaan om kommentaar te lewer op enige vereiste wat hy of sy beplan om kragtens subartikel (1) te stel.

#### Registrasie van leerder vir onderwys tuis

51. (1) 'n *Ouer* kan by die *Departementshoof* aansoek doen om die registrasie van  
35 'n *leerder* om by die *leerder* se huis onderwys te ontvang.
- (2) Die *Departementshoof* moet 'n *leerder* soos beoog in subartikel (1) registreer indien hy of sy oortuig is dat—
- (a) die registrasie in die belang van die *leerder* is;
- 40 (b) die onderwys wat die *leerder* waarskynlik tuis sal ontvang—
- (i) aan die minimum vereistes van die kurrikulum van *openbare skole* sal voldoen; en
- (ii) van 'n standaard sal wees wat nie minderwaardig is aan die standaard van onderwys wat in *openbare skole* aangebied word nie; en
- 45 (c) die *ouer* aan enige ander redelike voorwaardes wat deur die *Departementshoof* gestel word, sal voldoen.
- (3) Die *Departementshoof* kan, behoudens subartikel (4), die registrasie bedoel in subartikel (1) intrek.
- (4) Die *Departementshoof* kan nie die registrasie intrek nie alvorens hy of sy—
- 50 (a) die *ouer* van sy of haar voorneme om op hierdie wyse op te tree en die redes daarvoor verwittig het;
- (b) aan die *ouer* die geleentheid gebied het om verstoë tot hom of haar te rig in verband met sodanige optrede; en
- (c) enige sodanige verstoë wat ontvang is, behoorlik oorweeg het.
- 55 (5) 'n *Ouer* kan by die *Lid van die Uitvoerende Raad* appèl teen die intrekking van 'n registrasie of die weiering om 'n *leerder* ingevolge hierdie Wet te registreer, aanteken.

## CHAPTER 6

## TRANSITIONAL PROVISIONS

**Transitional provisions relating to schools other than private schools**

**52.** (1) Any *school* which was established or was deemed to have been established in terms of any law governing *school* education in the Republic of South Africa and which existed immediately prior to the commencement of *this Act*, other than a private *school* referred to in section 53 is deemed to be a *public school*. 5

(2) The assets and liabilities which vested in a *school* contemplated in subsection (1) immediately prior to the commencement of *this Act*, vest in the *public school* in question. 10

(3) Funds and other moveable assets used by, or held for or on behalf of, a *public school* contemplated in subsection (1) and which in law are the property of the State, remain at the disposal of the *school*, and devolve on the *school* on a date and subject to conditions determined by the *Minister* by notice in the Government Gazette, after consultation with the *Council of Education Ministers*. 15

(4) Any transaction entered into prior to the commencement of *this Act* by a *school* contemplated in subsection (1), which had the effect of transferring funds or other assets of such *school* to another person or body without value, is invalid.

**Transitional provisions relating to private schools**

**53.** A private *school* which was registered or deemed to have been registered under the provisions of a law regulating *school* education in the Republic of South Africa and which existed immediately prior to the commencement of *this Act*, is deemed to be an *independent school*. 20

**Transitional provisions relating to governing bodies**

**54.** (1) The *Minister* must, after consultation with the *Member of the Executive Council* and by notice in the Government Gazette, determine dates— 25

(a) by which the election of members of *governing bodies* at all *public schools* in a *province* must be finalised in terms of *this Act*; and

(b) from which the *governing bodies* referred to in subsection (1)(a) must function in terms of this Act. 30

(2) Different dates may be determined in terms of subsection (1)(b) in respect of *governing bodies* in the different provinces.

(3) Any *governing body*, management council or similar authority of a *public school*, which existed immediately prior to the commencement of *this Act*, continues to function until the day before the date on which the relevant *governing body* is elected and must perform all the functions it performed prior to the commencement of this Act which a *governing body* can lawfully perform in terms of *this Act*. 35

(4) Until a *governing body* begins to function in terms of subsection 1(b), such *governing body* of a *school* deemed to be a *public school* in terms of section 52(1) must perform the functions lawfully performed by its predecessor which are capable of being performed by a *governing body* in terms of *this Act*. 40

**Transitional provisions relating to immovable property of certain schools**

**55.** (1) The immovable property of a *school* which was declared to be a state-aided *school* under section 29(2A) of the Education Affairs Act, 1988 (House of Assembly) (Act No. 70 of 1988), devolves upon the State on a date determined by the *Minister* by notice in the Government Gazette. 45

(2) The *Minister* may determine different dates in respect of different *schools* under subsection (1).

(3) Any notice determining a date or dates referred to in subsection (1) or (2) must grant all interested parties a period of not less than 30 days in which to make written submissions. 50

(4) The *Minister* must consider all such submissions received, and thereafter may alter any notice referred to in subsection (1).

**HOOFSTUK 6****OORGANGSBEPALINGS****Oorgangsbepalings wat op skole anders as private skole betrekking het**

52. (1) Enige *skool* wat ingestel is of geag was ingestel te gewees het ingevolge enige  
5 wet wat skoolonderwys in die Republiek van Suid-Afrika beheer en wat onmiddellik  
voor die inwerkingtreding van hierdie Wet bestaan het, anders as 'n private skool  
bedoel in artikel 53, word geag 'n *openbare skool* te wees.
- (2) Die bates en laste wat onmiddellik voor die inwerkingtreding van hierdie Wet by  
'n *skool* beoog in subartikel (1) berus het, berus by die betrokke *openbare skool*.
- 10 (3) Fondse en ander roerende bates wat deur die *openbare skool* gebruik word of vir  
of namens 'n *skool* beoog in subartikel (1) gehou word, wat regtens die eiendom van  
die Staat is, bly tot die beskikking van die *skool*, en val terug na die *skool* op 'n datum  
en onderhewig aan voorwaardes deur die *Minister* bepaal by wyse van kennisgewing  
in die Staatskoerant, ná oorleg met die *Raad van Onderwysministers*.
- 15 (4) Enige transaksie wat voor die inwerkingtreding van hierdie Wet deur 'n *skool*  
beoog in subartikel (1) aangegaan is en wat daartoe gelei het dat fondse of ander bates  
van sodanige *skool* sonder waarde aan 'n ander persoon of liggaam oorgedra is, is  
ongeldig.

**Oorgangsbepalings wat op private skole betrekking het**

- 20 53. 'n Private *skool* wat geregistreer was of geag word geregistreer te gewees het  
kragtens die bepaling van 'n wet wat skoolonderwys in die Republiek van Suid-Afrika  
reël, en wat bestaan het onmiddellik voor die inwerkingtreding van hierdie Wet, word  
geag 'n *onafhanklike skool* te wees.

