

SECTION 2: SOUTH AFRICAN SCHOOLS ACT 84 OF 1996

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SOUTH AFRICAN SCHOOLS ACT

84 of 1996

[ASSENTED TO 6 NOVEMBER, 1996]

[ENGLISH TEXT SIGNED BY THE PRESIDENT]

[DATE OF COMMENCEMENT: 1 JANUARY, 1997]

as amended by

Education Laws Amendment Act, No. 100 of 1997

Education Laws Amendment Act, No. 48 of 1999

Education Laws Amendment Act, No. 53 of 2000

Education Laws Amendment Act, No. 57 of 2001

Education Laws Amendment Act, No. 50 of 2002

ACT

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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;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

Chapter 1 DEFINITIONS AND APPLICATION OF ACT

Definitions

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

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

[Definition of “Constitution” substituted by s. 1(b) of Act No. 100 of 1997.]

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

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

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

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

“governing body” means a governing body contemplated in section 16(1);

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

“Head of Department” means the head of an education department;

“independent school” means a school registered or deemed to be registered in terms of section 46;

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

“member of staff” means a person employed at a school;

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

“Minister” means the Minister of Education;

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

“parent” means –

(a) the parent or guardian of a learner;

(b) the person legally entitled to custody of a learner; or

(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school;

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

“province” means a province established by section 124 of the Constitution;

“provincial legislature” means a provincial legislature contemplated in section 125 of the Constitution;

“public school” means a school contemplated in Chapter 3;

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

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

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

[Definition of “school” substituted by s. 1(c) of Act No. 100 of 1997 and by s. 6(b) of Act No. 48 of 1999.]

“this Act” means this Act and all regulations promulgated under this Act.

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

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

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

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

[Sub-s. (3) amended by s. 2 of Act No. 100 of 1997.]

Chapter 2 LEARNERS

Compulsory attendance

3. (1) Subject to this Act and any applicable provincial law, every parent must cause 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 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 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 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 –
- (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 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 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 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 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 claim for damages arising out of the education of the learner.
 - (4) (a) The admission age of a learner to a public school to –
 - (i) grade R is age four turning five by 30 June in the year of admission;
 - (ii) grade 1 is age five turning six by 30 June in the year of admission.
 - (b) Subject to the availability of suitable school places and other educational resources, the Head of Department may admit a learner who –
 - (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c).
 - (c) The Minister may, by regulation, prescribe –
 - (i) criteria for the admission to a public school, at an age lower than the admission age, of an underage learner who complies with the criteria;¹
 - (ii) age requirements for different grades at a public school.
 - (d) For the purpose of paragraph (b)(i), good cause shown means that –
 - (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in his or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.
- [Sub-s. (4) amended by s. 5 of Act 50 of 2002. Sub-s. (4) will come into operation on 1 January 2004.]
- (5) Subject to this Act and any applicable provincial law, the admission policy of a 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.
 - (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.

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.
- (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.

Curriculum and assessment

- 6A (1) The Minister must, by notice in the *Government Gazette*, determine –
 - (a) a national curriculum statement indicating the minimum outcomes or standards; and
 - (b) a national process and procedures for the assessment of learner achievement.
- (2) The curriculum and the process for the assessment of learner achievement contemplated in subsection (1) must be applicable to public and independent schools.

[S. 6A inserted by s. 3 of Act No.50 of 2002.]

¹ It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that –

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

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.

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.
- (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.
- (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 safe-guarding the interests of the learner and any other party involved in disciplinary proceedings.
- (6) A learner must be accompanied by his or her parent or a person designated by the parent at disciplinary proceedings, unless good cause is shown by the governing body for the continuation of the proceedings in the absence of the parent or the person designated by the parent.

[Sub-s. (6) added by s. 4 of Act No. 50 of 2002.]

- (7) Whenever disciplinary proceedings are pending before any governing body, and it appears to such governing body that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the governing body may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

[Sub-s. (7) added by s. 4 of Act No. 50 of 2002.]

- (8) (a) An examination, cross-examination or re-examination of a witness in respect of whom a governing body has appointed an intermediary under subsection (7), except examination by the governing body, must not take place in any manner other than through that intermediary.
- (b) Such intermediary may, unless the governing body directs otherwise, convey the general purport of any question to the relevant witness.

[Sub-s. (8) added by s. 4 of Act No. 50 of 2002.]

- (9) If a governing body appoints an intermediary under subsection (7), the governing body may direct that the relevant witness must give his or her evidence at any place which –
- (a) is informally arranged to put that witness at ease;
- (b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) enables the governing body and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-s. (9) added by s. 4 of Act No. 50 of 2002.]

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) in consultation with the Head of Department, pending a decision as to whether the learner is to be expelled from the school by the Head of Department.

[Para. (b) substituted by s. 7 of Act No. 48 of 1999.]

- (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.
- (3) The Member of the Executive Council must determine by notice in the *Provincial Gazette* –
- (a) the behaviour by a learner at a public school which may constitute serious misconduct;
- (b) disciplinary proceedings to be followed in such cases;
- (c) provisions of due process safe-guarding the interests of the learner and any other party involved in disciplinary proceedings.

- (4) A learner or the parent of a learner who has been expelled from a public school may appeal against the decision of the Head of Department to the Member of the Executive Council.
- (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.
- (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.

Prohibition of initiation practices

- 10A** (1) A person may not conduct or participate in any initiation practices against a learner at a school or in a hostel accommodating learners of a school.
- (2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action must be instituted against such a person in accordance with the applicable code of conduct, prescribed in sections 8 and 18A of this Act and Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998).
- (b) In addition to paragraph (a), a learner may institute civil action against a person or a group who manipulated and forced that learner to conduct or participate in any initiation practices.
- (3) For the purposes of this Act, "initiation practices" means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of, a school, a group, intramural or extramural activities, interschools sports team, or organisation –
- (a) endangers the mental or physical health or safety of a person;
 - (b) undermines the intrinsic worth of human beings by treating some as inferior to others;
 - (c) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Bill of Rights;
 - (d) undermines the fundamental rights and values that underpin the Constitution;
 - (e) impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern; or
 - (f) destroys public or private property.
- (4) In considering whether the conduct or participation of a person in any initiation practices falls within the definition of subsection (3), the relevant disciplinary authority referred to in subsection (2)(a) must take into account the right of the learner not to be subjected to such practices.

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

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 or higher, and such council is the only recognised and legitimate representative learner body at the school.

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

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

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

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

Chapter 3 PUBLIC SCHOOLS

Provision of public schools

- 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.
- (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.
- (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.

Merger of public schools

- 12A** (1) Subject to subsection (2), the Member of the Executive Council may, by notice in the Provincial Gazette, merge two or more public schools into a single school.
- (2) Before merging two or more public schools the Member of the Executive Council must –
- (a) give written notice to the schools in question of the intention to merge them;
 - (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated;
 - (c) give the governing bodies of the schools in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
 - (d) consider such representations; and
 - (e) be satisfied that the employers of staff at the public schools have complied with their obligations in terms of the applicable labour law.
- (3) If one or more of the schools that are to be merged in terms of subsection (1) are public schools on private property, the Member of the Executive Council must also –
- (a) notify the owner of the private property of his or her intention to merge the schools in question;
 - (b) consider his or her contractual obligations in terms of the agreement contemplated in section 14;
 - (c) renegotiate his or her obligations in terms of the existing agreement if necessary; and
 - (d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.
- (4) The single school contemplated in subsection (1) must be regarded as a public school.
- (5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school.
- (6) (a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.
- (b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.
- (7) The governing body of a public school to be merged, may appeal to the Minister against the decision as contemplated in subsection (1).

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

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.
- (2) Subject to section 20(1)(k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.
- (3) The right referred to in subsection (2) may only be restricted –
- (a) by the Member of the Executive Council; and
 - (b) if the immovable property is not utilised by the school in the interests of education.
- (4) The Member of the Executive Council may not act under subsection (3) unless he or she has –
- (a) informed the governing body of the school of his or her intention so to act and the reasons therefor;
 - (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
 - (c) duly considered any such representations received.
- (5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

- (6) No immovable property owned by the State and occupied by a public school may be alienated unless an agreement contemplated in section 14 has been concluded between the Member of the Executive Council and the prospective owner of the immovable property.
- (7) The Registrar of deeds may not execute, attest to or register a transfer deed in respect of the immovable property in question unless the owner has provided the Registrar of deeds with proof of the agreement contemplated in subsection (6).

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

- (8) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to the right contemplated in subsection (2).
- (9) On application by the owner and on production of the owner's copy of the title deed, the Registrar of deeds must endorse on the title deed and in his or her records the fact that a public school has been established on the land in terms of this Act.

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

Public schools on private property

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

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

- (2) An agreement contemplated in subsection (1) must be consistent with this Act and in particular must provide for –
 - (a) the provision of education and the performance of the normal functions of a public school;
 - (b) governance of the school, including the relationship between the governing body of the school and the owner;
 - (c) access by all interested parties to the property on which the school stands;
 - (d) security of occupation and use of the property by the school;
 - (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services;
 - (f) protection of the owner's rights in respect of the property occupied, affected or used by the school.
- (3) The provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply to a real right, excluding ownership, acquired by the State, a public school or another party in terms of an agreement contemplated in this section.
- (4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.
- (5) Despite subsection (3), a Registrar of deeds must endorse on the title deed of the affected property that the property is subject to an agreement contemplated in this section, if the Registrar of deeds receives –
 - (a) an application for such endorsement by the owner of the property, or the Member of the Executive Council or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
 - (b) affidavits by the owner of the property and the Member of the Executive Council stating that an agreement contemplated in this section has been concluded.

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

- (6) The Minister must, after consultation with the Council of Education Ministers, make regulations regarding the minimum requirements of an agreement contemplated in this section.
- (7) The Registrar of deeds may cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Member of the Executive Council of the province in which the public school is situated to the effect that such public school has been closed in terms of section 33.

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

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

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

Status of public schools

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

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 and it may perform only such functions and obligations and exercise only such rights as prescribed by the Act.
[Sub-s. (1) substituted by s. 2 of Act No. 57 of 2001.]
- (2) A governing body stands in a position of trust towards the school.
- (3) Subject to this Act and any applicable provincial law, the professional management of a public school must be undertaken by the principal under the authority of the Head of Department.
- (4) The Head of Department may close a public school temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives of learners and staff are endangered or that there is a real danger of bodily injury to them or of damage to property.
[Sub-s. (4) added by s. 9 of Act No. 48 of 1999.]
- (5) When the Head of Department decides that the school should be re-opened, he or she must inform the governing body and the principal of the date on which the school must re-open.
[Sub-s. (5) added by s. 9 of Act No. 48 of 1999.]
- (6) The principal or a person designated by the Head of Department must inform the educators and parents of the date contemplated in subsection (5).
[Sub-s. (6) added by s. 9 of Act No. 48 of 1999.]
- (7) If a new public school is provided in terms of section 12, the governance of that school vests in the Head of Department until a governing body has been constituted in terms of this Act.
[Sub-s. (7) added by s. 3 of Act No. 53 of 2000.]

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.
- (2) The Member of the Executive Council may not act under subsection (1) unless he or she has –
- (a) given notice in the *Provincial Gazette* of his or her intention so to act;
 - (b) given interested parties an opportunity to make written submissions within a period of not less than 30 days; and
 - (c) considered all such submissions.

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*.
- (2) A Constitution contemplated in subsection (1) must provide for –
- (a) a meeting of the governing body at least once every school term;
 - (b) meetings of the governing body with parents, learners, educators and other staff at the school, respectively, at least once a year;
 - (c) recording and keeping of minutes of governing body meetings;
 - (d) making available such minutes for inspection by the Head of Department; and
 - (e) rendering a report on its activities to parents, learners, educators and other staff of the school at least once a year.
- (3) The governing body must submit a copy of its Constitution to the Head of Department within 90 days of its election.

Code of conduct of governing body

- 18A** (1) The Member of the Executive Council must, by notice in the *Provincial Gazette*, determine a code of conduct for the members of the governing body of a public school after consultation with associations of governing bodies in that province, if applicable.
- (2) The code of conduct referred to in subsection (1) must be aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at a public school.
- (3) All members of a governing body must adhere to the code of conduct.
- (4) The code of conduct must contain provisions of due process, safeguarding the interests of the members of the governing body in disciplinary proceedings.
- (5) The Head of Department may suspend or terminate the membership of a governing body member for a breach of the code of conduct after due process.

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

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

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 –
- (a) provide introductory training for newly elected governing bodies to enable them to perform their functions; and
 - (b) provide continuing training to governing bodies to promote the effective performance of their functions or to enable them to assume additional functions.
- (2) The Head of Department must ensure that principals and other officers of the education department render all necessary assistance to governing bodies in the performance of their functions in terms of this Act.

Functions of all governing bodies

- 20** (1) Subject to this Act, the governing body of a public school must –
- (a) promote the best interests of the school and strive to ensure its development through the provision of quality education for all learners at the school;
 - (b) adopt a Constitution;
 - (c) develop the mission statement of the school;
 - (d) adopt a code of conduct for learners at the school;
 - (e) support the principal, educators and other staff of the school in the performance of their professional functions;
 - (f) determine times of the school day consistent with any applicable conditions of employment of staff at the school;
 - (g) administer and control the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
 - (h) encourage parents, learners, educators and other staff at the school to render voluntary services to the school;
 - (i) recommend to the Head of Department the appointment of educators at the school, subject to the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Labour Relations Act, 1995 (Act No. 66 of 1995);

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

- (j) recommend to the Head of Department the appointment of non-educator staff at the school, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the Labour Relations Act, 1995 (Act No. 66 of 1995);
- (k) at the request of the Head of Department, allow the reasonable use under fair conditions determined by the Head of Department of the facilities of the school for educational programmes not conducted by the school;

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

- (l) discharge all other functions imposed upon the governing body by or under this Act; and
 - (m) discharge other functions consistent with this Act as determined by the Minister by notice in the *Government Gazette*, or by the Member of the Executive Council by notice in the *Provincial Gazette*.
- (2) The governing body may allow the reasonable use of the facilities of the school for community, social and school fund-raising purposes, subject to such reasonable and equitable conditions as the governing body may determine, which may include the charging of a fee or tariff which accrues to the school.
- (3) The governing body may join a voluntary association representing governing bodies of public schools.
- (4) Subject to this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law, a public school may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council in terms of section 3(1) of the Educators' Employment Act, 1994.

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

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

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

- (6) An educator and a non-educator employed in a post established in terms of subsection (4) or (5) must comply with the requirements set for employment in public schools in terms of this Act, the Labour Relations Act, 1995 (Act No. 66 of 1995), and any other applicable law.
[Sub-s. (6) added by s. 6 of Act No. 100 of 1997.]
- (7) A public school may only employ an educator in a post established in terms of subsection (4) if such educator is registered as an educator with the South African Council of Educators.
[Sub-s. (7) added by s. 6 of Act No. 100 of 1997.]
- (8) The staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution, and the factors to be taken into account when making appointments include, but are not limited to –
(a) the ability of the candidate;
(b) the principle of equity;
(c) the need to redress past injustices; and
(d) the need for representivity.
[Sub-s. (8) added by s. 6 of Act No. 100 of 1997.]
- (9) When presenting the annual budget contemplated in section 38, the governing body of a public school must provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.
[Sub-s. (9) added by s. 6 of Act No. 100 of 1997.]
- (10) Despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).
[Sub-s. (10) added by s. 6 of Act No. 100 of 1997.]
- (11) After consultation as contemplated in section 5 of the National Education Policy Act, 1996 (Act No. 27 of 1996), the Minister may determine norms and standards by notice in the *Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.
[Sub-s. (11) added by s. 6 of Act No. 100 of 1997.]