**Oorgangsbepalings wat op beheerliggame betrekking het**

- 25 54. (1) Die *Minister* moet, ná oorleg met die *Lid van die Uitvoerende Raad* en by  
kennisgewing in die Staatskoerant, datums vasstel—
- (a) waarteen die verkiesing van lede van *beheerliggame* vir alle *openbare skole*  
in 'n *provinsie* afgehandel moet wees ingevolge hierdie Wet; en
- 30 (b) waarop die *beheerliggame* bedoel in subartikel (1)(a) ingevolge hierdie Wet  
moet funksioneer.
- (2) Verskillende datums kan bepaal word ingevolge subartikel (1)(b) ten opsigte van  
*beheerliggame* in die verskillende provinsies.
- (3) Enige *beheerliggaam*, bestuursraad of dergelike owerheid van 'n *openbare skool*,  
wat onmiddellik voor die inwerkingtreding van hierdie Wet bestaan het, gaan voort om  
35 te funksioneer tot op die dag voor die datum waarop die betrokke *beheerliggaam*  
verkies word en verrig alle werksaamhede wat hy voor die inwerkingtreding van  
hierdie Wet verrig het en wat 'n *beheerliggaam* wettig ingevolge hierdie Wet kan  
verrig.
- (4) Totdat 'n *beheerliggaam* ingevolge subartikel 1(b) begin funksioneer, moet so 'n  
40 *beheerliggaam* van 'n skool wat geag word 'n *openbare skool* te wees ingevolge artikel  
52(1) die werksaamhede verrig wat wettig deur sy voorganger verrig is en wat deur 'n  
*beheerliggaam* ingevolge hierdie Wet verrig kan word.

**Oorgangsbepalings wat op vaste eiendom van sekere skole betrekking het**

55. (1) Die vaste eiendom van 'n *skool* wat tot staatsondersteunde *skool* verklaar is  
45 ingevolge artikel 29(2A) van die Wet op Onderwysaangeleenthede, 1988 (Volksraad)  
(Wet No. 70 van 1988), val die Staat toe op 'n datum deur die *Minister* bepaal by  
kennisgewing in die Staatskoerant.
- (2) Die *Minister* kan verskillende datums ten opsigte van verskillende *skole* kragtens  
subartikel (1) bepaal.
- 50 (3) Enige kennisgewing wat 'n datum of datums bedoel in subartikel (1) of (2)  
bepaal, moet aan alle belanghebbende partye 'n tydperk van minstens 30 dae gee om  
skriftelike verhoë te kan rig.
- (4) Die *Minister* moet alle sodanige verhoë wat ontvang is, oorweeg en kan daarna  
'n kennisgewing bedoel in subartikel (1) wysig.



(5) Any transfer duty, stamp duty, other fees or costs payable as a result of the transfer of the immovable property contemplated in subsection (1) must be paid in full or in part from funds appropriated by Parliament for that purpose.

(6) The *Minister* may, with the concurrence of the Minister of Finance, direct that no transfer duty, stamp duty, other fees or costs contemplated in subsection (5) be paid in respect of a particular transfer under this section. 5

(7) The rights of third parties with claims against the *school* in respect of the immovable property affected by the transfer contemplated in this section are not extinguished by the transfer and—

(a) a third party acquires no right of execution against the immovable property as a result of such transfer alone; 10

(b) a third party is obliged to excuss the *school* in question if the *school* fails to meet its commitments to the third party; and

(c) the State indemnifies such a third party in its claims against the *school* which were secured by the immovable property, but the third party does not acquire a greater right against the State than that which it had against the *school* prior to the transfer. 15

(8) The fact that compensation for any land and real rights in or over land expropriated in terms of subsection (1) has not been finalised or paid, does not impede the transfer of such land and real rights in or over land to the State. 20

(9) Until the date contemplated in subsection (1), a *public school* referred to in that subsection may not let, sell or otherwise alienate its immovable property, or grant to any person any real right thereon or servitude thereon without the written consent of the *Member of the Executive Council*.

(10) Any claim for compensation arising from subsection (1) must be determined as contemplated in the *Constitution*. 25

#### **Transitional provisions relating to public schools on private property**

56. If an agreement contemplated in section 14 does not exist at the commencement of *this Act* in respect of a *school*, standing on private property and which is deemed to be a *public school* in terms of section 52(1), the *Member of the Executive Council* must take reasonable measures to conclude such an agreement within six months of the commencement of *this Act*. 30

#### **Transitional provisions relating to private property owned by religious organisation**

57. If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in section 14 must recognise, in an appropriate manner consistent with *this Act*, the distinctive religious character of the *school*. 35

### **CHAPTER 7**

#### **GENERAL PROVISIONS** 40

##### **Expropriation**

58. (1) The *Member of the Executive Council* may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to *school* education in a *province*.

(2) The *Member of the Executive Council* must give notice in the Provincial Gazette of his or her intention to expropriate in terms of subsection (1). 45

(3) A notice contemplated in subsection (2) must—

(a) identify the land or any real right in or over the land;

(b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and 50

(c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the *Member of the Executive Council* in that regard, and draw attention to the provisions of subsection (5).

(4) The *Member of the Executive Council* may, after considering all such written submissions, expropriate the land or any real right in or over the land referred to in subsection (3) by notice in the Provincial Gazette. 55

(5) Enige hereregte, seëlregte, ander gelde of kostes wat as gevolg van die oordrag van die onroerende eiendom beoog in subartikel (1) betaalbaar is, moet ten volle of gedeeltelik uit fondse deur die Parlement vir daardie doel bewillig, betaal word.

(6) Die *Minister* kan, met die instemming van die Minister van Finansies, beveel dat 5 geen hereregte, seëlregte, ander gelde of kostes beoog in subartikel (5) ten opsigte van 'n bepaalde oordrag kragtens hierdie artikel betaal word nie.

(7) Die regte van derde partye met eise teen die *skool* met betrekking tot die vaste eiendom deur die oordrag beoog in hierdie artikel geaffekteer, word nie deur die oordrag uitgewis nie en—

10 (a) 'n derde party verkry geen reg tot eksekusie teen die vaste eiendom bloot as gevolg van sodanige oordrag nie;

(b) 'n derde party is verplig om die betrokke *skool* uit te win as die *skool* in gebreke bly om sy verpligtinge teenoor die derde party na te kom; en

15 (c) die Staat stel sodanige party skadeloos in sy eise teen die *skool* wat deur die onroerende eiendom geborg is, maar die derde party bekom nie 'n groter reg teen die Staat as wat hy voor die oordrag teen die *skool* gehad het nie.

(8) Die feit dat kompensasie vir enige grond en saaklike reg in of oor grond wat kragtens subartikel (1) onteien is, nog nie afgehandel of betaal is nie, verhinder nie die oordrag van sodanige grond of saaklike reg in of oor die grond na die Staat nie.

20 (9) Tot op die datum beoog in subartikel (1) mag 'n *openbare skool* bedoel in daardie subartikel nie sy vaste eiendom verhuur, verkoop of andersins vervreem nie, of aan enige persoon enige saaklike reg of 'n serwituut daarop toestaan sonder die skriftelike goedkeuring van die *Lid van die Uitvoerende Raad* nie.

25 (10) Enige eis om skadevergoeding wat uit subartikel (1) voortspruit, moet besleg word soos beoog in die *Grondwet*.

#### Oorgangsbepalings met betrekking tot openbare skole op private eiendom

56. Indien 'n ooreenkoms beoog in artikel 14 nie met die inwerkingtreding van hierdie *Wet* met betrekking tot 'n *skool*, wat op private eiendom staan, en wat geag 'n *openbare skool* ingevolge artikel 52(1) te wees, bestaan nie, moet die *Lid van die* 30 *Uitvoerende Raad* redelike maatreëls tref om sodanige ooreenkoms binne ses maande na die inwerkingtreding van hierdie *Wet* aan te gaan.

#### Oorgangsbepalings met betrekking tot private eiendom besit deur godsdiensorganisasie

57. Indien die eienaar van die private eiendom na verwys in artikel 56 'n 35 godsdiensorganisasie is, kan sodanige eienaar verlang dat die ooreenkoms in artikel 14 beoog op 'n gepaste wyse in ooreenstemming met hierdie *Wet* die eiesoortige godsdiensstige karakter van die *skool* weerspieël.

### HOOFSTUK 7

#### ALGEMENE BEPALINGS

##### 40 Onteiening

58. (1) Die *Lid van die Uitvoerende Raad* kan, indien dit in die openbare belang is om dit te doen, grond en saaklike regte in of oor grond onteien vir enige doel wat verband hou met onderwys in skole in 'n provinsie.

45 (2) Die *Lid van die Uitvoerende Raad* moet in die Provinsiale Koerant kennis gee van sy of haar voorneme om ingevolge subartikel (1) onteiening te bewerkstellig.

(3) 'n Kennisgewing in subartikel (2) beoog, moet—

(a) die grond of enige saaklike regte in of oor die grond identifiseer;

(b) belanghebbende partye 'n geleentheid bied om skriftelike verdoë betreffende die onteiening binne 'n tydperk van minstens 30 dae te rig; en

50 (c) enige persoon wat op vergoeding aanspraak maak as gevolg van die onteiening, uitnoui om in onderhandeling daarvoor te tree met die *Lid van die Uitvoerende Raad*, en moet verwys na die bepalinge van subartikel (5).

(4) Die *Lid van die Uitvoerende Raad* kan, ná oorweging van alle sodanige skriftelike verdoë, die grond en enige saaklike regte in of oor die grond bedoel in 55 subartikel (3) onteien by kennisgewing in die Provinsiale Koerant.

(5) Any expropriation contemplated in subsection (4) takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

(6) If the *Member of the Executive Council* and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration. 5

(7) The arbitrator determines the time, venue and procedures which apply in the arbitration.

(8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding. 10

(9) The arbitrator may not make an award of costs.

(10) The arbitrator is paid, out of moneys appropriated for this purpose by the *provincial legislature*, such fees and allowances as the *Member of the Executive Council* may determine, with the concurrence of the Member of the Executive Council responsible for finance. 15

(11) Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right contemplated in subsection (1) may be paid in full or in part from funds appropriated by the *provincial legislature* for that purpose. 20

(12) Any claim to compensation arising from the expropriation contemplated in subsection (4) must be determined as contemplated in the *Constitution* and this section.

#### **Duty of schools to provide information**

59. (1) A *school* must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights. 25

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

#### **Liability of State**

60. (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. 30

(2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1). 35

#### **Regulations**

61. The *Minister* may make regulations on any matter which must or may be prescribed by regulation under *this Act* and any matter which may be necessary or expedient to prescribe in order to achieve the objects of *this Act*.

#### **Delegation of powers** 40

62. (1) The *Member of the Executive Council* 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 an 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 in terms of *this Act* or delegated to him or her in terms of subsection (1). 45

(3) A delegation under subsection (1) or (2) does not prevent the *Member of the Executive Council* or *Head of Department*, as the case may be, from exercising such power or performing such duty. 50



(5) Enige onteiening beoog in subartikel (4) is onmiddellik van krag, selfs al is die kompensasie betaalbaar ten opsigte van sodanige grond of saaklike regte in of oor die grond nog nie finaal vasgestel of betaal nie.

(6) Indien die *Lid van die Uitvoerende Raad* en die eienaar van die grond of saaklike regte in of oor die grond nie daarin slaag om 'n ooreenkoms te bereik in verband met die betaling van kompensasie nie, kan enigeen van die twee partye die aangeleentheid na 'n hof verwys vir beslegting, of hulle kan ooreenkom om die geskil na 'n arbiter te verwys vir arbitrasie.

(7) Die arbiter bepaal die tyd, plek en prosedures wat op die arbitrasie van toepassing sal wees.

(8) Die arbiter gee 'n beslissing oor die geskil en maak 'n skriftelike toekenning met opgawe van redes vir sodanige toekenning so gou as moontlik ná arbitrasie, en sy of haar beslissing is bindend.

(9) Die arbiter kan geen toekenning van koste maak nie.

(10) Die arbiter word, uit fondse wat vir dié doel deur die *provinsiale wetgewer* bewillig is, die gelde en toelaes betaal wat die *Lid van die Uitvoerende Raad* in oorleg met die *Lid van die Uitvoerende Raad* verantwoordelik vir finansies bepaal.

(11) Enige hereregte, seëlreg, ander fooie of koste betaalbaar as gevolg van die oordrag van grond of saaklike regte beoog in subartikel (1) kan ten volle of gedeeltelik betaal word uit fondse wat vir dié doel deur die *provinsiale wetgewer* bewillig is.

(12) Enige eis vir kompensasie wat uit die onteiening beoog in subartikel (4) voortspruit, moet besleg word soos beoog in die *Grondwet* en hierdie artikel.

#### Plig van skole om inligting te verstrek

59. (1) 'n *Skool* moet inligting beskikbaar stel vir inspeksie deur enige persoon, vir sover sodanige inligting vir die uitoefening en beskerming van sodanige persoon se regte vereis word.

(2) Elke *skool* moet die inligting oor die *skool* wat redelikerwys deur die *Departementshoof* vereis word, voorsien.

#### Aanspreeklikheid van Staat

60. (1) Die Staat is aanspreeklik vir enige skade of verlies wat veroorsaak word as gevolg van enige daad of versuim in verband met enige opvoedkundige aktiwiteit wat deur 'n *openbare skool* bedryf word en waarvoor sodanige *openbare skool* aanspreeklik sou gewees het by gebrek aan die bepalings van hierdie artikel.