Allocated functions of governing bodies

- 21** (1) Subject to this Act, a governing body may apply to the Head of Department in writing to be allocated any of the following functions:
(a) To maintain and improve the school's property, and buildings and grounds occupied by the school, including school hostels, if applicable;
(b) to determine the extra-mural curriculum of the school and the choice of subject options in terms of provincial curriculum policy;
(c) to purchase textbooks, educational materials or equipment for the school;
(d) to pay for services to the school;
(dA) to provide an adult basic education and training class or centre subject to any applicable law; or
[Para. (dA) inserted by s. 10(b) of Act No. 48 of 1999.]
(e) other functions consistent with this Act and any applicable provincial law.
- (2) The Head of Department may refuse an application contemplated in subsection (1) only if the governing body concerned does not have the capacity to perform such function effectively.
- (3) The Head of Department may approve such application unconditionally or subject to conditions.
- (4) The decision of the Head of Department on such application must be conveyed in writing to the governing body concerned, giving reasons.
- (5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal to the Member of the Executive Council.
- (6) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine that some governing bodies may exercise one or more functions without making an application contemplated in subsection (1), if –
(a) he or she is satisfied that the governing bodies concerned have the capacity to perform such function effectively; and
(b) there is a reasonable and equitable basis for doing so.

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 –
 - (a) informed the governing body of his or her intention so to act and the reasons therefor;
 - (b) granted the governing body a reasonable opportunity to make representations to him or her relating to such intention; and
 - (c) given due consideration to any such representations received.
- (3) In cases of urgency, the Head of Department may act in terms of subsection (1) without prior communication to such governing body, if the Head of Department thereafter –
 - (a) furnishes the governing body with reasons for his or her actions;
 - (b) gives the governing body a reasonable opportunity to make representations relating to such actions; and
 - (c) duly considers any such representations received.
- (4) The Head of Department may for sufficient reasons reverse or suspend his or her action in terms of subsection (3).
- (5) Any person aggrieved by a decision of the Head of Department in terms of this section may appeal against the decision to the Member of the Executive Council.

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;
 - (b) the principal, in his or her official capacity;
 - (c) co-opted members.
- (2) Elected members of the governing body shall comprise a member or members of each of the following categories:
- (a) Parents of learners at the school;
 - (b) educators at the school;
 - (c) members of staff at the school who are not educators; and
 - (d) learners in the eighth grade or higher at the school.
- (3) A parent who is employed at the school may not represent parents on the governing body in terms of subsection (2)(a).
- (4) The representative council of learners referred to in section 11(1) must elect the learner or learners referred to in subsection (2)(d).
- (5) The governing body of an ordinary public school which provides education to learners with special needs must, where practically possible, co-opt a person or persons with expertise regarding the special education needs of such learners.
- (6) A governing body may co-opt a member or members of the community to assist it in discharging its functions.
- (7) The governing body of a public school contemplated in section 14 may co-opt the owner of the property occupied by the school or the nominated representative of such owner.
- (8) Subject to subsection (10), co-opted members do not have voting rights on the governing body.
[Sub-s. (8) substituted by s. 11(a) of Act No. 48 of 1999.]
- (9) The number of parent members must comprise one more than the combined total of other members of a governing body who have voting rights.
- (10) If the number of parents at any stage is not more than the combined total of other members with voting rights, the governing body must temporarily co-opt parents with voting rights.
[Sub-s. (10) added by s. 11(b) of Act No. 48 of 1999.]
- (11) If a parent is co-opted with voting rights as contemplated in subsection (10), the co-option ceases when the vacancy has been filled through a by-election which must be held according to a procedure determined in terms of section 28(d) within 90 days after the vacancy has occurred.
[Sub-s. (11) added by s. 11(b) of Act No. 48 of 1999.]
- (12) If a person elected as a member of a governing body as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the governing body.
[Sub-s. (12) added by s. 11(b) of Act No. 48 of 1999.]

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

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

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

- (2) Subject to this Act, the Member of the Executive Council must, by notice in the Provincial Gazette, determine the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every public school for learners with special education needs within his or her province.
- (3) A notice contemplated in subsection (2) must give interested parties an opportunity to make written submissions within a period of not less than 30 days.
- (4) The Member of the Executive Council must consider all such submissions, and thereafter may alter the notice contemplated in subsection (2).

Failure by governing body to perform functions

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

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

- (2) The Head of Department may extend the period referred to in subsection (1), by further periods not exceeding three months each, but the total period may not exceed one year.
- (3) If a governing body has ceased to perform its functions, the Head of Department must ensure that a governing body is elected in terms of this Act within a year after the appointment of persons contemplated in subsection (1).

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

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

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

Recusal by members of governing body

- 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.
- (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 –

- (a) the term of office of members and office-bearers of a governing body;
- (b) the designation of an officer to conduct the process for the nomination and election of members of the governing body;
- (c) the procedure for the disqualification or removal of a member of the governing body or the dissolution of a governing body, for sufficient reason in each case;
- (d) the procedure for the filling of a vacancy on the governing body;
- (e) guidelines for the achievement of the highest practicable level of representativity of members of the governing body;

- (f) a formula or formulae for the calculation of the number of members of the governing body to be elected in each of the categories referred to in section 23(2), but such formula or formulae must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of public schools; and
- (g) any other matters necessary for the election, appointment or assumption of office of members of the governing body.

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

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

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.
- (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

- 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.
- (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.
- (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.

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 –
- (a) informed the governing body of the school of his or her intention so to act and his or her reasons therefor;
 - (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;
 - (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such actions; and
 - (d) given due consideration to any such representations received.
- (3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

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.
- (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

- 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

- 36** (1) A governing body of a public school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.
- (2) Despite subsection (1), a governing body may not enter into any loan or overdraft agreement so as to supplement the school fund, without the written approval of the Member of the Executive Council.
- [Sub-s. (2) added by s. 5 of Act No. 57 of 2001.]
- (3) If a person lends money or grants an overdraft to a public school without the written approval of the Member of the Executive Council, the State and the public school will not be bound by the contract of lending money or an overdraft agreement.
- [Sub-s. (3) added by s. 5 of Act No. 57 of 2001.]

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.
- (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 one banking account, but a governing body of a public school may, with the approval of the Member of the Executive Council, invest surplus money in another account.
- [Sub-s. (3) substituted by s. 6(a) of Act No. 57 of 2001.]
- (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.
- (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 –
- (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;
 - (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.
- (7) (a) Money from the school fund of a public school may not be paid into a trust or be used to establish a trust.
- (b) If a trust was established from a school fund of a public school or if such money was paid into a trust prior to 1 January 2002, such trust or payment is invalid and the money must be paid back into the school fund.
- (c) A governing body of a public school may not collect any money or contributions from parents to circumvent or manipulate the payment of compulsory school fees and to use such money or contributions to establish or fund a trust, and if such money or contributions of parents were paid into a trust prior to 1 January 2002, the trust must pay such money or contributions into the school fund.

[Sub-s. (7) inserted by s. 6(b) of Act No. 57 of 2001.]

Annual budget of public school

- 38** (1) A governing body of a public school must prepare a budget each year according to prescriptions determined by the Member of the Executive Council in a *Provincial Gazette*, which shows the estimated income and expenditure of the school for the following financial year.
[Sub-s. (1) substituted by s. 7 of Act No. 57 of 2001.]
- (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.
- (3) The notice contemplated in subsection (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting.
[Sub-s. (3) added by s. 7 of Act No. 50 of 2002.]

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 –
- (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).
- (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 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 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

- 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 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.
- (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
 - (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 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.

- (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.

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.

Admission age to independent school

- 45A (a) The admission age of a learner to an independent school to –
- (i) grade R is age four turning five by 30 June in the year of admission;
 - (ii) grade 1 is age five turning six by 30 June in the year of admission.
- (b) An independent school may admit a learner who –
- (i) is under the age contemplated in paragraph (a) if good cause is shown; and
 - (ii) complies with the criteria contemplated in paragraph (c).
- (c) The Minister may, by regulation, prescribe –
- (i) criteria² for the admission to an independent school at an age lower than the admission age of an underage learner who complies with the criteria;
 - (ii) age requirements for different grades at an independent school.
- (d) For the purpose of paragraph (b)(i), good cause shown means that –
- (i) it can be shown that exceptional circumstances exist which necessitate the admission of an underage learner because admission would be in her or her best interest; and
 - (ii) the refusal to admit that learner would be severely detrimental to his or her development.
- [S. 45A inserted by s. 8 of Act 50 of 2002. S. 45A will come into operation on 1 January 2004.]

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.
- (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;
 - (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).
- (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;

2 It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable and effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that –

- (a) learners are admitted on an equitable basis;
- (b) there is no unfair discrimination to learners;
- (c) the admission is fair to the individual learner as well as other learners in the classroom;
- (d) recognition is given to the diversity of language, culture and economic background;
- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child is taken into account.

- (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
 - (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.
- (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.
- (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 –
- (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) 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.
- (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

- 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;
 - (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.
- (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

- 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;
 - (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
 - (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 –
- (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.
- (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.

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.
- (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.
- (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.
- (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.

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 –
- (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.
- (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.
- (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.

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

- (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;
 - (b) a third party is obliged to excuse 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.
- (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.
- (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.
- (11) The officer in charge of the deeds office or other office where the immovable property of a school is registered, must, on submission of the title deed in question, make such endorsement on the title deed and such entry in the register as may be required to register the transfer of the immovable property.
[Sub-s. (11) added by s. 9 of Act No. 100 of 1997 and substituted by s. 13 of Act No. 48 of 1999.]
- (12) Any immovable property belonging to the State which was used by a school and not transferred or endorsed into the name of the school contemplated in subsection (1) remains the property of the State.
[Sub-s. (12) added by s. 9 of Act No. 100 of 1997.]
- (13) Any immovable property which was transferred into the name of a school contemplated in subsection (1) must, if such school is subsequently closed in terms of this Act or any other applicable law, devolve upon the State.
[Sub-s. (13) added by s. 9 of Act No. 100 of 1997.]

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.

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.

Chapter 7 GENERAL PROVISIONS

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).
- (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
 - (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*.
- (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.
- (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.
- (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.
- (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.
- (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.
- (2) Every school must provide such information about the school as is reasonably required by the Head of Department or the Director-General of the national Department of Education in consultation with the Head of Department.

[Sub-s. (2) substituted by s. 10 of Act No. 100 of 1997.]

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.
- (2) The provisions of the State Liability Act, 1957 (Act No. 20 of 1957), apply to any claim under subsection (1).
- (3) Any claim for damage or loss contemplated in subsection (1) must be instituted against the Member of the Executive Council concerned.

[Sub-s. (3) added by s. 14 of Act No. 48 of 1999.]

- (4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

[Sub-s. (4) added by s. 14 of Act No. 48 of 1999.]

- (5) Any legal proceedings against a public school for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20(10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the Head of Department for his or her information.

[Sub-s. (5) added by s. 14 of Act No. 48 of 1999.]

Regulations

- 61** The Minister may make regulations –
- (a) to provide for safety measures at public and independent schools;
 - (b) on any matter which must or may be prescribed by regulation under this Act;
 - (c) to prescribe a national curriculum statement applicable to public and independent schools;
 - (d) to prescribe a national process and procedures for the assessment of learner achievement in public and independent schools;
 - (e) to prescribe a national process for the assessment, monitoring and evaluation of education in public and independent schools;
 - (f) on initiation practices at public and independent schools;
 - (g) to prescribe the age norm per grade in public and independent schools;
 - (h) to provide for norms and minimum standards for school funding; and
 - (i) on any matter which may be necessary or expedient to prescribe in order to achieve the objects of this Act.

[S. 61 substituted by s. 5 of Act No. 53 of 2000 and by s. 9 of Act No. 50 of 2002.]

Delegation of powers

- 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).
- (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.

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.

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*.

Schedule 1

<i>Number and year of Act</i>	<i>Short title</i>	<i>Extent of repeal</i>
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 <i>Schools</i> 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

Schedule 2

Amendment of Educators Employment Act, 1994, by Section 63

The Educators' Employment Act 1994 was repealed and replaced by the Employment of Educators Act 76 of 1998 and hence the amendments are no longer applicable.

MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF A PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

G.N. 1738 of 1997 published in *Government Gazette* No. 18566 dated 19 December 1997

REGULATIONS RELATING TO THE MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF THE PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with the Council of Education Ministers, and with organisations representing the owners of private properties on which public schools are provided, hereby make the regulations in the Schedule in terms of sections 14(6), read with section 61 of the South African Schools Act, 1996, relating to the minimum requirements of an agreement contemplated in section 14.

SME BENGU
Minister of Education
November 1997

REGULATIONS RELATING TO THE MINIMUM REQUIREMENTS OF AN AGREEMENT BETWEEN THE MEMBER OF THE EXECUTIVE COUNCIL AND THE OWNER OF THE PRIVATE PROPERTY ON WHICH A PUBLIC SCHOOL IS SITUATED

1. Definitions

In these regulations any word or expression to which a meaning has been assigned by the Act, shall have the same meaning assigned to it in the Act, and unless the context indicates otherwise –

“**agreement**” means the agreement between the Member of the Executive Council and the owner as contemplated in section 14 of the Act and all amendments thereto;

“**owner**” means the owner of a private property on which a public school is or will be situated;

“**property**” means that portion of the private property on which a public school is or will be situated which is referred to in regulation 5(1);

“**the Act**” means the South African Schools Act, 1996 (Act No. 84 of 1996), and/or regulations promulgated in terms of the Act.

2. The nature and status of the agreement

- (1) In terms of section 14(1) of the Act a public school may be provided on private property only in terms of an agreement.
- (2) An agreement between the State and the owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and may be amended by agreement between the Member of the Executive Council and the owner.
- (3) The Member of the Executive Council must invite the governing body to make a written submission on the terms of the proposed agreement, and the Member of the Executive Council and the owner must take the views of the governing body into account before concluding the agreement.
- (4) An agreement must be reached before a new public school is established on private property in which case the provision of subclause (3) will not apply.
- (5) An agreement and all amendments thereto must be in writing and signed by both the Member of the Executive Council and the owner.
- (6) An agreement remains valid as long as the public school exists. A school can only be closed in terms of section 33 of the Act after prior consultation between the owner and the Member of the Executive Council.
- (7) The governing body must make a copy of the agreement available on request, and must inform its members and learners, educators, parents and workers at the school, of the content of the agreement and any amendments thereto.

- (8) A learner, educator, parent and worker at the school, member of the governing body, an official and a member of the public who has an interest in the educational activities of the school must honour the agreement.

- (9) A *pro forma* agreement, ANNEXURE 1, is given as a guideline to assist the parties to the agreement.

3. Provision of education and performance of the normal functions of a public school

- (1) Education must be provided in accordance with the prescribed curriculum for public schools and the applicable administrative directives and as otherwise provided for in the agreement.
- (2) The owner may not interfere with the normal educational activities of the public school.