(2) Die bepalings van die Wet op Staatsaanspreeklikheid, 1957 (Wet No. 20 van 1957), is op 'n eis kragtens subartikel (1) van toepassing.

#### Regulasies

61. Die *Minister* kan regulasies uitvaardig ten opsigte van enige aangeleentheid wat kragtens *hierdie Wet* deur regulasies voorgeskryf kan of moet word en enige aangeleentheid wat nodig of dienstig is om voor te skryf ten einde die oogmerke van *hierdie Wet* te bereik.

#### Delegasie van bevoegdhede

62. (1) Die *Lid van die Uitvoerende Raad* kan, behoudens die voorwaardes wat hy of sy bepaal, enige bevoegdheid wat by of kragtens *hierdie Wet* aan hom of haar opgedra is, met uitsondering van die bevoegdheid om 'n kennisgewing te publiseer en die bevoegdheid om te beslis oor enige appèl wat ingevolge *hierdie Wet* by hom of haar aangeteken word, aan die *Departementshoof* of 'n *beampte* delegeer.

(2) Die *Departementshoof* kan, behoudens die voorwaardes wat hy of sy bepaal, enige van sy of haar bevoegdhede by of ingevolge *hierdie Wet* of gedeleger kragtens subartikel (1) aan 'n *beampte* delegeer.

(3) Delegasie ingevolge subartikel (1) of (2) belet nie die *Lid van die Uitvoerende Raad* of die *Departementshoof*, na gelang van die geval, om sodanige bevoegdheid self uit te oefen of sodanige plig self uit te voer nie.

**Repeal and amendment of laws**

**63.** (1) The laws listed in the first column of Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule.

(2) The Educators' Employment Act, 1994 (Proclamation No. 138 of 1994), is hereby amended to the extent set out in Schedule 2. 5

**Short title and commencement**

**64.** *This Act* is the South African Schools Act, 1996, and comes into operation on a date fixed by the President by proclamation in the Government Gazette.

**Herroeping en wysiging van wette**

**63.** (1) Die wette in kolom een van Bylae 1 vermeld, word hiermee herroep in die mate uiteengesit in kolom drie van daardie Bylae.

(2) Die Wet op die Indiensneming van Opvoeders, 1994 (Proklamasie No. 138 van 5 1994), word hiermee gewysig in die mate uiteengesit in Bylae 2.

**Kort titel en inwerkingtreding**

**64.** *Hierdie Wet* is die Suid-Afrikaanse Skolewet, 1996, en tree in werking op 'n datum wat die President by proklamasie in die Staatskoerant bepaal.

**SCHEDULE 1**

<b>No. and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 47 of 1963	Coloured Persons Education Act, 1963	Sections 1A, 8 to 20, 26 and 28 to 31
Act No. 61 of 1965	Indians Education Act, 1965	Sections 1B, 8 to 20, 26, 28, 29, 31 and 33(1)(g)
Act No. 90 of 1979	Education and Training Act, 1979	Sections 1A, 3, 4, 11 to 29, 31, 32, 43 and 44(1)(h)
Act No. 104 of 1986	Private Schools Act (House of Assembly), 1986	Section 1A
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	Sections 3 and 65 and Chapter 7

**BYLAE 1**

<b>No. en jaar van Wet</b>	<b>Kort titel</b>	<b>In hoeverre herroep</b>
Wet No. 47 van 1963	Wet op Onderwys vir Gekleurde Persone, 1963	Artikels 1A, 8 tot 20, 26 en 28 tot 31
Wet No. 61 van 1965	Wet op Indiëronderwys, 1965	Artikels 1B, 8 tot 20, 26, 28, 29, 31 en 33(1)(g)
Wet No. 90 van 1979	Wet op Onderwys en Opleiding, 1979	Artikels 1A, 3, 4, 11 tot 29, 31, 32, 43 en 44(1)(h)
Wet No. 104 van 1986	Wet op Private Skole (Volksraad), 1986	Artikel 1A
Wet No. 70 van 1988	Wet op Onderwysaangeleenthede (Volksraad), 1988	Artikels 3 en 65 en Hoofstuk 7

## SCHEDULE 2

## (Amendment of Educators' Employment Act, 1994, by section 63)

## 1. Amendment of section 1 by—

## (a) the insertion of the following definitions:

“ ‘Department’ means a department contemplated in section 7(2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), responsible for education in the national government;

‘educational institution’ means a public school, college of education, technical college, other college or an office controlling such a school or college or rendering a support service to such a school or college where educators are employed, in regard to which the terms and conditions of employment of such educators are determined by this Act but excludes a university, technikon, independent school or independent college;

‘Labour Relations Act’ means the Labour Relations Act, 1995 (Act No. 66 of 1995);

‘public educational institution’ means an educational institution which is not a state-aided college;

‘public school’ means a public school as defined in section 1 of the South African Schools Act, 1996;

‘state-aided college’ means a college of education, technical college or other college which is wholly or partly funded by the State in respect of the remuneration and conditions of service of educators in posts on the establishment created in terms of section 3(1) and in regard to which the college is the employer of such educators;

‘unsubsidised post’ means a post at a state-aided college in respect of which no subsidy in terms of a law is paid by the State;”;

## (b) substitution for the definitions of “educator”, “employee member” and “employer” of the following definitions, respectively—

“ ‘educator’ means any person who teaches, educates or trains other persons or provides professional [therapy] educational services including professional therapy at any [school, technical college or college of education] educational institution [or assists in rendering professional services or performs educational management services or educational auxiliary services provided by or in a department of education] and whose [employment] appointment and terms and conditions of employment [is] are regulated by this Act;

‘employee member’ means an employee organisation that is a member of the Education Labour Relations Council established in terms of section [6 of the Education Labour Relations Act] 37(3)(b) read with item 20 of Schedule 7 to the Labour Relations Act;

‘employer’ means—

(a) in the case of a [departmental] public educational institution [or office], the head of a department; [and]

(b) in the case of a state-aided [educational institution] college, the body which employs an educator;

(c) for the purposes of section 5(1)(a) and (b) the Minister in respect of educators appointed to posts created in terms of sections 3(1) and (3); and

(d) in the case of an unsubsidised post at a public school referred to in section 3A, the body which employs the educator.”; and

## (c) the deletion of the following definitions, namely—

“departmental educational institution”

“subsidised post”

“state-aided educational institution”

“Executive Council”

“Education Labour Relations Act”



## BYLAE 2

## (Wysigings van die Wet op die Indiensneming van Opvoeders, 1994, deur artikel 63)

## 1. Wysiging van artikel 1 deur—

## (a) die volgende woordomskrywings in te voeg:

“ ‘Departement’ ’n departement beoog in artikel 7(2) van die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), verantwoordelik vir onderwys in die nasionale regering;