4. Governance of the public school

- (1) A public school situated on the property must be governed in accordance with the Act and any agreement contemplated in subsection 14(1) of the Act or these regulations.
- (2) The governing body must enter into an agreement with the owner if, in exercising any of its functions in terms of the Act, a right of the owner regarding the immovable or movable property of the owner or the religious character of the school is affected.
- (3) If a religious organisation exercises its rights as contemplated in section 57 of the Act, the agreement between the Member of the Executive Council and the religious organisation must record the recognised distinctive religious character of the school and the manner in which such distinctive character will be maintained. The recognised distinctive religious character of the school and the manner in which it will be maintained, must be consistent with the provisions of the Act.
- (4) Subject to the agreement contemplated in subregulation (3) the governing body must enter into an agreement with the religious organisation to ensure the preservation of the distinctive religious character of such a public school.
- (5) A written record must be kept of all meetings between the governing body and the owner, and must be signed by the owner and the authorised signatory of the governing body.

5. Access by all interested parties to the school

- (1) An accurate description of the property and all access roads to the school must be provided for in the agreement.
- (2) Clear road signs giving directions to the public school must be erected on access roads to the school where access to the school is by way of private roads.
- (3) The owner may not limit access to the school by a learner, educator, parent, worker at the school, member of the governing body, officer or member of the public who has a reasonable interest in the activities of the school.
- (4) The owner has the right of access to the property.

6. Security of occupation and use of the property by the school

- (1) The public school may not be deprived of the occupation or use of the property for purposes related to the Act.
- (2) The property and access roads to the school must be adequately fenced.

7. Maintenance and improvement of the school buildings and property and supply of the necessary services

- (1) Potable water and toilets must be provided and secured.
- (2) The supply of electricity to the school must comply with national safety standards.
- (3) The erection of new buildings and improvements to existing buildings may only be undertaken in terms of an agreement between the owner and the education department, or the governing body, if the governing body has been allocated such function in terms of section 21(1)(a) of the Act.
- (4) The agreement must provide for the maintenance of the property.
- (5) Provision must be made in the agreement for compensation for improvements to the immovable property, if any, when the school is closed.

8. Protection of owner's rights

- (1) If payment is due to the owner by the education department or the governing body for the use of the property or services supplied to the school, the agreement must provide for the terms and conditions of such payment.
- (2) The governing body may enter into an agreement with the owner to perform its functions with respect to the Act after consultation with the owner.

9. Breach of agreement and dispute resolution

- (1) The agreement must provide for the procedure to be followed in the case of a breach of the agreement.

- (2) The agreement must provide for a mechanism to resolve a dispute arising from a breach of the agreement or from any act or omission by any person who incurs a responsibility or obligation in terms of the agreement.

10. Determination of responsibilities

The agreement must specify which person, body or authority is responsible for any function or obligation as contemplated in these regulations.

ANNEXURE 1

PRO FORMA AGREEMENT

AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

The Member of the Executive Council (hereinafter referred to as "the MEC") of
(name of Province) herein represented by:
(name and rank), duly authorised by the MEC

AND

..... (name of owner, hereafter referred to "the owner")

Postal address:

.....
.....
.....

Physical Address:

.....
.....
.....

I.D. Number.....

Telephone.....

PREAMBLE

WHEREAS

..... is the Owner of the immovable property on which
..... (name of school, hereafter referred to as "the school") is situated

Postal address:

.....
.....
.....

Physical Address:

.....
.....
.....

Telephone.....

WHEREAS the school is a public school offering education from Grade to Grade; and

WHEREAS the MEC and the Owner have agreed to enter into this agreement pursuant to sections 14(1) and 57 of the South African Schools Act (Act No. 84 of 1996) (hereafter referred to as "the Act"), whereby the school is established/deemed to be established as a public school on private property.

IT IS HEREBY AGREED THAT:

Definitions

1. In this agreement any word or expression to which a meaning has been assigned by the Act or Regulations Relating to the Minimum Requirements for an Agreement between the Member of the Executive Council and the

Owner of the Private Property on which a Public School is situated (hereafter referred to as “the Regulations”), has the same meaning assigned to it in the Act or Regulations, unless the context indicates otherwise.

The status and description of the school

2. The school is a public school on private property in terms of section 52(1) of the Act or established in terms of section of (Provincial Education Law).
3. A description of the site and buildings and access roads to the school is as set out in Schedule 1.

Proprietary rights held by the school

4. The Owner declares himself or herself willing to give the right of use of the property referred to in paragraph 2 for the sole purpose of education in a public school on the property.
5. The Owner gives the right of use to the school free of charge.

OR

The Owner lets the property referred to in paragraph 2 to the MEC for the amount of R..... per month/year which payment must be paid into the Owner's bank account No., (Bank) (Town) not later than the first day of each month/first day of January each year.

6. An agreement between the State and the Owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and is only amended to the extent that it is in conflict with this agreement, in which case this agreement prevails.
7. The agreement is valid as long as the school exists. The school can only be closed in terms of section 33 of the Act and after a reasonable period of notice has been given to the Owner by the MEC. A lease agreement, if it is in existence, terminates on the date on which the school is closed. All the improvements to the immovable property will become the property of the Owner free of charge

OR

after payment by the Owner to the State of an agreed sum of money calculated on the day of the closure of the school.

8. All reasonable maintenance, including insurance and security to the buildings and fixed assets and improvements, is done by [if such maintenance is the responsibility of the school an agreement must be entered into between the school and the Owner on the date such allocated function in terms of section 21(1) of the Act is allocated to such school.] The extent of such maintenance is set out in Schedule 2.

General

9. The MEC undertakes to provide a copy of this agreement to the school and ensure that the school makes it available to the parents, learners and any third person if requested by them as contemplated in Regulation 2(7).
10. must erect clear road signs giving directions to the public school on access roads to the school where access to the school is by way of private roads.
11. The curriculum offered at such public school is in accordance with the prescribed curriculum for public schools and the applicable administrative directives.
12. must ensure that a fresh drinking water supply is available at all times at such school.
13. may erect new buildings or effect improvements to the existing buildings. Such new buildings or improvements may only be effected after a separate agreement is concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes.
14. must ensure that the supply of electricity to the school complies with the national safety standards.
15. must ensure that the property on which the school is situated and all access roads are safe for school purposes and all dangerous areas on the property referred to in paragraph 2 are safeguarded.
16. The Owner guarantees access to the school by the public, school community and officials referred to in Regulation 5(3) in relation to educational purposes.
17. The State indemnifies the Owner for any damage or loss claimed against such Owner as a result of the property being owned by the Owner and provided that such claim is related to any educational activity conducted by the school for which the Owner would have been liable.

Recognition of the religious character

18. This clause is applicable only in respect of an owner of private property who has exercised his or her rights as contemplated in Section 57 of the Act.

- 18.1 The Member of the Executive Council recognises the distinctive religious character of the school as
- 18.2 The recognised distinctive religious character of the school referred to in subclause 18.1 will be maintained in the following manner:
-
-
-

Dispute

19. Any dispute arising under this agreement must, as a first step, be resolved amicably through conciliation between the MEC and the Owner, or by any other manner mutually agreed upon by them.
20. If any dispute arises (including a breach of contract) the aggrieved party must notify in writing the other party and any other party affected by the dispute, within 14 school days, stating the nature and extent of his or her complaint.
21. A conciliation meeting between the parties to the dispute must take place within 7 school days of the notice referred to in paragraph 20.
22. If a dispute is referred to a Magistrate's court then the applicable cost structures must be agreed to.

Selling of the immovable property

23. If the Owner sells the property on which the school is situated, he or she must notify –
- (a) the buyer of the existence of such school in writing before entering into an agreement with such buyer; and
 - (b) the school and the MEC of such sale and attach the letter referred to in subparagraph (a) within 7 days of such sale.

Amendments

24. This agreement comprises the agreement and all amendments and annexures thereto.
25. This agreement may only be amended, varied or changed if both parties agree to such amendment, variation or change in writing and it is signed by both parties.

Domicilium

26. The Owner chooses the following address as his or her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

.....

.....

.....

Thus done and signed at on this day of 19

.....
OWNER

AS WITNESSES:

1.
2.

Thus done and signed at on this day of 19

MEC FOR EDUCATION OF (PROVINCE) or

.....
DELEGATE OF THE MEC

AS WITNESSES:

1.
2.

SCHEDULE 1

DESCRIPTION OF THE SITE, BUILDINGS AND ACCESS ROADS TO THE SCHOOLS

To be provided by the Owner in terms of paragraph 3 of the Agreement.

SCHEDULE 2

DESCRIPTION OF MAINTENANCE

In terms of paragraph 8 of the Agreement.

NORMS AND STANDARDS FOR LANGUAGE POLICY IN PUBLIC SCHOOLS

G.N. R1701 of 1997 published in *Government Gazette* No. 18546 dated 19 December 1997

NORMS AND STANDARDS FOR LANGUAGE POLICY IN PUBLIC SCHOOLS

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with the Council of Education Ministers, hereby determine norms and standards for language policy in public schools, in terms of section 6(1) of the South African Schools Act, 1996 (Act No. 84 of 1996). The norms and standards for language policy in public schools is as published in the following Schedule.

SME BENGU

Minister of Education

November 1997

- I. The language in education policy documents which follow have been the subject of discussions and debate with a wide range of education stakeholders and role-players. They have also been the subject of formal public comment following their publication on 9 May 1997 (Government Notice No. 383, *Government Gazette* 17997).
- II. Two policies are announced herewith, namely, the LANGUAGE IN EDUCATION POLICY IN TERMS OF SECTION 3(4)(m) OF THE NATIONAL EDUCATION POLICY ACT, 1996 (ACT 27 OF 1996), and the NORMS AND STANDARDS REGARDING LANGUAGE POLICY PUBLISHED IN TERMS OF SECTION 6(1) OF THE SOUTH AFRICAN SCHOOLS ACT, 1996. While these two policies have different objectives, they complement each other and should at all times be read together rather than separately.
- III. Section 4.4 of the Language in Education Policy relates to the current situation. The new curriculum, which will be implemented from 1998, onwards, will necessitate new measures which will be announced in due course.
- IV. **LANGUAGE IN EDUCATION POLICY IN TERMS OF SECTION 3(4)(m) OF THE NATIONAL EDUCATION POLICY ACT, 1996 (ACT 27 OF 1996)**

A. Preamble

This Language-in-Education Policy Document should be seen as part of a continuous process by which policy for language in education is being developed as part of a national language plan encompassing all sectors of society, including the deaf community. As such, it operates within the following paradigm:

1. In terms of the new Constitution of the Republic of South Africa, the government, and thus the Department of Education, recognises that our cultural diversity is a valuable national asset and hence is tasked, amongst other things, to promote multilingualism, the development of the official languages, and respect for all languages used in the country, including South African Sign Language and the languages referred to in the South African Constitution.
2. The inherited language-in-education policy in South Africa has been fraught with tensions, contradictions and sensitivities, and underpinned by racial and linguistic discrimination. A number of these discriminatory policies have affected either the access of the learners to the education system or their success within it.
3. The new language in education policy is conceived of as an integral and necessary aspect of the new government's strategy of building a non-racial nation in South Africa. It is meant to facilitate communication across the barriers of colour, language and region, while at the same time creating an environment in which respect for languages other than one's own would be encouraged.
4. This approach is in line with the fact that both societal and individual multilingualism are the global norm today, especially on the African continent. As such, it assumes that the learning of more than one language should be general practice and principle in our society. That is to say, being multilingual should be a defining characteristic of being South African. It is constructed also to counter any particularistic ethnic chauvinism or separatism through mutual understanding.
5. A wide spectrum of opinions exists as to the locally viable approaches towards multilingual education, ranging from arguments in favour of the cognitive benefits and cost-effectiveness of teaching through one medium (home language) and learning additional language(s) as subjects, to those drawing on comparative international experience demonstrating that, under appropriate conditions, most learners benefit cognitively and emotionally from the type of structured bilingual education found in dual-medium (also known as two-way immersion) programmes. Whichever route is followed, the underlying principle is to maintain home language(s) while providing access to and the effective acquisition of additional language(s). Hence, the Department's position that an additive approach to bilingualism is to be seen as the normal orientation of our language-in-education policy. With regard to the delivery system, policy will progressively be guided by the results of comparative research, both locally and internationally.

6. The right to choose the language of learning and teaching is vested in the individual. This right has, however, to be exercised within the overall framework of the obligation on the education system to promote multilingualism.

B. This paradigm also presupposes a more fluid relationship between languages and culture than is generally understood in the Eurocentric model which we have inherited in South Africa. It accepts *a priori* that there is no contradiction in a multicultural society between a core of common cultural traits, beliefs, practices, etc., and particular sectional or communal cultures. Indeed, the relationship between the two can and should be mutually reinforcing and, if properly managed, should give rise to and sustain genuine respect for the variability of the communities that constitute our emerging nation.

C. Aims

The main aims of the Ministry of Education's policy for language in education are:

1. to promote full participation in society and the economy through equitable and meaningful access to education;
2. to pursue the language policy most supportive of general conceptual growth amongst learners, and hence to establish additive multilingualism as an approach to language in education;
3. to promote and develop all the official languages;
4. to support the teaching and learning of all other languages required by learners or used by communities in South Africa, including languages used for religious purposes, languages which are important for international trade and communication, and South African Sign Language, as well as Alternative and Augmentative Communication;¹
5. to counter disadvantages resulting from different kinds of mismatches between home languages and languages of learning and teaching;
6. to develop programmes for the redress of previously disadvantaged languages.

D. Policy: Languages as subjects

1. All learners shall offer at least one approved language as a subject in grade 1 and grade 2.
2. From grade 3 (Std 1) onwards, all learners shall offer their language of learning and teaching and at least one additional approved² language as subjects.
3. All language subjects shall receive equitable time and resource allocation.
4. The following promotion requirements apply to language subjects:
 - (a) In grade 1 to grade 4 (Std 2) promotion is based on performance in one language and Mathematics.
 - (b) From grade 5 (Std 3) onwards, one language must be passed.
 - (c) From grade 10 to grade 12 two languages must be passed, one on first language level, and the other on at least second language level. At least one of these languages must be an official language.
 - (d) Subject to national norms and standards as determined by the Minister of Education, the level of achievement required for promotion shall be determined by the provincial education departments.

E. Policy: Language of learning and teaching

The language(s) of learning and teaching in a public school must be (an) official language(s).

V. NORMS AND STANDARDS REGARDING LANGUAGE POLICY PUBLISHED IN TERMS OF SECTION 6(1) OF THE SOUTH AFRICAN SCHOOLS ACT, 1996

A. Introduction

1. Aim of these norms and standards

- (a) Recognising that diversity is a valuable asset, which the state is required to respect, the aim of these norms and standards is the promotion, fulfilment and development of the state's overarching language goals in school education in compliance with the Constitution, namely:
 1. the protection, promotion, fulfilment and extension of the individual's language rights and means of communication in education; and
 2. the facilitation of national and international communication through promotion of bi- or multilingualism through cost-efficient and effective mechanisms;
 3. to redress the neglect of the historically disadvantaged languages in school education.

¹ Alternative and Augmentative Communication facilitate communication for learners with limited or no speaking skills.

² The term "approved languages" indicates that valid syllabuses at first or second language level have been submitted, and have been approved by the Minister as national policy. All official languages are "approved" languages, while German First Language is also an "approved" language for non-immigrant candidates. A syllabus at first or second language level for any language, may be submitted for approval by the Minister.

2. Definitions

In these norms and standards, unless the context otherwise indicates, words and expressions contained in the definitions in the Act shall have corresponding meanings; and the following words and phrases shall have the following meanings:

- (a) **“the Act”** means the South African Schools Act, Act 84 of 1996
- (b) **“the Constitution”** means the Constitution of the Republic of South Africa, Act 108 of 1996
- (c) **“school district”** means a geographical unit as determined by the relevant provincial legislation, or prevailing provincial practice
- (d) **“language”** means all official languages recognised in the Constitution, and also South African Sign Language, as well as Alternative and Augmentative Communication.

B. The protection of individual rights

- 1. The parent exercises the minor learner’s language rights on behalf of the minor learner. Learners who come of age, are hereafter referred to as the learner, which concept will include also the parent in the case of minor learners.
- 2. The learner must choose the language of teaching upon application for admission to a particular school.
- 3. Where a school uses the language of learning and teaching chosen by the learner, and where there is a place available in the relevant grade, the school must admit the learner.
- 4. Where no school in a school district offers the desired language as a medium of learning and teaching, the learner may request the provincial education department to make provision for instruction in the chosen language, and section 5.3.2 must apply. The provincial education department must make copies of the request available to all schools in the relevant school district.

C. The rights and duties of the school

- 1. Subject to any law dealing with language in education and the Constitutional rights of learners, in determining the language policy of the school, the governing body must stipulate how the school will promote multilingualism through using more than one language of learning and teaching, and/or by offering additional languages as fully-fledged subjects, and/or applying special immersion or language maintenance programmes, or through other means approved by the head of the provincial education department. (This does not apply to learners who are seriously challenged with regard to language development, intellectual development, as determined by the provincial department of education.)
- 2. Where there are less than 40³ requests in grades 1 to 6, or less than 35 requests in grades 7 to 12 for instruction in a language in a given grade not already offered by a school in a particular school district, the head of the provincial department of education will determine how the needs of those learners will be met, taking into account:
 - (a) the duty of the state and the right of the learners in terms of the Constitution, including
 - (b) the need to achieve equity,
 - (c) the need to redress the results of past racially discriminatory laws and practices,
 - (d) practicability, and
 - (e) the advice of the governing bodies and principals of the public schools concerned.

D. The rights and duties of the Provincial Education Departments

- 1. The provincial education department must keep a register of requests by learners for teaching in a language medium which cannot be accommodated by schools.
- 2. In the case of a new school, the governing body of the school in consultation with the relevant provincial authority determines the language policy of the new school in accordance with the regulations promulgated in terms of section 6(1) of the South African Schools Act, 1996.
- 3. It is reasonably practicable to provide education in a particular language of learning and teaching if at least 40 in grades 1 to 6 or 35 in grades 7 to 12 learners in a particular grade request it in a particular school.
- 4. The provincial department must explore ways and means of sharing scarce human resources. It must also explore ways and means of providing alternative language maintenance programmes in schools and or school districts which cannot be provided with and or offer additional languages of teaching in the home language(s) of learners.

3 The numbers 40 and 35 are informed by *inter alia* the following:
The learner teacher ratio;
the cost effective use of education funds.

E. Further steps

1. Any interested learner, or governing body that is dissatisfied with any decision by the head of the provincial department of education, may appeal to the MEC within a period of 60 days.
 2. Any interested learner, or governing body that is dissatisfied with any decision by the MEC, may approach the Pan South African Language Board to give advice on the constitutionality and/or legality of the decision taken, or may dispute the MEC's decision by referring the matter to the Arbitration Foundation of South Africa.
 3. A dispute to the Arbitration Foundation of South Africa must be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.
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GUIDELINES FOR THE CONSIDERATION OF GOVERNING BODIES IN ADOPTING A CODE OF CONDUCT FOR LEARNERS

G.N. 776 of 1998 published in *Government Gazette* No. 18900 dated 15 May 1998

GUIDELINES FOR THE CONSIDERATION OF GOVERNING BODIES IN ADOPTING A CODE OF CONDUCT FOR LEARNERS

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with each member of the Council of Education Ministers, hereby give notice in terms of section 8(3) of the South African Schools Act, 1996 of guidelines in the Schedule which governing bodies may consider in adopting a Code of Conduct for Learners.

SME BENGU
Minister of Education
April 1998

SCHEDULE GUIDELINES FOR A CODE OF CONDUCT FOR LEARNERS

1. Introduction

- 1.1 Section 8 of the South African Schools Act provides that a governing body of a public school must adopt a Code of Conduct. The Code of Conduct must aim at establishing a disciplined and purposeful environment to facilitate effective education and learning in schools.
- 1.2 This document sets out guidelines for consideration by governing bodies of public schools in adopting a Code of Conduct for learners to ensure that there is order and discipline in schools.
- 1.3 The Code of Conduct must be subject to the Constitution of the Republic of South Africa, 1996, the South African Schools Act, 1996 and provincial legislation. It must reflect the constitutional democracy, human rights and transparent communication which underpin South African society.
- 1.4 The Code of Conduct must inform the learners of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. It must set a standard of moral behaviour for learners and equip them with the expertise, knowledge and skills they would be expected to evince as worthy and responsible citizens. It must promote the civic responsibilities of the school and it must develop leadership. The main focus of the Code of Conduct must be positive discipline; it must not be punitive and punishment oriented but facilitate constructive learning.
- 1.5 Each school must develop its own Code of Conduct. In formulating a Code of Conduct as a consensus document and before adopting it, the governing body must involve the parents, learners, educators, and non-educators at that school. After the adoption of the Code of Conduct, each stakeholder must receive a copy thereof. The above stakeholders must also be consulted when the Code of Conduct is reviewed annually or when any amendments are made.
- 1.6 The purpose of a code of conduct is to promote positive discipline, self-discipline and exemplary conduct, as learners learn by observation and experience.
- 1.7 All key stakeholders should be committed to the Code of Conduct despite its being directed specifically at learners.
- 1.8 The Code of Conduct must suit the development of the learners and be appropriate to the different school levels. The language used must be easily understandable to make the content accessible. The format should be user-friendly.
- 1.9 The Code of Conduct must contain a set of moral values, norms and principles which the school community should uphold. However, the Code of Conduct is only enforceable against learners – no other person.
- 1.10 The Code of Conduct should clarify and promote the roles and responsibilities of various stakeholders in the creation of a proper learning environment in schools.
- 1.11 The Code of Conduct should contain the components discussed below (paragraphs 2 – 14) which aim at providing appropriate mechanisms and avenues for stakeholders to air their grievances, and also provide for legitimate disciplinary measures.

2. The preamble to a Code of Conduct

- 2.1 The preamble to a Code of Conduct should contain the principles, philosophy and ethos contained in the preamble to the South African Schools Act.
- 2.2 Reference should be made to the fact that, while the State has the obligation to make education available and accessible, this must be complemented by the commitment and acceptance of responsibility by the other partners in education, inter alia, learners, educators and parents.
- 2.3 The preamble should direct the Code of Conduct towards a culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace in all schools.

3. The legal authority for the control and discipline of learners

- 3.1 In terms of section 3(n), of the National Education Policy Act, Act No. 27 of 1996, the Minister of Education must determine national education policy for the control and discipline of learners at education institutions.
- 3.2 This policy shall be directed at the advancement and protection of the fundamental rights of every person guaranteed in the Bill of Rights in the Constitution of the Republic of South Africa 1996, Act No. 108 of 1996.
- 3.3 The South African Schools Act, Act No. 84 of 1996, section 8(1) empowers a governing body of a school to maintain discipline in a school. The Code of Conduct must prescribe behaviour that respects the rights of learners and educators.
- 3.4 The Code of Conduct of a public school must be displayed at the school and as far as possible be given to each learner in the official language of teaching of the learner when he/she enrolls at a school. As learners are compelled to comply with the Code of Conduct of the school they attend they must be informed about its contents, which must list, in positive terms, the things learners may not do, or should do, as well as communication channels, grievance procedures and due process in conducting a fair hearing.
- 3.5 Learners must understand that action may be taken against them if they contravene the Code of Conduct. When action is taken against learners they should be informed why their conduct is considered as misbehaviour or misconduct and why they are to be disciplined or punished. The punishment must suit the offence.
- 3.6 Nothing shall exempt a learner from complying with the Code of Conduct of the school.
- 3.7 An educator at the school shall have the same rights as a parent to control and discipline the learner according to the Code of Conduct during the time the learner is in attendance at the school, any classroom, school function or school excursion or school related activities.
- 3.8 The principal or an educator, upon reasonable suspicion (sufficient information), has the legal authority to conduct a search of any learner or property in possession of the learner for a dangerous weapon, firearm, drugs, or harmful dangerous substance, stolen property, or pornographic material brought on to the school property. (A search may be performed in terms of the following Acts of general application: Control of Access to Public Premises and Vehicles Act, Act No. 53 of 1985; Drugs and Drug Trafficking Act 140 of 1992; Arms and Ammunition Act, Act No. 75 of 1969). During a search human dignity shall be observed and learners shall be searched in private by persons of their own gender, preferably in the presence of at least one other person. A record must be kept of the search proceedings and the outcome.
- 3.9 A learner who falls pregnant may not be prevented from attending school. A pregnant girl may be referred to a hospital school for pregnant girls.

4. Principles and values: the rights of learners

4.1 Democracy

The Bill of Rights in the Constitution of the Republic of South Africa, Act No. 108 of 1996, enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. The school must protect, promote and fulfil the rights identified in the Bill of Rights. All learners and partners at a school have the democratic right to due process and to participate in decision-making about matters affecting them at the school. They also have the right to have their views heard about these matters.

4.2 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

4.3 Privacy, respect and dignity

Every learner has inherent dignity and has the right to have his/her human dignity respected. That implies mutual respect including respect for one another's convictions and cultural traditions. Every learner also has the right to privacy, which includes the right not to have his/her person or property searched or his/her possession seized. However, the principal or an educator may search learners based on his/her reasonable suspicion followed by the use of search methods that are reasonable in scope.

4.4 **Non-violence and the freedom and security of a person**

- 4.4.1 Every learner has the right not to be treated or punished in a cruel, inhuman or degrading manner. Corporal punishment has been abolished. Educators and learners have to learn the importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict and differences and to make use of due process of law.
- 4.4.2 Learners have the right not to be locked up in solitary confinement or detention.
- 4.4.3 The philosophy of the disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault.

4.5 **Freedom of expression and right to demonstrate and present petitions**

- 4.5.1 Freedom of expression is more than freedom of speech. The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, learners' rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited as the disruption of schools is unacceptable.
- 4.5.2 Learners have the right to agreed procedures with the governing body for expressing and resolving school-related grievances, including due process, a method of appeal and a right to assemble peacefully on the school property at a time and place designated by the principal. Problems or issues should, as far as possible, be resolved at the school. However, the disruption of schools is unacceptable.

4.6 **School environment**

Learners have the right to a clean and safe environment that is conducive to education. Security of property, well-cared for school facilities, school furniture and equipment, clean toilet facilities, water and a green environment, absence of harassment in attending classes and writing tests and examinations, all create an atmosphere that is conducive for education and training.

4.7 **Education**

- 4.7.1 The Constitution enshrines the right of every one to education and to further education which the State must make progressively available and accessible;
- 4.7.2 The South African Schools Act provides that education is compulsory for learners from the year in which such learners reach the age of 7 years until the last school day of the year in which such learners turn 15 years or the ninth grade, whichever comes first. It also makes provision for due process before a learner may be removed or expelled from a school. The right of a learner to education cannot be taken away when the learner is expelled from school. Therefore, in the case of expulsion, the Head of Department must find a school place for an expelled learner who is of school-going age,
- 4.7.3 In cases of suspension and expulsion, placement in an alternative school setting, e.g. reassignment to another class, correctional education under supervision after school hours, a special school for learners with behavioural disorders, etc., are options which could be considered in conjunction with a school psychologist or a social worker. Suspension with the intent to expel a learner is part of a process to be decided by the Head of Department. The governing body may suspend a learner as a punitive measure if due process has been followed.
- 4.7.4 Education and learning can be successful if the learners are committed to self-development, education and learning, and the educators are dedicated to education and teaching.
- 4.7.5 The right to education includes the right to attend all classes, to learn and be taught in all approved subjects, to be informed regularly about school progress, to make use of all school facilities, and to have the potential of all learners fully developed.

5. **Rights and responsibilities of learners**

5.1 **School and classroom rules**

- (a) School rules are designed to regulate the general organisation of the school, and relationships between the principal, educators and learners. Classroom rules are designed to give effect specifically to the relationship between educators and learners in the classroom, and may include classroom interactions and management;
- (b) learners must be involved in the formulation of school and classroom rules and must conform to such rules;
- (c) all rules are to be consistent with the overall Code of Conduct, be clear and understandable and make provision for fair warning;
- (d) each learner should be provided with a copy of the school rules at the beginning of each school year; younger learners at primary schools should be informed verbally of school rules;

- (e) classroom rules should be posted in the classroom. The consequence for breaking the rules should also be included. The punishment must fit the offence and be graded to make provision for repeated offences. These rules should make provision for fundamental fairness and fair warning; and
- (f) learners must be expected to know and to adhere to school and classroom rules. Ignorance of these rules is not an acceptable excuse.

5.2 Learning and school work

Learners must commit themselves to do their school work during classes, complete assigned homework and catch up on work missed because of absence. Disruption of schools is unacceptable.

5.3 Security and care of school property

As the school has been developed for the use of all the learners attending the school, it is the privilege and obligation of every learner to protect and carefully use all the facilities and equipment so that others that come after them can also enjoy the privilege. The parent or legal guardian of anyone who intentionally misuses, damages or defaces any school property should replace it or pay for the property so damaged. Destruction of property is a punishable offence.

5.4 School attendance

The right of learners to basic education places the obligation on them to attend school regularly during school hours. Should a learner be absent his/her parent or legal guardian must notify the school to explain the absence.

- 5.5 Learners have the responsibility to learn and develop their full potential, i.e. academic, occupational, social, sport, spiritual, art and cultural potential. They should actively participate in the learning process and decision making and have the opportunity to talk about their problems.
- 5.6 Learners can expect educators to maintain a high standard of professional ethics and to be present to teach their classes, assist them with their learning difficulties, report on their progress and to look after their well-being. There should be a relationship of mutual trust and respect between learners and educators. Victimisation of the one by the other is unacceptable.
- 5.7 The Learner Representative Council should represent the interests and views of the learners within the school. They should also promote proper conduct of learners but do not have the authority or right to punish other learners.
- 5.8 A school may establish a liaison mechanism between learners and educators.

6. Responsibilities of parents with respect to the Code of Conduct

- 6.1 The ultimate responsibility for learners' behaviour rests with their parents or guardians. It is expected that parents will –
 - (a) support the school, and require learners to observe all school rules and regulations and accept responsibility for any misbehaviour on their part; and
 - (b) take an active interest in their children's schoolwork and make it possible for the children to complete assigned homework.
- 6.2 Parents should attend meetings that the governing body convenes for them.
- 6.3 Parents have the right to take legal action against any educator, learner or person who unlawfully violates the constitutional rights of their children by, e.g. corporal punishment, injury to a child, etc.