‘onderwysinstelling’ ’n openbare skool, onderwyskollege, tegniese kollege, ander kollege of ’n kantoor wat so ’n skool of kollege beheer of ’n hulpdiens aan sodanige skool of kollege lewer, waar opvoeders in diens is, ten opsigte waarvan die diensvoorwaardes en bedinge van sodanige opvoeders deur hierdie Wet bepaal word, maar sluit nie ’n universiteit, teknikon, onafhanklike skool of onafhanklike kollege in nie;

‘ongesubsidieerde pos’ ’n pos by ’n staatsondersteunde kollege waarvoor geen subsidie ingevolge enige wet deur die Staat betaal word nie; ‘openbare onderwysinstelling’ ’n onderwysinstelling wat nie ’n staatsondersteunde kollege is nie;

‘openbare skool’ ’n openbare skool soos omskryf in artikel 1 van die Suid-Afrikaanse Skolewet, 1996;

‘staatsondersteunde kollege’ ’n onderwyskollege, tegniese kollege of ander kollege wat in geheel of gedeeltelik deur die Staat gefinansier word ten aansien van die vergoeding en diensvoorwaardes van opvoeders wat poste op die diensstaat, ingestel ingevolge artikel 3(1) en ten opsigte waarvan die kollege die werkgewer van sodanige opvoeders is, bekleë;

‘Wet op Arbeidsverhoudinge’ die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995)’;

## (b) die omskrywing van “opvoeder”, “werkgewer” en “werknemerslid” deur onderskeidelik die volgende omskrywings te vervang:

“ ‘opvoeder’ ’n persoon wat ander persone leer, opvoed of oplei of professionele [terapie] opvoedkundige dienste met inbegrip van professionele terapie verskaf by enige [skool, tegniese kollege of onderwyskollege] onderwysinstelling [of help om professionele dienste te lewer of onderwysbestuursdienste of onderwys hulpdienste te lewer wat deur of in ’n onderwysdepartement verskaf word] en wie se [diens] aanstelling en diensvoorwaardes deur hierdie Wet gereël word; ‘werkgewer’—

(a) in die geval van ’n [departementele] openbare onderwysinstelling [of kantoor], die hoof van ’n departement; [en]

(b) in die geval van ’n staatsondersteunde [onderwysinstelling] kollege, die liggaam wat ’n opvoeder in diens neem;

(c) vir die doeleindes van artikel 5(1)(a) en (b), die Minister met betrekking tot opvoeders wat in poste aangestel is wat geskep is ingevolge artikel 3(1) en (3); en

(d) in die geval van ’n ongesubsidieerde pos by ’n openbare skool bedoel in artikel 3A, die liggaam wat ’n opvoeder in diens neem; en

‘werknemerslid’ beteken ’n werknemersorganisasie wat ’n lid is van die Raad vir Arbeidsverhoudinge in die Onderwys ingestel by artikel [6 van die Wet op Arbeidsverhoudinge in die Onderwys] 37(3)(b) saamgelees met item 20 van Bylae 7 van die Wet op Arbeidsverhoudinge.’; en

## (c) die volgende woordomskrywings te skrap:

“departementele onderwysinstelling”

“gesubsidieerde pos”

“staatsondersteunde onderwysinstelling”

“Uitvoerende Raad”

“Wet op Arbeidsverhoudinge in die Onderwys”

2. The substitution for section 3 of the following section:

**“Educator Establishment of educational institutions and Department**

3. (1) Notwithstanding anything to the contrary contained in any other law, but subject to this Act and the National Policy [for General Education Affairs] on the Salaries and Conditions of Employment of Educators Act, 1984 (Act No. 76 of 1984), the educator establishment at an [a state] educational institution in a province shall consist of the posts which the Member of the Executive Council creates and the educator establishment of the Department of Education shall consist of the posts which the Minister creates.

(2) [The employer] A state-aided college may create unsubsidised posts additional to the educator establishment referred to in subsection (1).

(3) Educators may be appointed [on a temporary basis] additional to the establishment referred to in subsection (1) with the approval of the Member of the Executive Council or the Minister, as the case may be.

(4) A post referred to in subsection (1) may be regraded, redesignated, converted or abolished by the Member of the Executive Council or the Minister, as the case may be.”.

3. By the insertion after section 3 of the following section:

**“Transitional arrangement**

3A. (1) The authority to create unsubsidised posts, to employ educators in such posts and all other matters incidental thereto which, in terms of section 3(2), vested in a state-aided school prior to the commencement of this Act, shall remain intact for such school until 31 December 1997, and thereafter such authority shall cease.

(2) Contracts of employment of educators appointed to posts referred to in subsection (1) entered into after the commencement of this Act, shall not be valid after 31 December 1997.”.

4. The substitution for section 4 of the following section:

**“Appointment and promotion of educators**

4. (1) The qualifications for appointment and promotion as an educator shall be [prescribed] determined by the Minister.

(2) Subject to the provisions of the Constitution, the Labour Relations Act, 1995 (Act No. 66 of 1995), and agreements reached in terms thereof [Posts] posts shall be filled by appointment, transfer or promotion and the power to fill a post created under section 3 shall, subject to the provisions of this Act, vest in the employer, who shall exercise such power with regard to posts referred to in section 3(1) and (3) subject to the prior approval of the Member of the Executive Council or the Minister, as the case may be.

(3) The authority to fill a post referred to in section 3(1) and (3) at a public school in terms of subsection (2) is exercised on the recommendation of a public school, as represented by its governing body, and the employer may only deviate from such recommendation if:

- (a) the candidate does not have the required qualifications;
- (b) the candidate has been found guilty of misconduct; or
- (c) sufficient proof exists that the recommendation made by the school was based on improper influence.

[(3)](4) An educator may be appointed under [subsection (2)] this section—

- (a) in a permanent capacity, which shall include an appointment to the permanent relief staff, whether on probation or not; or
- (b) temporarily or on special contract, whether in a full-time or part-time capacity.

## 2. Vervanging van artikel 3 deur die volgende artikel:

**“Opvoederdiensstaat van onderwysinstellings en Departement**

3. (1) Ondanks andersluidende bepalings in enige ander wet, maar behoudens hierdie Wet en die Wet op die Nasionale Beleid vir [Algemene Onderwysake,] die Salarisse en Diensvoorwaardes van Opvoeders, 1984 (Wet No. 76 van 1984), bestaan die diensstaat van opvoeders by 'n [staats] onderwysinstelling in 'n provinsie uit die poste wat die Lid van die Uitvoerende Raad skep en die diensstaat van opvoeders van die Departement van Onderwys uit die poste wat die Minister skep.

(2) [Die werkgewer] 'n Staatsondersteunde kollege kan ongesubsidieerde poste skep bykomend by die [diensstaat] opvoederdiensstaat in subartikel (1) bedoel.