7. Discipline

- 7.1 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. Its goal is to teach and lead learners to self discipline.
- 7.2 The disciplinary process must be expeditious, fair, just, corrective, consistent and educative. Where possible the parent should be informed and involved in the correction of the learner's behaviour. Learners should be protected from abuse by adults or other learners.
- 7.3 Restraint is the act of controlling the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators may use reasonable measures where necessary to prevent a learner from harming him/herself or others.
- 7.4 The South African Schools Act, 1996, empowers school authorities to discipline learners, but it is beyond the law to delegate this authority to fellow learners. Learners are partners with other members of the school and are not in charge of the school.
- 7.5 Every educator is responsible for discipline at all times at the school and at school related activities. Educators have full authority and responsibility to correct the behaviour of learners whenever such correction is necessary at the school. Serious misconduct must be referred to the principal of the school. However, a mechanism must be created at schools to handle disciplinary problems to reduce the load of the principal.
- 7.6 Any corrective measures or disciplinary action must be commensurate with the offence/infraction. Corrective measures may become more severe with subsequent repeated infractions. Suspension or expulsion may follow. Learners should not think that they cannot be suspended or expelled simply because

it is their first offence or infraction of a rule or policy, but such decision should be taken by the right authority.

- 7.7 In cases where a learner cannot adjust to the school and where his/her behaviour is objectionable in that it violates the rights of others, he/she will be referred to the principal. Through consultation with his/her educators, and the site of learning based team in consultation with the parents or guardians every effort should be made to assist him/her to adjust. This will include referral to the education support services for treatment. If all these efforts fail, the principal will refer the matter to the governing body, which may make a decision in the best interest of the learner and the other learners at the school.

8. Punishment

8.1 Punishment is a corrective measure or a penalty inflicted on an offender who has to suffer the consequences of misconduct in order to maintain the orderly society of the school.

8.2 Corporal punishment shall not be administered.

9. Dispute resolution

Educators as disciplinarians must resolve disciplinary problems which are not serious enough to be referred to the principal. A liaison mechanism, or objective and impartial adjudicator between learners and educators, should be set up to resolve disputes. In cases where learners are involved in gangs, the principal should not confront them but the governing body should set up a negotiation mechanism.

10. Prevention, proactive advice, counselling, penalties and corrective measures

10.1 In case of minor offences corrective measures may be applied. These measures could include one or more of the following:

- (a) verbal warning or written reprimand by an educator or a principal;
- (b) supervised school work that will contribute to the learner's progress at school, the improvement of the school environment, provided that the parents are timeously informed and the security of the child is assured;
- (c) performing tasks that would assist the offended person;
- (d) agreed affordable compensation;
- (e) replacement of damaged property; and
- (f) suspension from some school activities, e.g. sport, cultural activities.

10.2 Suspension should only be considered after every effort has been made to correct the behaviour of the learner.

11. Offences that may lead to suspension

Provincial regulations must be consulted in the compilation of a list of offences which may lead to suspension of a learner. Offences that may lead to such suspension include, but are not limited to the following:

- (a) conduct which endangers the safety and violates the rights of others;
- (b) possession, threat or use of a dangerous weapon;
- (c) possession, use, transmission or visible evidence of narcotic or unauthorised drugs, alcohol or intoxicants of any kind;
- (d) fighting, assault or battery;
- (e) immoral behaviour or profanity;
- (f) falsely identifying oneself;
- (g) harmful graffiti, hate speech, sexism, racism;
- (h) theft or possession of stolen property including test or examination papers prior to the writing of tests or examinations;
- (i) unlawful action, vandalism, or destroying or defacing school property;
- (j) disrespect, objectionable behaviour and verbal abuse directed at educators or other school employees or learners;
- (k) repeated violations of school rules or the Code of Conduct;
- (l) criminal and oppressive behaviour such as rape and gender based harassment;
- (m) victimisation, bullying and intimidation of other learners;
- (n) infringement of examination rules; and
- (o) knowingly and wilfully supplying false information or falsifying documentation to gain an unfair advantage at school.

12. Suspension and expulsion

12.1 A governing body may, after a fair hearing, suspend any learner who has been found guilty of contravening stipulations of the Code of Conduct:

- (a) for a period of one week; or
- (b) for a reasonable period not exceeding one week, pending a decision by the Head of Department on the recommendation of the governing body as to whether or not the learner is to be expelled from the school.

12.2 A learner who has been expelled, or his/her parent, may appeal against the decision of the Head of Department to the Member of the Executive Council, within seven days of the decision so to expel him/her.

12.3 In cases of disciplinary transfer, the Head of Department must find a school place for a learner until the learner is beyond compulsory school-going age, as the right of a learner to basic education cannot be violated.

12.4 All decisions leading to suspension or expulsion must take cognisance of applicable laws, e.g. a learner whose parent is unable to pay the school fees determined by the governing body may not be suspended from classes or expelled from the school.

13. Due process

13.1 The South African Schools Act makes provision for due process including a fair hearing before a learner may be suspended from the school by the governing body. Due process guarantees a learner a fair hearing before a learner may be suspended for a period of one week or be expelled from the school by the Head of the Department.

13.2 Any learner alleged to have violated any rule that may require suspension or expulsion, must be brought to the principal. The principal shall hear the evidence and then decide on the action to be taken. Such action must include that the principal must inform the parents in writing of the proposed action and arrange for a fair hearing by a small disciplinary committee (tribunal) consisting of members designated by the governing body. This tribunal must not be intimidating to the learner. In the case of very young learners special arrangements must be made for the hearing and the parents or guardians could represent the learners.

13.3 The disciplinary committee so appointed must conduct the hearing in accordance with the provincial regulations laid down by the Member of the Executive Council.

13.4 For the hearing the learner must –

- (a) be informed of and understand the charges of which written notice should be given at least five days before the time also indicating the date, time and place of the hearing;
- (b) receive such particulars on the charges as he/she may be entitled to according to law, if he/she so requests;
- (c) get the opportunity to be heard and tell his/her side of the story and to present the relevant facts;
- (d) not be prohibited from being represented by legal counsel, in which case written explanation of the charges must be given, or, in less serious cases the learner may be represented by a member of the LRC, parent, guardian or educator;
- (e) be heard by an impartial person(s);
- (f) be treated with dignity during the process;
- (g) be informed in writing of the decision of the governing body on whether or not he/she is guilty of misconduct, and the penalty to be imposed in the case of suspension or expulsion; and
- (h) have the right to appeal to the MEC if he/she is aggrieved by the decision of the governing body.

13.5 The governing body must keep a record of the proceedings of the hearing, and

- (a) may inform, in writing, the Head of Department of its decision to suspend a learner; or
- (b) must inform the Head of Department within twenty-four hours of its recommendation for expulsion of the learner.

13.6 Subject to any provincial law a learner may only be expelled by the Head of Department.

14. Serious misconduct and the law

Serious misconduct which may include offences according to the law, must be investigated by the police and referred to the Court if necessary. Serious misconduct must be handled in terms of the government notice and regulations promulgated by the Member of Executive Council in the *Provincial Gazette* of the province concerned.

Should a governing body have difficulty to interpret these guidelines they must please contact the Head of Department of the province in which their school is situated.

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

G.N. 2362 of 1998 published in *Government Gazette* No. 19347 dated 12 October 1998

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

The Minister of Education, after consultation with the Council of Education Ministers, the Financial and Fiscal Commission and the Minister of Finance, hereby give notice in terms of section 35 of the South African Schools Act, 1996 (No. 84 of 1996), and section 3(4)(g) of the National Education Policy Act, 1996 (No. 27 of 1996) of the national norms and standards for school funding, as set out in the Schedule.

SME BENGU
Minister of Education
October 1998

SCHEDULE

NATIONAL NORMS AND STANDARDS FOR SCHOOL FUNDING

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Abbreviations

CEM	Council of Education Ministers
DoE	National Department of Education
EMIS	Education Management Information System
FFC	Financial and Fiscal Commission
HEDCOM	Heads of Education Departments Committee
HOD or	
Head of Department	Head of a Provincial Education Department
MEC	Member of the Executive Council for Education
MTEF	Medium Term Expenditure Framework
PED	Provincial Education Department
SASA	South African Schools Act, 1996
Section 21	Section 21 of the South African Schools Act, 1996
SGB	school governing body

1 Introduction

This document

1. This document sets out the national norms and minimum standards for school funding in terms of the South African Schools Act, 1996 (No. 84 of 1996). It also deals with the procedures to be adopted by provincial education departments (PEDs) in determining resource allocation to their schools.
2. These norms and minimum standards deal with –
 - (a) the public funding of public schools, in terms of section 35 of the Act.
 - (b) the exemption of parents who are unable to pay school fees, in terms of section 39(4) of the Act.¹
 - (c) Public subsidies to independent schools in terms of section 48(1) of the Act.
3. The norms deal only with school-level expenditure, and do not cover a provincial education department's school-related administrative and developmental expenditure. However, such provincial funding allocations are expected to be consistent with the equity and efficiency principles underlying the public school funding norms and standards. In particular, allocations for management capacity development should be made by provincial authorities, and should target schools and governing bodies with weaker management.
4. The funding policy relating to learners with special educational needs will be prepared after the joint report of the National Commission on Special Needs in Education and Training and the National Committee on Education Support Services has been fully considered by the Ministry.² The funding policy for learners with special education needs who are enrolled in ordinary public schools is unlikely to contradict the principles underlying the present document, even if adjustments are eventually required.
5. The national Department of Education (DoE) prepared this document after consultation with the Standing Committee on Finance of the Heads of Education Departments Committee (HEDCOM). The standing committee includes representatives of the DoE and PEDs, the Departments of Finance and State Expenditure, the FFC, and the national educator organisations.
6. The DoE carefully analysed about 450 written public comments on the published draft of these norms. Consultations have been held with key stakeholder bodies representing the organised educators, public school governing bodies, and representatives of the independent schools. The document was then revised in collaboration with the HEDCOM Standing Committee on Finance. Further meetings were conducted with the organisations representing independent schools and public school governing bodies.
7. A formal consultation on the revised draft was held with officials of the Departments of Finance and State Expenditure, and the FFC Secretariat.
8. A subsequent draft was workshopped with the HEDCOM and discussed with the Council of Education Ministers (CEM). As required by the Act, the Minister has formally consulted with the CEM, the FFC and the Minister of Finance. Cabinet has endorsed the document.

1 The Regulations relating to the Exemption of Parents from the Payment of School Fees published as G.N. 1293 of 1998 are included in this publication.

2 *Quality Education for All: Overcoming Barriers to Learning and Development* (Pretoria: Department of Education 1997).

Interpretation

9. In this document –
 - (a) unless the context indicates otherwise, any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 84 of 1996), has that meaning;
 - (b) **“Regulations”** means the Exemption of Parents from the Payment of School Fees Regulations, 1998, determined in terms of the Act;
 - (c) **“the Act”** means the South African Schools Act, 1996 (No. 84 of 1996).

Application of the norms

10. The norms and minimum standards in this document apply –
 - (a) uniformly in all provinces, and are intended to prevail in terms of section 146(2) of the Constitution;
 - (b) only to ordinary public schools.
11. The norms do not apply to funds raised by ordinary public schools through their own efforts in terms of sections 36 – 37 and 39 of the Act.

When the norms come into effect

12. These norms become national policy on 1 April 1999.
13. Some norms will apply to the public school financial year (January to December) and others to the state financial year (April to March). Norms pertaining to the school year come into effect at the beginning of the first school year after the norms become policy, namely the school year starting in January 2000.
14. Pre-conditions for full and efficient implementation of the norms are described later in this document, with suggestions for a sequence of activities that would enable PEDs to prepare themselves to put the norms into effect.

Monitoring of implementation

15. The national Department of Education is responsible for monitoring the implementation of the norms in terms of section 8 of the National Education Policy Act, 1996 (No. 27 of 1996). The DoE is required to undertake its monitoring and evaluation role

“in a reasonable manner, with a view to enhancing professional capacities in monitoring and evaluation throughout the national education system, and assisting the competent authorities by all practical means within the limits of available public resources to raise the standards of education provision and performance.” (section 8(4)).
16. Each Head of Department will be expected to verify that the national norms are being complied with in allocating funds, or that acceptable alternatives are being implemented after consultation with the DoE. If the PED is unable to comply with the norms because of a lack of expertise or for any other reason, the DoE must be informed without undue delay, so that the problem can be examined and remedies sought.

2 Policy framework

The right to education and the financial responsibility of the state

17. The Bill of Rights in the Constitution of the Republic of South Africa, 1996 (No. 108 of 1996) establishes the right to education in these terms:

“Everyone has the right –

 - (a) to a basic education, including adult basic education; and
 - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible” (section 29(1)).
18. The South African Schools Act, 1996 came into effect on 1 January 1997. The principal objective of the Act is “to provide for a uniform system for the organisation, governance and funding of schools”. In terms of the Act, schools cover learning programmes between grade O (better known as grade R, for “Reception”) through to grade 12.
19. The SASA (section 3) provides for compulsory attendance of learners at school between the ages of seven and 15 (or the completion of grade 9). This is known as the compulsory or General Education phase. Every provincial Member of the Executive Council for Education (MEC) is required to provide sufficient school places for every child in the compulsory attendance bracket. If this cannot be done because of a lack of capacity, the MEC must take steps to remedy the lack as soon as possible.
20. The Act imposes other important responsibilities on the state with respect to the funding of public schools. The basic principles of state funding of public schools derive from the constitutional guarantee of equality and recognition of the right of redress. The Act provides that:

“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 educational provision” (section 34(1)).

21. These principles therefore underlie the national norms and minimum standards for public school funding which the Minister is required to determine (section 35).
22. The SASA follows the Constitution (section 29(3)) in establishing the right of any person to establish and maintain an independent school at his or her own cost, and sets out the grounds on which a PED must register an independent school. The Constitution does not preclude state subsidies for independent education institutions. The Act empowers the Minister of Education to determine norms and minimum standards for the granting of subsidies to independent schools. Such subsidies may be granted by the MEC in a province (sections 46, 48).

Personnel costs in provincial education departments

23. Except in this section, this document does not deal with personnel costs in provincial education departments.

Policy targets

24. The Ministry of Education's personnel policy for schools embodies these key principles:
 - (a) schools must be supplied with an adequate number of educator and non-educator personnel
 - (b) such staff members must be equitably distributed according to the pedagogical requirements of the schools, and
 - (c) the cost of personnel establishments must also be sustainable within provincial budgets.
25. In recent years, personnel expenditure has increased as a proportion of total expenditure by PEDs.³ In 1998/99, the national average of personnel to total costs in PED budgets is 90 per cent. The result is that per learner spending on non-personnel costs has seriously declined. It may continue to do so unless the rate of personnel cost rises is arrested, since the Medium Term Expenditure Framework (MTEF) target expenditure levels indicate very small real increases in public spending on education.
26. Unless the relative proportion of personnel costs to total provincial education spending is managed down, provinces will continue to be unable to finance essential non-personnel education services, whose distribution at present is both inadequate and highly inequitable. As a policy target, based on both local and international evidence, the Ministry of Education has determined that personnel:non-personnel spending in ordinary public schools should be of the order of 80:20.
27. These matters have been the subject of detailed analysis by the MTEF Education Sectoral Review Teams, both in 1997 and 1998. Given realistic assumptions, the Review Team's 1998 report demonstrates that the Ministry of Education's policy target may take many years to achieve.⁴ The team's recommendations are based on achieving a personnel:non-personnel cost ratio of 85:15 by the year 2005.
28. Progress toward meeting the personnel:non-personnel target must be assessed by provincial education departments in the course of preparing each year's updated MTEF. A reduction in the proportion of the education budget spent on personnel must result in an actual increase in budgeted expenditure on pedagogically critical non-personnel items (such as new school construction, provision of essential services, supply of books and other learning support materials, and educator development).
29. Within the total personnel allocation in PEDs, teaching personnel costs should be targeted at 85%, to allow for the appointment and proper distribution of administrative and support staff in provincial education departments.
30. The national Department of Education (DoE) will work with provincial education departments, using existing databases, to ensure that they can track the number and location of personnel engaged in teaching and non-teaching activities, in order to assist planning towards this target.

Educator personnel

31. Aside from the above general policy targets, this document does not norm the allocation of educator personnel, either in a province generally, or in teaching posts at or in connection with schools. Such matters, among others, are dealt with in important agreements that were negotiated in 1998 between the Ministry of Education and the national teacher unions.
32. The Minister of Education determines national policy in respect of educator post provisioning, in terms of the National Education Policy Act, 1996 (No. 27 of 1996). The educator post establishment in each province is determined by the MEC, subject to national norms prescribed for the provisioning of posts (Employment of Educators Act, 1998 (No. 76 of 1998), section 5(1)).
33. The Minister determines norms in respect of posts to be allocated to public schools, in relation to their curriculum and other circumstances, which the Head of Department must follow in distributing the available posts within the approved education establishment of a PED.
34. The Ministry's personnel and funding policies aim to remove inequities in the distribution of public resources for education, both across provinces and within provinces. The logical direction of policy is that

³ Personnel expenditure refers to the costs associated with personnel salaries and benefits. It does not include the cost of pre-service or in-service education and training and the professional development of teachers and other staff.

⁴ 1998 Medium Term Expenditure Review – Education (Pretoria: Budget Office, Department of Finance 1998).

personnel allocation costs to schools should be funded, eventually, on the basis of an equitable cost per learner, in order to address more efficiently the aim of redress and equity in the provision of quality education. However, these norms and the funding practices of PEDs are not yet based on a strict equitable cost per learner.

Non-teaching personnel at school level

35. The allocation of non-teaching staff to schools, including administrative and support staff, is extremely uneven. The provision of such personnel has been severely lacking in historically disadvantaged and small schools. Inequalities in the provision of such staff members is almost certainly associated with major inefficiencies in schools which serve poor communities.
36. The Minister of Education does not have responsibility for determining norms for the provision of non-educator personnel, including non-teaching personnel at school level. At present, such responsibility lies with provincial governments.
37. Nevertheless, the Ministry of Education is of the view that there is a clear case for norms to be established that will regulate the post provision of school-based non-teaching personnel on an equitable basis. The present inequalities must be phased out. The level of provision of non-teaching personnel at schools should, over time, approximate to educationally defensible and cost-effective per learner ratios for different categories of schools and staff members.
38. The Ministry will undertake further work on this matter, in consultation with PEDs, other state departments, and labour unions.

Targeting expenditure for redress, equity and quality

39. Effecting redress and equity in school funding, with a view to progressively improving the quality of school education, within a framework of greater efficiency in organising and providing education services, are matters of urgent priority for the Ministry of Education. The Preamble to the South African Schools Act, 1996 states that:

“ . . . 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 . . . ”

40. To achieve these objectives in a systematic manner requires new systems of budgeting and spending for schools.
41. In terms of our Constitution and the government’s budgeting procedure, the national Ministry of Education does not decide on the amounts to be allocated annually for provincial education departments. This is the responsibility of provincial governments and legislatures, which must make appropriations to their education departments from the total revenue resources available to their provinces. Thus, each province determines its own level of spending on education, in relation to its overall assessment of needs and resources.
42. It follows that national norms for funding schools cannot prescribe actual minimum amounts in Rands to be spent per learner, however desirable that might be.
43. From the 1998/99 financial year, the national and provincial budgets have been prepared within the MTEF, which enables government outlays to be planned on a three-year rolling basis.
44. An important assumption underlying these national norms is that the national and provincial levels of government will honour the state’s duty, in terms of the Constitution and the SASA, to progressively provide resources to safeguard the right to education of all South Africans. However, educational needs are always greater than the budgetary provision for education. To effect redress and improve equity, therefore, public spending on schools must be specifically targeted to the needs of the poorest. This will apply to both the General Education (grades 1 – 9) and the Further Education and Training (grades 10 – 12) phases.

Fee charging and exemption policy in public schools

School fees and equity

45. The SASA imposes a responsibility on all public school governing bodies to do their utmost to improve the quality of education in their schools by raising additional resources to supplement those which the state provides from public funds (section 36). All parents, but particularly those who are less poor or who have good incomes, are thereby encouraged to increase their own direct financial and other contributions to the quality of their children’s education in public schools. The Act does not interfere unreasonably with parents’ discretion under the law as to how to spend their own resources on their children’s education.
46. Ironically, given the emphasis on redress and equity, the funding provisions of the Act appear to have worked thus far to the advantage of public schools patronised by middle-class and wealthy parents. The apartheid regime favoured such communities with high-quality facilities, equipment and resources. Vigorous fund-raising by parent bodies, including commercial sponsorships and fee income, have enabled many such schools to add to their facilities, equipment and learning resources, and expand their range of cultural and sporting activities. Since 1995, when such schools have been required to down-size their staff establishments, many have been able to recruit additional staff on governing body contracts, paid from the school fund.

47. Poor people, on the other hand, especially in former homeland areas, have contributed a disproportionate share of their incomes over many decades to the building, upkeep and improvement of schools, through school funds and other contributions, including physical labour. All too many schools in poor rural and urban working-class communities still suffer the legacy of large classes, deplorable physical conditions, and absence of learning resources, despite a major RDP National School Building Programme, and many other projects paid directly from provincial budgets. Yet the educators and learners in poor schools are expected to achieve the same levels of learning and teaching as their compatriots.
48. Such contradictions within the same public school system reflect past discriminatory investment in schooling, and vast current disparities in the personal income of parents. The present document addresses these inequalities by establishing a sharply progressive state funding policy for ordinary public schools, which favours poor communities.

Parents' responsibility

49. All public school governing bodies are obliged by the Act to support their schools financially as best they can. The Act provides that a governing body must
"take all reasonable measures within its means to supplement the resources provided by the State in order to improve the quality of education provided by the school to all learners at the school" (section 36).
50. However, in fulfilling their obligation to raise supplementary resources, governing bodies are not required to charge school fees. Whether or not to charge school fees is a matter for the parents of the schools.⁵ The Act links the question of fees to the budget of the school, which the governing body must present to a general meeting of parents for approval. The intention is that the governing body will give the parents all necessary information about the school's income, from the state and other sources, and its educational needs. Parents will then decide what additional revenue the school needs for educational purposes, and how that revenue is to be raised, including whether or not fees are to be charged.
51. At the parents' general meeting, any resolution that proposes fee payment must include the amount of fees to be charged, and "equitable criteria and procedures for the total, partial or conditional exemption of parents who are unable to pay" the fees (section 39(2)). In making its decisions, therefore, the parent body must take into account, as far as is practicable, the financial circumstances of all the parents, taken as a whole. The Ministry expects that more affluent, or less poor, parent communities will contribute proportionally more, because state funding per learner in their schools will be less than in schools serving poorer communities.
52. A parent body, taking into account its circumstances, may decide to charge no fees at all, in which case the question of exemptions does not arise. Another parent body may decide to set a small fee, so that no parent needs to be exempted. In most public schools where parents decide to charge fees, parents' ability to pay fees may vary considerably. In such cases, difficult decisions must be taken about the level of fees, and an equitable threshold for exemption from fee-paying.
53. Parents of learners at a public school, therefore, carry serious responsibilities with respect to the determination of a school's budget, its sources of revenue, and (if fees are charged) the level of fees and the conditions for exemption of parents from fee paying. Furthermore, if a majority of parents vote in favour of school fees, each parent is responsible for paying the required fee, unless an exemption has been granted. But no learner can be denied admission, or otherwise discriminated against, on grounds of the parent's inability or failure to pay fees.
54. The Ministry of Education monitors all aspects of the implementation of the South African Schools Act, 1996, in order to assess to what extent its objectives are being met. In particular, the effect of the new budget allocation policy on the current inequalities in school provision, the levels of fee charging by public schools, and the uses to which such income is put, are all important matters of legitimate concern to the Ministry and the public, which must be kept under review.

State subsidies to independent schools

The independent school sector

55. Independent schools vary substantially in age, size, location, socio-economic status, facilities, staff, mission, governance, representivity, religious or secular identity, community service, cost structure, endowments, financial viability, rates of fees, and quality of teaching and learning. It is impossible to generalise about them. Many deliver valuable educational services and have loyal clienteles. Others deliver services of low quality and exploit the ignorance of parents. Some pride themselves on conservative principles of governance and teaching. Others value innovation. Some have an inward focus. Others have a deliberate mission of social concern and professional co-operation with public schools serving the poor.
56. Independent school enrolment amounts to about two percent of total school enrolment nation-wide. This percentage may be increasing. Within provinces, independent school enrolments vary from a fraction of a

5 Section 1(xiv) of the Act defines "parent" as –

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

percent of total school enrolment, to several times the national average. If all learners were to transfer to public schools, the cost of public education in certain provinces might increase by as much as five percent.

57. The practice of granting state subsidies to registered independent schools (previously known as private schools) is well established in South Africa. Subsidies have typically been calculated as a defined fraction of the cost per learner in the public school system. Before 1994, independent schools were required to register with the respective education departments of the apartheid state, among which the cost per learner was grossly unequal. Therefore, state subsidies to independent schools reflected the pattern of race-based inequality in the public (state and state-aided) school systems under apartheid.
58. Race-based inequalities in subsidies to independent schools have been eliminated since 1994. Since then, subsidy levels have differed somewhat by province. But extreme pressure on the non-salary components of provincial education budgets, especially in 1997/98 and 1998/99, has resulted in a sharp decline in the per learner value of independent school subsidies, and considerable uncertainty as to the future trend of independent school funding by provincial education authorities.
59. Fees in independent schools have tended to rise in response to subsidy cuts. Some independent school proprietors have applied for schools to be taken over by provincial education departments, as public schools on private property, in terms of section 14 of the Act. PEDs have been slow to comply.
60. The Government is grappling with the necessity to stabilise and reprioritise provincial education budgets, in terms of the Medium Term Expenditure Framework. The serious reality underlying the new policy for school funding is that, for the foreseeable future, provincial education budgets will be extremely constrained, especially with respect to non-personnel allocations, out of which subsidies are paid.

Subsidy policy

61. The national Ministry of Education cannot determine subsidy levels in monetary (Rand) terms because, under our Constitution, budget decisions of that kind are made within provincial governments. For this reason, the national norms for independent school subsidies are expressed as criteria of eligibility for subsidy, and principles of allocation. These criteria and principles are consistent with the values underlying the Constitution and the Act.
62. The Ministry of Education bases its subsidy policy on the fiscal argument, and on social grounds. The fiscal argument is as follows. The state has a constitutional and statutory responsibility to provide school education to all learners. However, the right of reputable, registered independent schools to exist is protected by the Constitution, and the payment of subsidies to them is not precluded. Such independent schools perform a service to their learners that would otherwise have to be performed by the provincial education departments. Public subsidies to such schools cost the state considerably less per learner than if the same learners enrolled in public schools. It is, therefore, cost efficient for the state to provide a subsidy.
63. In South Africa, the fiscal argument is an important but not a sufficient basis for national policy. Given the extreme inequalities and backlogs in the provision of public education and the pressure on public education budget allocations, the national policy on public subsidies to independent schools must serve explicit social purposes.
64. Subsidy allocations, therefore, must show preference for independent schools that are well managed, provide good education, serve poor communities and individuals, and are not operated for profit. Such criteria must be capable of measurement according to objective, transparent, and verifiable criteria.

3 Implementation

Developing capacity for intensive data use

Data needs

65. Most PEDs manage budgets of many billions of Rands. Targeting redress, and improving equity in public funding of public schools in an efficient manner, requires the DoE and PEDs to undertake serious budgetary and financial analysis, and to use information intensively.
66. In order to make progress towards equity in school funding, each provincial education department must –
 - (a) use relevant provincial data much more intensively in budgeting and planning decisions;
 - (b) develop the necessary data systems to guide planning and allocations; and
 - (c) be able to demonstrate to the DoE that progress is being made.
67. The SASA provides that all public schools are budget and cost centres (sections 37, 38 and 42). These norms and standards therefore require the use of certain data that have not previously been necessary in budgeting for public schools.
68. Schools must provide information to provincial education departments (section 59 of the Act). On their part, departments must ensure that information is received on time from schools, so that the necessary analysis can be undertaken, and resource allocation decisions made on time.
69. PEDs must annually provide public schools with sufficient information so that the schools' governing bodies can develop their budgets as required by section 34 of the Act. The recommended date for the provision of such information to public schools is 30 September each year.
70. Initially, the budget information provided to schools by PEDs may be indicative, rather than fully detailed. In time, such information should include the current year's expenditures at each school, and the guideline

amount of the total allocation by the provincial education department to the school for the coming school year, including all guideline personnel costs. Such costs should be expressed both in absolute and per learner terms. This is necessary so that schools become accustomed to thinking about their *total* costs per learner. The aim is to improve each PED's accounting and information processing systems so that each school's costs for personnel and non-personnel can be identified by item.

71. Comprehensive data on schools have been created through the national School Register of Needs survey, whose databases have been incorporated in provincial data systems, and the new, provincially-based national Education Management Information System (EMIS). The 1996 national Census reports will provide reliable and up-to-date demographic information. Provincial education departments may have access to other data sources, and the national Department will augment these wherever possible.
72. The MTEF provides a co-operative mechanism for improving the accuracy of budget-related data, and undertaking relevant analytic studies. The DoE and PEDs are active participants in these processes.