(3) Opvoeders kan bykomend by die diensstaat bedoel in subartikel (1) [op 'n tydelike basis] aangestel word met die goedkeuring van die Lid van die Uitvoerende Raad of die Minister, na gelang van die geval.

(4) 'n Pos bedoel in subartikel (1), kan hergradeer, herbenaam, omskep of afgeskaf word, deur die Lid van die Uitvoerende Raad of die Minister, na gelang van die geval.”

## 3. Deur na artikel 3 die volgende artikel in te voeg:

**“Oorgangsbepaling**

3A. (1) Die bevoegdheid om ongesubsidieerde poste te skep, om opvoeders in sodanige poste aan te stel en alle ander aangeleenthede wat daarmee in verband staan wat ingevolge artikel 3(2) by 'n staatsondersteunde skool voor die inwerkingtreding van hierdie Wet berus het, bly by sodanige skool tot 31 Desember 1997, en daarna verval daardie bevoegdheid.

(2) Dienskontrakte van opvoeders wat in poste bedoel in subartikel (1) aangestel is, wat aangegaan is na die inwerkingtreding van hierdie Wet is na 31 Desember 1997 ongeldig.”

## 4. Die vervanging van artikel 4 deur die volgende artikel:

**“Aanstelling en bevordering van opvoeders”**

4. (1) Die kwalifikasies vir aanstelling en bevordering as opvoeders [is soos voorgeskryf] moet deur die Minister bepaal word.

(2) [Poste word gevul] Behoudens die Grondwet, die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en ooreenkomste wat ingevolge daarvan aangegaan is, word poste gevul deur aanstelling, oorplasing of bevordering, en die bevoegdheid om 'n pos te vul wat kragtens artikel 3 geskep is, berus, behoudens die bepalings van hierdie Wet, by die werkgewer, wat sodanige bevoegdheid uitoefen met betrekking tot poste bedoel in artikel 3(1) en (3), onderworpe aan die vooraf verkreeë goedkeuring van die Lid van die Uitvoerende Raad of die Minister, na gelang van die geval.

(3) Die bevoegdheid om 'n pos bedoel in artikel 3(1) en (3) by 'n openbare skool kragtens subartikel (2) te vul, word uitgeoefen op die aanbeveling van 'n openbare skool, soos verteenwoordig deur sy beheerliggaam, en die werkgewer wyk van sodanige aanbeveling af slegs indien—

- (a) die kandidaat nie oor die vereiste kwalifikasies beskik nie;
- (b) die kandidaat aan wangedrag skuldig bevind is; of
- (c) voldoende bewys bestaan dat die aanbeveling deur die beheerliggaam gemaak, op onbehoorlike beïnvloeding berus.

[(3)](4) 'n Opvoeder kan kragtens [subartikel (2)] hierdie artikel aangestel word—

- (a) in 'n permanente hoedanigheid, met inbegrip van 'n aanstelling op die permanente aflospersoneel, hetsy op proef al dan nie; of

[(4)](5) An appointment, transfer or promotion referred to in subsection (2) shall be effected in such manner and subject to such conditions as may be determined by the Minister.

[(5)](6) An educator appointed in terms of any law repealed by this Act shall be deemed to have been appointed in terms of this Act to the appropriate post on the establishment of the **[state]** educational institution in question.

(7) An educator appointed in terms of the Public Service Act, 1994, shall be deemed to have been appointed in terms of this Act.

(8) An educator appointed at a public school shall not, by virtue of an amendment of this Act by the South African Schools Act, 1996, be regarded as having changed employers.”.

5. The amendment of section 5—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary contained in any other law, but subject to the provisions of the National Policy on the Salaries and Conditions of Employment of Educators Act **[for General Education Affairs]**, 1984 (Act No. 76 of 1984), and the **[Education]** Labour Relations Act **[and subsection (2)]**—

(a) the salaries, salary scales, **[and]** allowances and other terms and conditions of employment of educators appointed, transferred or promoted to posts referred to in section 3(1) and (3) shall be determined by the Minister;

**[(b) the other terms and conditions of employment and service benefits of educators referred to in paragraph (a) shall be prescribed by the Minister; and]**

(b)[c] the salaries, salary scales, allowances and other terms and conditions of employment referred to in **[paragraphs]** paragraph (a) **[and (b)]** with a financial implication shall be determined by the Minister with the concurrence of the Minister responsible for finance at national level; and

(c)[d] the salaries, salary scales, allowances and other terms and conditions of employment of educators at a state-aided college appointed, transferred or promoted to posts referred to in section 3(2)(3) shall be determined by the employer.”; and

(b) by the deletion of subsection (2).

6. The substitution for section 6 of the following section:

**“Transfer [and secondment] of educators**

6. (1) Subject to the provisions of this section, section 4(3) and applicable terms and conditions of employment, an educator employed in **[an office or departmental]** a public educational institution may be transferred from the post in which he or she serves to any other post—

(a) at **[the same departmental educational institution or office or at another departmental educational institution or office]** a public educational institution under the control of the same provincial education department by the Member of the Executive Council; or

(b) at a **[departmental]** public educational institution **[or office]** in a different province or the Department at national level by the Member of the Executive Council, or the Minister, as the case may be, with the concurrence of the Member of the Executive Council of such other province or the Minister, as the case may be.

(2) Subject to the provisions of this section, an educator employed at a state-aided **[educational institution]** college may **[with his or her consent]**, be transferred from the post in which he or she serves to any other post at the same or to any other state-aided **[educational institution]** college or public **[departmental]** educational institution—

(b) tydelik of op spesiale kontrak, hetsy in 'n voltydse of deeltydse hoedanigheid.

[(4)](5) 'n Aanstelling, oorplasing of bevordering bedoel in subartikel (2) geskied op die wyse en onderworpe aan die voorwaardes wat die Minister bepaal.

[(5)](6) 'n Opvoeder aangestel kragtens 'n wet wat by hierdie Wet herroep word, word geag ingevolge hierdie Wet aangestel te wees in die toepaslike pos op die diensstaat van die betrokke [staats]onderwysinstelling.

(7) 'n Opvoeder aangestel kragtens die Staatsdienswet, 1994, word geag ingevolge hierdie Wet aangestel te wees.

(8) 'n Opvoeder wat by 'n openbare skool aangestel is, word nie as gevolg van 'n wysiging van hierdie Wet by die Suid-Afrikaanse Skolewet, 1996, geag om van werkgewers te verander het nie."

##### 5. Wysiging van artikel 5—

(a) deur subartikel (1) met die volgende subartikel te vervang:

“(1) Ondanks andersluidende bepalings in 'n ander wet, maar behoudens die bepalings van die Wet op die Nasionale Beleid vir **[Algemene Onderwys]** Salarisse en Diensvoorwaardes van Opvoeders, 1984, (Wet No. 76 van 1984), en die Wet op Arbeidsverhoudinge **[in die Onderwys en subartikel (2)]**—

(a) word die salarisse, salarisskale **[en]** toelaes en ander bedinge en voorwaardes van diens van opvoeders aangestel in, oorgeplaas na of bevorder tot poste bedoel in artikel 3(1) en (3), deur die Minister bepaal;

**[(b) word die ander bedinge en voorwaardes van diens en diensvoordele van die in paragraaf (a) bedoelde opvoeders deur die Minister voorgeskryf;]**

**[(b)](c)** word die salarisse, salarisskale, toelaes en ander voorwaardes van diens bedoel in **[paragrafe]** paragraaf (a) **[en (b)]** wat 'n finansiële implikasie het, bepaal deur die Minister in samewerking met die Minister verantwoordelik vir finansies op nasionale vlak; en

**[(c)](d)** word die salarisse, salarisskale, toelaes en ander bedinge en voorwaardes van diens en diensvoordele van opvoeders by 'n staatsondersteunde kollege aangestel in, oorgeplaas na of bevorder tot poste bedoel in artikel 3(2), deur die werkgewer bepaal.”; en

(b) deur subartikel (2) te skrap.

##### 6. Die vervanging van artikel 6 deur die volgende artikel:

###### “Oorplasing **[en sekondering]** van opvoeders”

6. (1) Behoudens die bepalings van hierdie artikel, artikel 4(3) en toepaslike bedinge en voorwaardes van diens kan 'n opvoeder in diens by 'n **[kantoor of 'n ander departemente]** openbare onderwysinstelling oorgeplaas word van die pos waarin hy of sy dien, na enige ander pos—

(a) by **[dieselfde departemente onderwysinstelling of kantoor of 'n ander onderwysinstelling of kantoor]** 'n openbare onderwysinstelling onder die beheer van dieselfde provinsiale onderwysdepartement deur die Lid van die Uitvoerende Raad; of

(b) by 'n **[departemente]** openbare onderwysinstelling **[of kantoor]** in 'n ander provinsie of die Departement op nasionale vlak deur die Lid van die Uitvoerende Raad of die Minister, na gelang van die geval, met die instemming van die Lid van die Uitvoerende Raad van sodanige ander provinsie, of die Minister, na gelang van die geval.

(2) Behoudens die bepalings van hierdie artikel kan 'n opvoeder in diens by 'n staatsondersteunde **[onderwysinstelling]** kollege **[met sy of haar toestemming]** oorgeplaas word uit die pos waarin hy of sy dien, na 'n ander pos by dieselfde of 'n ander staatsondersteunde **[onderwysinstelling]** kollege of openbare **[departemente]** onderwysinstelling—

- (a) in the same province by the Member of the Executive Council, with the concurrence of the employer or employers concerned; or
- (b) in a different province by the Member of the Executive Council, with the concurrence of the Member of the Executive Council of such other province and the employers concerned; or
- (c) at the Department at national level with the concurrence of the Minister.

(3) Subject to the provisions of this section, an educator at a **[departmental]** public educational institution **[or office]** may, **[with his or her consent,]** be transferred from the post in which he or she serves to any other post at a state-aided **[educational institution]** college, and in such a case the provisions of subsection (2) must apply *mutatis mutandis*.

(4) A transfer provided for in subsections (1), (2) and (3) may be effected irrespective of whether the post to which an educator is transferred is of the same, a lower or higher grade: Provided that—

- (a) the salary and salary scale of an educator shall not be lowered without his or her consent; and
- (b) paragraph (a) shall not apply in respect of an educator transferred in terms of section 19(1).

(5) An educator who is employed in a permanent capacity at **[a state]** public educational institution in a post of a lower or higher grading than that appropriate to his or her rank shall, subject to section 4**[(4)] (5) and (6)** be transferred to a post with a grading appropriate to his or her rank as soon as a suitable vacancy arises.”.

7. The amendment of section 7 by the substitution for the expression “state educational institution”, wherever it occurs, of the expression “public educational institution”.

8. The amendment of section 8 by the substitution for the expression “state educational institution”, wherever it occurs, of the expression “public educational institution”.

9. The amendment of section 10 by the substitution for the expression “state educational institution”, wherever it occurs, of the expression “public educational institution”.

10. The amendment of section 11 by the substitution for subsection (3) of the following subsection:

“(3) If the name of an educator is struck off a register of educators kept by **[a body recognised by the Minister in terms of the National Policy for General Education Affairs Act, 1984 (Act No. 76 of 1984),]** the South African Council for Educators he or she shall notwithstanding anything to the contrary contained in this Act, be deemed to have resigned with effect from the date following immediately upon the day on which his or her name was so struck off.”

11. The substitution for section 22 of the following section:

**“Transfer of educators on declaration of public educational institution to be state-aided college**

22. (1) An educator who was employed at a **[departmental]** public educational institution immediately prior to the date of declaration of such institution to be a state-aided **[educational institution]** college shall with effect from that date with his or her consent be transferred to and appointed in the service of the state-aided **[educational institution]** college in question.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to persons in the service of a state-aided college **[educational institutions]**: Provided that—



- (a) in dieselfde provinsie deur die Lid van die Uitvoerende Raad, met die instemming van die betrokke werkgewer of werkgewers; of
- (b) in 'n ander provinsie deur die Lid van die Uitvoerende Raad, met die instemming van die Lid van die Uitvoerende Raad van sodanige ander provinsie en die betrokke werkgewers; of
- (c) by die Departement op nasionale vlak met die instemming van die Minister.

(3) Behoudens die bepalings van hierdie artikel kan 'n opvoeder by 'n openbare [departementele instelling] onderwysinstelling [of kantoor, met sy of haar instemming] oorgeplaas word van die pos waarin hy of sy dien, na 'n ander pos by 'n staatsondersteunde [onderwysinstelling] kollege, en in so 'n geval is die bepalings van subartikel (2) *mutatis mutandis* van toepassing.

(4) 'n Oorplasing waarvoor daar in subartikels (1), (2) en (3) voorsiening gemaak word, kan geskied ongeag of die pos waarheen die opvoeder oorgeplaas word, van dieselfde, 'n laer of hoër graad is: Met dien verstande dat—

- (a) die salaris en salarisskaal van 'n opvoeder nie sonder sy of haar toestemming verlaag mag word nie; en
- (b) paragraaf (a) nie van toepassing is nie ten opsigte van 'n opvoeder wat ingevolge artikel 19(1) oorgeplaas is.

(5) 'n Opvoeder in diens in 'n permanente hoedanigheid by [**n staats**]onderwysinstelling in 'n pos van 'n laer of hoër gradering as dié wat by sy of haar rang pas, word behoudens artikel 4[(4)] (5) en (6) oorgeplaas na 'n pos met 'n gradering wat by sy of haar rang pas, sodra 'n geskikte vakature ontstaan.”.