Skill requirements

73. To attempt to accomplish the new tasks without high-level skills is absolutely unrealistic, especially given the size of provincial education budgets. Each provincial education department must, therefore, acquire the services of:
 - (a) At least one, and preferably several, highly-skilled strategic financial analysts who understand the use of data-intensive planning and analysis techniques in public financial management. If not already deeply familiar with education issues and policies, they must be willing to make a careful study and acquire the necessary knowledge.
 - (b) Several high-level accounting experts who understand the national computerised public financial and management information systems. Both accounting expertise and strategic financial management expertise are necessary if PEDs are to apply the norms satisfactorily.
 - (c) Several highly-skilled information systems experts to improve the functioning of the education databases (including the EMIS). This will include the decentralisation or devolution of such functions and the training of regional and district officers.
 - (d) At least one senior statistician or applied numerical analyst.
 - (e) At least one person skilled in educational planning and forecasting techniques.
 - (f) Computer systems and databases.
74. Provinces that have difficulty making the necessary appointments should explore:
 - (a) the use of existing donor-funded arrangements with consulting firms and NGOs;
 - (b) secondments from other public sector organisations (e.g., financial or scientific);
 - (c) secondments from the private sector;
 - (d) consultancies or other contracted services; and
 - (e) the use of national DoE personnel with financial and EMIS expertise, to assist with the induction of the new, high-level analysts.
75. Each provincial education department should plan the work of such specialists as follows:
 - (a) Assess the tasks that must be accomplished, taking into account financial regulations, sound financial management procedures, and the national funding norms described in this document.
 - (b) Proceed to appoint, or cause to be seconded, or out-source with own or donor funds, persons with the skills listed above to undertake the tasks identified in step (a).
 - (c) Clarify the relationship of the new specialists to existing work units. Lines of accountability and working relationships must be very clear.
 - (d) Ensure that the new specialists have the necessary operating budget, status, and support personnel, such as data entry personnel, to get the work done.
 - (e) Ensure that they interact with colleagues in similar posts in other provinces and with national DoE officials working on these tasks, as a means of assisting with their familiarisation with the policy environment.
 - (f) Ensure that they have a written Scope of Work or task description. Draft lists of technical tasks consistent with the funding norms and other ongoing financial management tasks are available from the national DoE.
 - (g) The Scope of Work must include budgeted plans for financial capacity building in provincial, district and other offices of the PED (depending on their actual responsibilities), school management teams and SGBs.
76. A provincial education department that is not technically ready to apply the norms in full, will be expected to present to the national DoE a detailed management plan for the acquisition of the necessary capacity to implement. This plan must be consistent with paragraphs 73 – 75 of this document. The national DoE will assist PEDs to develop the capacity they need.
77. It will take some time for each PED to achieve the required capacity, and to enable their specialists to become fully conversant with the new requirements. This means that the national norms must be applied in

a progressive manner while provincial education departments are developing their data systems, and their capacity to apply them.

Implementing the norms

78. Certain tasks have priority, and must be undertaken or continued even before the norms and minimum standards come into effect. These are:
- creating a computerised method of tracking and documenting the targeted allocations and subsidies, according to the norms;
 - creating appropriate accounting and financial mechanisms to allocate and track funds in terms of the norms, and to inform schools of their allocations as required by section 34 of the Act;
 - helping SGBs to understand how to advise parents on whether to set fees, to calculate the level of fees, to determine exemption criteria and procedures, and to handle appeals (SASA, sections 38 – 40).
79. Analytical and budgetary preparation for January 2000 must start not later than the beginning of the school year 1999. Figure 1 outlines key aspects or functions of the norms that pertain to the school and fiscal years, or that are ongoing. The entries are presented in approximate chronological order during the year, except for the “ongoing” column. There is no time-wise correspondence across the three lists. Details and explanations of the activities listed in Figure 1 may be found in Part 2 of this document.

Figure 1. Sequencing the application of the norms during the school and state financial years

<i>School Financial Year</i>	<i>State Financial Year</i>	<i>Ongoing</i>
1. Determination of Rand value of subsidies to independent schools (term by term) for current school year	1. Availability of guideline preliminary and final budgetary information which can be used to determine school-level budgets and inform schools.	1. Ensure that personnel, teams and systems needed to accomplish the task in this table and in these norms are available.
2. Determination of which public schools will be able to receive direct transfer payments for certain items for next school year.	2. Availability of budgeted funds.	2. Improve data bases for targeting of public schools according to poverty and school conditions criteria.
3. Targeting of public schools according to targeting criteria for next school year and development of master targeting list.		3. Improve criteria for determining which public schools receive direct transfer payments for certain items.
4. Provide guideline budget information to public schools on their level of financial support for next year, including personnel, other directly-provided items, and transfer payments.		4. Improve financial and physical planning for new construction requirements, including analysis for targeting priorities.
5. Determination of percentage subsidy levels for independent schools for next school year.		5. Improve accounting, financial, and EMIS tracking methods to ensure that individual school costs and personnel allocations can be tracked, cross-indexed and made more accurate.
6. Fee determination and exemptions at public schools for next school year. (The PED is not necessarily directly involved in these processes, but bears a responsibility of supervision and ensuring that governing bodies are well prepared.)		6. Provide financial management training to governing bodies and school leadership.
		7. Ensure audited status of public schools.
		8. Ensure well-functioning process of appeal from parents over school fee exemptions.

PART 2

4 The public funding of public schools

Cost allocation categories

80. These norms apply to:

Capital cost allocations

- (1) new classroom and other construction

Recurrent cost allocations

- (2) immovable capital improvements and repairs
 - (3) recurrent costs easily separated from other costs
 - (4) other recurrent and minor capital equipment costs, and
 - (5) hostel costs.
81. In the discussion below, each cost allocation category is linked to the current categories under which costs are reported to the national DoE. In this way, budgeting, planning, and cost-reporting categories will correspond with one another.

How the norms should be applied

82. The norms should be applied as follows:
- (a) All the categories below should be budgeted and analysed separately for an initial estimate, since they must all fit within an overall provincial education budget.
 - (b) After initial estimates for the separate categories have been achieved, their overall educational coherence needs to be assessed, within the total allocation.
 - (c) Some of the categories may need to be cut and others increased. In that case, however, the procedure for budgeting within each of the five items must be respected.
83. If a provincial education department wishes to use a different methodology that serves the same purposes, the HOD must be able to demonstrate to the national DoE's satisfaction that it will have an equivalent effect.

Capital cost allocations

(1) *New classroom and other construction allocations*

(This cost category includes the items currently reported to the national DoE under "Land Acquisition" and "New buildings and other land improvements".)

Scenario planning for new school construction

84. "New classroom and other construction allocations" includes provision for water, electricity, sewage and telephone services on site, and connections to mains services where these are provided to the school site.
85. Provincial education departments must budget for this category in terms of their overall budget for education and for schools, and the relative flexibility or rigidity of other budget items.
86. The MEC for Education of each province must ensure that there are enough school places to enable each child living in the province to attend school during the compulsory phase (section 3(3) of the Act). If an MEC cannot comply with this mandate, he or she must take steps to remedy the situation and must report annually to the Minister of Education on progress made (section 3(4) of the Act).
87. In recent years, all PEDs have provided less funds for capital development, which reflects the severe pressure on their non-personnel allocations. The School Register of Needs survey has documented the extent of the backlogs of physical facilities in all provinces. These are particularly acute in provinces that carry the legacy of former homelands and so-called independent states. The 1998 MTEF Education Sectoral Review Team report acknowledges that such provinces are unable to provide sufficient funds to make inroads in their accumulated school construction needs. The team recommends that further work on this matter must be undertaken as a priority. The Departments of Education and Finance are working on the problem.
88. Despite the current shortage of funds for capital development, as an aid to planning and decision-making, each PED must:
- (a) maintain an accurate, prioritised, annually updated database of school construction needs, and
 - (b) undertake annually updated long-term projections of new school construction targets and funding requirements, based on these norms.
89. Part of the physical planning framework should include an analysis of the cost and educational need for schools that are smaller than is normally desirable. If they are very close to each other, and there are no economic or educational grounds for their separate existence, the options of merger or closure (in terms of section 33 of the Act) should be considered. In the event of a merger or closure, the provincial education department must ensure that all affected learners have access, on a reasonable basis, to alternative public school accommodation.
90. The scenario planning should initially estimate the requirements to eliminate backlogs and provide sufficient school places by the target year 2008. This must form part of the analytical work required for the MTEF, and should be adjusted annually in the light of new data and performance in new school construction. Depending on the availability of funds each year, and construction performance, the plan may require acceleration or deceleration.

Target list

91. The construction of new schools or additional classrooms and learning facilities should be targeted to the neediest population. In this expenditure category, "need" is defined in terms of –
 - (a) lack of current schools, or
 - (b) overcrowding of existing ones.
92. No national norm for "crowding" is given in this document. Each PED must objectively determine where to site new schools and classrooms based on provincial norms and verifiable crowding and distance indicators (need indicators) developed from available data, including the School Register of Needs, Census data, and the department's own EMIS.
93. Need indicators should refer to the proportion of children who are out of school or are in over-crowded schools. Preference should be given to areas where –
 - (a) children are out of school and there is no uncrowded local or nearby school; or
 - (b) all eligible children are enrolled in school but the local or nearby schools are crowded; and
 - (c) an analysis of population movements demonstrates that the population concerned is resident and permanent.
94. Using these criteria, the PEDs must develop a ranking of geographical areas from neediest to least needy, based on the numbers of children out of school or in existing crowded schools. Backlogs must be eliminated by starting with the neediest, most crowded areas, and proceeding as quickly as possible down the list of priorities.
95. In the allocation of new school construction funds, preference must be given to –
 - (a) facilities serving the compulsory education grades (grades 1–9) in order to ensure that all eligible learners have school places as soon as possible, and
 - (b) extensions to existing schools, rather than new schools, except where extensions would result in schools that are too large to be pedagogically sound, or would otherwise be uneconomical, impractical, or undesirable on educational grounds.

Hostel facilities

96. New hostel facilities may be built if the following criteria are satisfied:
 - (a) the crowding criteria in paragraphs 91–93, for construction of new schools or extensions; and
 - (b) the transport time and poverty criteria in paragraph 122.
97. Other criteria may be used, provided that they give the same results in terms of equity and efficiency. Provincial education departments may be required to verify such results, in order to demonstrate that they have complied with this national norm for hostel construction.

Recurrent cost allocations

Targeting schools on the basis of need

98. In principle, it would be desirable for all recurrent funding of ordinary public schools, including personnel allocations, to be driven by a simple per learner formula that favours the poor. This would be consistent with equity, efficiency, and the vision of schooling implicit in the SASA and Education White Papers 1 and 2.⁶ However, another approach is necessary because social conditions and school conditions are massively unequal, provincial administrations and school governing bodies have widely varying capacities, and provincial governments have different fiscal competencies.
99. Allocations for recurrent cost items must be targeted as far as possible on the basis of need, determined according to the condition of the school and the relative poverty of the school community, using the "Resource Targeting Table" (Figure 2 below).
100. Each PED is required to produce a "resource targeting list" of all schools in its province, sorted on the conditions at the school and the poverty of the community served by the school, so as to produce five groups of schools. These will correspond to the "school quintiles, from poorest to least poor" in column 1 of the table. Resource allocation will be based on this list.
101. The resource targeting list will comprise all ordinary public schools in the province sorted by "need" or "poverty". Two equally weighted factors will be used to rank the schools:
 - (a) *The physical condition, facilities and crowding of the school.* Using the School Register of Needs data, provincial education departments may create indices based on the range of physical facilities at the school, learner:classroom ratio, the overall condition and need for repairs, availability of basic services. This factor is weighted 50%.
 - (b) *The relative poverty of the community around the school.* Using Census, household survey or other data, provincial education departments may create indices based on, for example, the proportion of households with electricity and piped water in the community served by the school, the level of education of the parents served by the school, and other similar criteria. This factor is weighted 50%.

⁶ *Education and Training in a Democratic South Africa: First steps to develop a new system* Education White Paper 1 (Pretoria: Department of Education, February 1995), Notice 195 of 1995, and *The Organisation, Governance and Funding of Schools* Education White Paper 2 (Pretoria: Department of Education, February 1996) .Notice 130 of 1996.

Figure 2. Resource targeting table based on condition of schools and poverty of communities

School quintiles, from poorest to least poor	Expenditure allocation	Cumulative percentage of schools	Cumulative percentage of non-personnel and non-capital recurrent expenditure	Per learner expenditure indexed to average of 100
Poorest 20%	35% of the resources	20%	35%	175
Next 20%	25% of the resources	40%	60%	125
Next 20%	20% of the resources	60%	80%	100
Next 20%	15% of the resources	80%	95%	75
Least poor 20%	5% of the resources	100%	100%	25

102. Having listed the schools in rank order, PEDs must then divide the list in five quintiles, from poorest to least poor. The distribution by quintile will determine the per learner allocation, in terms of the Resource Targeting Table above. Thus, allocations will be made on a variable per learner basis that favours the poorer segments of the population. The neediest and largest schools will get priority in funding.

103. The same Resource Targeting Table is to be used by all PEDs. However, each PED's resource targeting list need not be used mechanically. There are four ways in which variations to the list may be made:

- (a) *Naturally-occurring breaks.* PEDs (must) [sic] are urged to take advantage of naturally-occurring breaks in the distribution that are close to, but do not exactly coincide with, the quintile break-points (20%, 40%, etc.). For example, if schools in the 17th percentile are distinctly poorer than those in the 18th, the break-point need not be the 20th percentile, but may be the 17th. The same might apply to any break points around the 40th, 60th, and 80th percentiles. If slightly different break points are used, the relative expenditures per learner in the various quintiles may differ somewhat from those shown in the last column of the table.
- (b) *Homogeneous conditions.* If the distribution makes it practically impossible to distinguish between two quintiles, the provincial education department is encouraged to consider making the same per learner allocations to the two quintiles. However, the general progressivity of the table must be respected.
- (c) *Special circumstances.* It is inevitable that special circumstances will apply in a number of schools, which will warrant their being reassigned to another quintile. Governing bodies may also apply for such a reassignment and provincial education departments must establish a fair and objective administrative mechanism for considering such requests and deciding upon them.
- (d) *Further subdivisions.* It is unlikely that enough information will exist to enable a PED to create further subdivisions, particularly in the poorest two quintiles. However, if sufficient information is available, a provincial education department may proceed to create further subdivisions, as long as the overall progressivity of the table is respected.

Responsibility of school governing bodies for managing recurrent allocations

104. The SASA makes provision for public school governing bodies to become progressively more responsible for managing aspects of recurrent expenditure. Section 21 provides that, subject to the Act, a school governing body may apply in writing to the Head of Department to be allocated any of the following functions:

- (a) maintain and improve the school's property, buildings, grounds, and hostel
- (b) determine the extra-mural curriculum and the choice of subject options in terms of provincial curriculum policy
- (c) purchase textbooks, educational materials or equipment for the school
- (d) pay for services to the school, or
- (e) other functions consistent with the Act or applicable provincial legislation.

105. The HOD must approve a governing body's application for section 21 functions, conditionally or unconditionally, unless the SOB does not have sufficient capacity to undertake the functions effectively.

106. An MEC may determine that some governing bodies may exercise one or more functions under section 21, even if they have not applied for them. This is permitted only if the governing bodies have the capacity to perform the functions effectively, and there is a reasonable and equitable basis for allocating the functions to them (section 21(6) of the Act).

107. In order to guide the actions of the MEC, the HOD and an affected SGB, it is necessary to establish an objective test of governing body capacity in terms of section 21 of the Act. Provincial education departments must, therefore, devise a managerial capacity checklist, for approval by the HOD. The checklist will include items relating to the capacity to handle and account for public funds, the capacity to meet ongoing contractual obligations to suppliers of goods and services, and the ability to make financial decisions that are educationally sound. The criteria used in developing such a list must be transparent and public.

108. Each provincial education department must develop a "section 21 list" of schools that have been allocated functions and may carry out their own procurements in this manner, and a list of schools that are not yet

section 21 schools. The lists must be revised each year. The section 21 list is expected to grow as more schools acquire the requisite capacity. However, a school may be removed from the list if the governing body proves unable to undertake the additional functions, as provided in section 22 of the Act.