7. Die wysiging van Artikel 7 deur die vervanging van die uitdrukking “staatsonderwysinstelling” deur die uitdrukking “openbare onderwysinstelling”, waar dit ook al voorkom.

8. Die wysiging van Artikel 8 deur die vervanging van die uitdrukking “staatsonderwysinstelling” deur die uitdrukking “openbare onderwysinstelling”, waar dit ook al voorkom.

9. Die wysiging van Artikel 10 deur die vervanging van die uitdrukking “staatsonderwysinstelling” deur die uitdrukking “openbare onderwysinstelling”, waar dit ook al voorkom.

10. Die wysiging van artikel 11 deur die vervanging van subartikel (3) deur die volgende subartikel:

“(3) Indien die naam van 'n opvoeder geskrap word uit 'n register van opvoeders wat gehou word deur [**n liggaam deur die Minister erken ingevolge die Wet op die Nasionale Beleid vir Algemene Onderwys sake, 1984 (Wet No. 76 van 1984)**], die Suid-Afrikaanse Raad vir Opvoeders, word hy of sy, ondanks andersluidende bepalings in hierdie Wet, geag te bedank het met ingang van die datum wat volg onmiddellik op die dag waarop sy of haar naam aldus geskrap is.”

11. Die vervanging van artikel 22 deur die volgende artikel:

**“Oorplasing van opvoeders by verklaring van openbare onderwysinstelling tot staatsondersteunde kollege**

22. (1) 'n Opvoeder wat by 'n [departementele] openbare onderwysinstelling in diens was onmiddellik voor die datum van die verklaring van sodanige instelling tot 'n staatsondersteunde [onderwysinstelling] kollege word, met ingang van daardie datum, met sy of haar instemming oorgeplaas na en aangestel in die diens van die betrokke staatsondersteunde [onderwysinstellings] kollege.

(2) 'n Opvoeder wat ingevolge subartikel (1) oorgeplaas en aangestel is, word aangestel op die bedinge en voorwaardes van diens wat van toepassing is op persone in die diens van 'n staatsondersteunde kollege [onderwysinstellings]: Met dien verstande dat—

- (a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;
- (b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the **[state-aided] public** educational institution shall be deemed to be a period in the service **[of the provincial government]** at the state-aided college concerned;
- (c) sick leave or vacation leave credit obtained by him or her as a result of his or her continuous service in a **[departmental] public** educational institution shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her service at the state-aided **[educational institution] college** in question; and
- (d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct which he or she allegedly committed prior to the date contemplated in subsection (1) shall be disposed of or instituted, as the case may be, in terms of this Act.”.

12. The substitution for section 23 of the following section:

**“Transfer of educators on declaration of state-aided college to be public educational institution**

23. (1) An educator who was employed in a subsidised post at a state-aided **[educational institution] college** immediately prior to the date of declaration of such institution to be **[departmental] a public** educational institution shall with effect from that date with his or her consent be transferred to and appointed in the service of the provincial government concerned.

(2) An educator transferred and appointed under subsection (1) shall be appointed on the terms and conditions of employment applicable to educators in the service of the provincial government concerned: Provided that—

- (a) his or her salary shall not be reduced without his or her consent as a result of such transfer and appointment;
- (b) for the purposes of the said terms and conditions of employment, including pension benefits, his or her period in the service of the state-aided **[educational institution] college** shall be deemed to be a period in the service of the provincial government concerned;
- (c) sick or vacation leave credit obtained by him or her as a result of his or her continuous service at the state-aided **[educational institution] college** shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him or her as a result of his or her period in the service of the provincial government concerned; and
- (d) any disciplinary proceedings instituted or to be instituted against him or her in respect of misconduct allegedly committed prior to the said date shall be disposed of or instituted, as the case may be, in terms of this Act.”.

- (a) sy of haar salaris nie sonder sy of haar instemming as gevolg van sodanige oorpasing en aanstelling verlaag word nie;
- (b) vir die doeleindes van die bedoelde bedinge en voorwaardes van diens, met inbegrip van pensioenvoordele, sy of haar diens by 'n **[staatsondersteunde]** openbare onderwysinstelling geag word diens by die betrokke staatsondersteunde **[onderwysinstelling]** kollege te wees;
- (c) siekte- of vakansieverlofkrediet wat deur hom of haar verwerf is as gevolg van sy of haar ononderbroke diens by 'n **[departementele]** openbare onderwysinstelling, behoudens die voorwaardes deur die Minister bepaal, geag word deur hom of haar verwerf te wees as gevolg van sy of haar diens by die betrokke staatsondersteunde **[onderwysinstelling]** kollege; en
- (d) enige dissiplinêre verrigtinge wat teen hom of haar ingestel is of ingestel staan te word of ten opsigte van wangedrag wat hy of sy na bewering voor die datum beoog in subartikel (1) gepleeg het, afgehandel of ingestel word, na gelang van die geval, ingevolge hierdie Wet.”.

12. Die vervanging van artikel 23 deur die volgende artikel:

**“Oorpasing van opvoeders by verklaring van staatsondersteunde kollege tot openbare onderwysinstelling**

23. (1) 'n Opvoeder wat in 'n gesubsidieerde pos by 'n staatsondersteunde **[onderwysinstelling]** kollege in diens was onmiddellik voor die datum van verklaring van sodanige instelling tot **[departementele]** 'n openbare onderwysinstelling word, met ingang van daardie datum, met sy of haar instemming oorgeplaas na en aangestel in die diens van die betrokke provinsiale regering.

(2) 'n Opvoeder wat ingevolge subartikel (1) oorgeplaas en aangestel word, word aangestel op die bedinge en voorwaardes van diens van toepassing op opvoeders in die diens van die betrokke provinsiale regering: Met dien verstande dat—

- (a) sy of haar salaris nie sonder sy of haar instemming as gevolg van sodanige oorpasing en aanstelling verlaag word nie;
- (b) vir doeleindes van bedoelde bedinge en voorwaardes van diens, met inbegrip van pensioenvoordele, sy of haar diens by die staatsondersteunde **[onderwysinstelling]** kollege geag word diens by die betrokke provinsiale regering te wees;
- (c) siekte- of vakansieverlofkrediet wat deur hom of haar verwerf is as gevolg van sy of haar ononderbroke diens by die staatsondersteunde **[onderwysinstelling]** kollege, behoudens die voorwaardes deur die Minister bepaal, geag word deur hom of haar verwerf te wees as gevolg van sy of haar diens by die betrokke provinsiale regering; en
- (d) enige dissiplinêre verrigtinge wat teen hom of haar ingestel is of ingestel staan te word ten opsigte van wangedrag wat hy of sy na bewering voor gemelde datum gepleeg het, afgehandel of ingestel word, na gelang van die geval, ingevolge hierdie Wet.”.