109. *Schools on section 21 list.* Schools on the section 21 list will receive a lump-sum, per-learner transfer for the payments for which they have responsibility, in accordance with the Resource Targeting Table. Such transfers will be smaller for better-off schools than for poorer schools. If a school's bills for these services or items are lower than the lump-sum transfer, the SGB may allocate the transferred amount to the purchase of other education-related items. In general, such SGBs may vary the proportion of the funding devoted to such goods and services according to their own perception of education needs, taking provincial policy into account. Such expenditure must of course be accounted for.
110. School governing bodies that are on the section 21 list may deal directly with suppliers and contractors for the relevant budgeted items in accordance with standard procurement procedures. They must keep documents as evidence of correct dealing with such suppliers and contractors, and records of how the materials and services were used, and produce such documents or records at the request of officials from the PED and for audit purposes.
111. *Schools not yet on section 21 list.* Schools that are not on the section 21 list, and have therefore not been granted approval to procure their own goods and services, must procure their goods and services according to existing departmental arrangements. However, the PED will exercise administrative controls to ensure that the cost per-learner is maintained at a level consistent with these norms, the Resource Targeting Table at Figure 2, and the budgeted allocation for each applicable item.
112. Such schools must be informed of their school's budget, even if it is a "paper" budget, as explained in this document. This will prepare them to understand actual costs of running their school, and improve their capacity to join the section 21 list in due course.
113. In the light of the foregoing, PEDs must allocate recurrent funds to the following cost items, on the basis of the Resource Targeting Table, with the provisos indicated below. Schools on the section 21 list must receive their per learner allocations for each cost item, and be accountable in terms of the Act for their expenditures on goods and services in terms of these items.

(2) Immovable capital improvement and repair costs

(This cost category is currently reported to the national DoE under "Maintenance of Buildings")

114. Allocation of this category of costs must be made according to the Resource Targeting Table and the section 21 list, where applicable. The following exceptions to the general allocation rules apply:
 - (a) *Emergency repairs.* Emergency repairs which endanger the health or safety of persons at or associated with the school, or which might imply large future expenditures if not corrected immediately, must be prioritised in terms of their relative danger or future cost. The Resource Targeting Table will not apply. In general, the section 21 list will not apply.
 - (b) *Routine maintenance and cleanliness.* Functions such as cleaning, removal of litter, maintenance of grounds, minor painting and repairs, and replacement of light-bulbs, will be the responsibility of the school community, regardless of the level of poverty of the community.
115. Thus, non-routine and non-emergency capital improvements and repairs will be allocated according to the section 21 list and the Resource Targeting Table. These will probably constitute the majority of the allocations in this category.

(3) Easily separable recurrent costs

(This cost category is part of what is currently reported to the national DoE under "Supplies and Services – Other")

116. Allocation of these items must be made according to the Resource Targeting Table and the section 21 list, where applicable.

(4) Other recurrent and small capital equipment costs

(This cost category is currently reported to the national DoE under "School Books", "Stationery", "Equipment," and "Media Collections")

117. The purpose of this allocation is to provide all learners with a minimum package of learning materials (books and stationery) equivalent to at least R100 per learner. However, if the total provincial budgetary allocation for this item is insufficient, the PED must ensure that priority is given to poorer learners according to the Resource Targeting Table. In this case, the funding per learner remains as per the cost of the basic package, but priority is given to schools highest in the poverty rank order.
118. The allocation per learner of R100 should be allowed to increase with the national Consumer Price Index or the "reading matter" component of this index, whichever is higher.
119. The norms relating to schools on the section 21 list, also apply to this category of recurrent expenditure.

(5) Hostel costs

(This cost category is currently reported to the national DoE under "Supplies and Services – Other")

120. **Records.** Schools with hostels must keep a separate account for all recurrent costs associated with hostels, and a record of the number of learners staying at each hostel. Such accounts and records will be subject to unannounced audits by officials of the PED.
121. **Hostel fee.** The school must charge each learner staying in the hostel a hostel fee equal to the average running cost per learner in the hostel. No blanket cross-subsidisation of hostel costs from fee income is permitted. However, if the SGB wishes to exempt particular learners from hostel fees, it may do so by recording the necessary book-keeping transfer.
122. **Hostel subsidy.** The PED must, in turn, set aside a budget item for hostel subsidies. Schools with hostels will be paid pro rata out of this budget for each of their learners –
- (a) whose transport time to the school is greater than 1.5 hours;
 - (b) if there are no available school places near the learner's parents' place of residence; and
 - (c) whose parents cannot afford the per-child hostel cost.
123. The PED may adjust these criteria in order to ensure that the subsidy per learner is meaningful, while recognising that this may decrease the number of learners thus covered, requiring a tightening of the targeting criteria.
124. Subsidies for hostel costs incurred by learners with special education needs enrolled in ordinary public schools will be provided by the provincial education department in accordance with the overall funding approach used for such learners.

5 Fee exemptions in public schools

Introduction

125. The SASA requires the Minister of Education to make regulations about the equitable criteria and procedures for exemption of parents who are unable to pay school fees (section 39(4)).⁷ The regulations reflect the national norms in this document, and apply uniformly in all provinces. PEDs are advised to make the regulations available to all public school governing bodies.
126. Governing bodies must notify all parents in writing about the equitable criteria and procedures for exemption, in sufficient time for the general meeting of parents at which the budget is considered. The regulations are to be interpreted within the framework set by chapter 4 of the Act, and with reference to these norms.
127. Since fee revenue is determined both by the fee level and by the number of fee payers, the norms relating to exemption are designed to assist parent bodies to make appropriate and equitable decisions about the fee level and the exemption thresholds.

Exemption criteria

128. If a parent meeting in terms of section 39 of the Act decides to charge annual school fees, the following criteria for exemption from fee paying must be observed, subject to the Regulations.

Full exemption

129. Subject to Regulation 5(4), if the combined annual gross income of the parents is less than 10 times (10X) the annual school fees per learner, the parent qualifies for full exemption.
130. A person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety, qualifies for full exemption.

Partial exemption

131. Subject to Regulation 5(4), if the combined annual gross income of the parents is less than 30 times (30X) but more than 10 times (10X) the annual school fees per learner, the parent qualifies for partial exemption.
132. Partial exemption may be granted on a sliding scale. The criteria for applying the scale of partial exemptions must be determined by the parents at the general meeting referred to in section 38(2) of the Act, or by the governing body of the school if the general meeting of parents so decides. Such criteria could be intermediate income multiples between 30X and 10X. Thus, for example, 50% exemption could apply at the 20X mark.

No exemption

133. Subject to Regulation 5(4), if the combined annual gross income of the parents is more than 30 times (30X) the annual school fees per learner, the parent does not qualify for exemption.

Conditional exemption

134. The criteria for making a conditional exemption must be related to special circumstances affecting a parent's ability to pay the fee, or to the need to acquire relevant information about a parent's circumstances.

⁷ The Exemption of Parents from the Payment of School Fees Regulations, 1998, are published in G.N. 1293 *Government Gazette* dated 12 October 1998.

Other considerations

135. A school governing body must make it possible for parents to pay by instalment.
136. Parents whose circumstances change for the worse during the school year may apply for partial or total exemption at any time during the year, but fees already paid need not be reimbursed.
137. Parents who are partially or totally exempt, must advise the SGB if their circumstances improve to the extent that they are no longer eligible for the exemption granted to them. The SGB may amend or rescind the exemption on the merits of the parent's circumstances.
138. Nothing prevents a parent who is eligible for exemption from freely deciding to waive exemption. Such a decision must be communicated to the chairperson of the governing body in writing.
139. Nothing in these norms prevents a governing body from encouraging all parents, including fee-exempt parents, to render voluntary services to the school or to make voluntary contributions to the school fund in terms of sections 20(1)(h) and 37(2), respectively, of the Act.

Exemption procedures

140. The Regulations on exemption specify the procedures for:
 - (a) making an application for exemption
 - (b) consideration of an application by a school governing body
 - (c) alteration of a decision by a school governing body, and
 - (d) an appeal by a parent who is dissatisfied with a decision relating to exemption.

6 Subsidies to independent schools

Introduction

141. Every person has the right, in terms of the Constitution, to establish and maintain, at their own expense, an independent educational institution that does not discriminate on grounds of race, is registered with the state, and maintains standards that are not inferior to standards in comparable public educational institutions. This provision does not preclude state subsidies for such institutions (section 29(3) and (4)).
142. The SASA provides for the right of persons to establish and maintain an independent school, and for the registration of an independent school by the Head of Department, under conditions consistent with the Constitution. The Act enables the provincial MEC to grant a subsidy to a registered independent school, in terms of norms and minimum standards determined by the Minister of Education (sections 45 – 46, 48).
143. The norms that follow are the first uniform national norms for independent school subsidies. They are intended to provide a stable and principled basis for MECs in all provinces, to decide the eligibility for subsidy and the level of subsidies for registered independent schools.
144. The national norms apply uniformly in all provinces. However, a provincial MEC may vary them, so long as their intent and spirit is maintained. The Head of Department must consult the national DoE on this matter.
145. The following norms embody conditions of eligibility for subsidy, and funding criteria for allocating subsidies.

Conditions of eligibility

146. An independent school may be considered for subsidy if –
 - (a) it is registered by the PED;
 - (b) has made an application to the PED in the prescribed manner;
 - (c) has been operational for one full school year;
 - (d) is not operated for profit;
 - (e) is managed successfully according to a management checklist determined by the PED, as described in paragraph 149;
 - (f) agrees to unannounced inspection visits by officials of the PED; and
 - (g) has not been established in direct competition with a nearby uncrowded public school of equivalent quality.
147. In addition to the conditions in the previous paragraph, the following conditions apply to independent secondary schools. A secondary school may be considered for subsidy if –
 - (a) its grade 12 pass rate is 50% or more of full-time candidates writing the examination in the prior year;
 - (b) the repetition rate in grades 11 or 12 is not more than 20%; and
 - (c) it does not engage in practices that are calculated to artificially increase the school's grade 12 pass rate.
148. The Head of Department may vary conditions (a) or (b) in the previous paragraph, on good cause shown.
149. Each school requesting funding will be subject to a management checklist (which may be the same as, or based on, the checklist referred to in paragraph 107 above), which will be approved by the HOD after consultation with representatives of independent schools. This checklist will determine whether the school

is able to manage public funding responsibly. It must include indicators of sound management, such as whether the school keeps proper admissions and attendance registers, and maintains fee payment and other financial records. To be eligible for funding a school must subscribe to the checklist, and must allow unannounced inspections by officials of the PED, to ensure that the practices in the checklist are up-to-date. Refusal to allow an unannounced visit will result in forfeiture of further funding.

Funding criteria

Subsidies related to fees

150. In what follows, the level of annual non-discounted fees⁸ charged at an independent school as of January 1998 will be taken as an indicator of the socio-economic status of a school's clientele.
151. The Ministry's policy is to enable subsidies to be granted in relation to the socio-economic circumstances of an eligible school's clientele. The level of school fees charged by an independent school is taken as an objective, publicly-available criterion that correlates well with the socio-economic circumstances of the school's clientele. Subsidy levels are therefore related to fee levels on a five-point progressive scale, as shown in Figure 3 below. Eligible schools charging the lowest fees will qualify for the highest level of subsidy. Schools charging the highest fees, in excess of 2.5 times the provincial average cost per learner in an ordinary public school, are considered to serve a highly affluent clientele, and no subsidy will be paid to them from public funds.

Figure 3. Allocation table for independent school subsidies

Fee level	Subsidy level
1. Up to 0.5 times (50% of) the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 60% of the provincial average cost per learner in ordinary public schools.
2. Higher than 0.5 and up to 1.0 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 40% of the provincial average public cost per learner in ordinary public schools.
3. Higher than 1.0 and up to 1.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 25% of the provincial average public cost per learner in ordinary public schools.
4. Higher than 1.5 and up to 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	Subsidy equal to 15% of the provincial average public cost per learner in ordinary public schools.
5. Higher than 2.5 times the provincial average public cost per learner in ordinary public schools the previous fiscal year.	No subsidy.

152. PEDs will need to establish a procedure to deal with borderline situations. For example, if the average public school cost in a province is R2000, and an independent school charges fees of R1 050, it will just miss being in the first (highest subsidy) category, even if its clientele is not different from that of a school charging, say, R950. PEDs may use the following criteria, in addition to any other relevant information submitted by the school, to judge whether a school falls into a certain category:
- (a) schools in the first (highest subsidy level) category would typically be located in townships, deep rural areas, or informal settlements.
 - (b) schools in the second category would typically be in inner city or transitional suburban areas, catering largely to township and informal sector clientele or the urban lower middle class.
 - (c) schools in the third and fourth categories would be middle and upper middle class schools with good facilities with a local clientele.
 - (d) schools in the fifth category would be well established schools with excellent facilities and a national or regional clientele and very low learner:educator ratios.
153. Subsidies may be paid only in respect of grades 1 – 12. No other grades are eligible for subsidy for the time being. If the fee structure varies by grade, the enrolment-weighted average of the fees in all relevant grades will be taken as representative of each level.
154. The fee levels applying to primary and secondary schools may differ. For purposes of these norms, "primary" comprises grades 1 to 7, and "secondary" comprises grades 8 to 12. The HOD may recommend

⁸ For the purpose of this national policy, "fees" means any form of payment for registration and tuition made by a parent in relation to a learner's enrolment or attendance at an independent school. It includes the present annualised value of any past or future once-off payment, using a market rate of interest for investments of equal certainty. It also includes any other form of payment by a parent, or equity in the school taken by a parent, as a form of fee payment equivalent. The highest level of fees normally charged at the school, as opposed to fees discounted for once-off payment, will be taken as representative. Additional costs associated with the normal course of instruction which learners are expected to follow are to be considered fees, even if they are not formally called fees. However, payments for extra items or services, or for school materials that are procured by the school instead of having to be purchased by the parent, are not to be considered fees, as long as the cost of such items is similar to their open-market value.

a subsidy, if it is deemed in the interest of the school and the provincial education department, when a school lowers its fees in order to qualify for the same percentage subsidy in both primary and secondary levels.

Subsidies in relation to PED budgets

155. The Ministry of Education is sensitive to the connection between the total cost of independent school subsidies and the overall budgetary position of a provincial education department. Recent reductions in the overall funds available for independent school subsidies because of urgent budgetary expediency, should not become de facto policy by default. At the same time, PEDs must have latitude to vary budgetary allocations between programme areas, in relation to the total funds at their disposal, and the priorities established in terms of national and provincial policies.
156. A PED may, therefore, alter the fee levels and corresponding percentage subsidies after consultation with the national DoE, if the application of these norms would –
- (a) cause a PED's expenditure on subsidies to independent schools to deviate from a three-year historical moving average by more than 10 percent in real terms in any given year; or
 - (b) contribute to over-expenditure on the PED's budget in the year they are applied; or
 - (c) result in independent schools receiving year-to-year budget cuts (or increases) in any given year that are significantly larger (or smaller) than other programme areas in the PED's budget.

Other deviations

157. Aside from deviations already discussed in this document, a PED may deviate from the subsidy and fee levels in these norms only on good cause shown (see paragraph 144 above).

Date of subsidy payments

158. Subsidies will be calculated on a per learner basis according to the verified enrolment in the school at the beginning of each term.
159. PEDs must ensure that the first term's subsidy is paid no later than 1 April in each school year. Subsequent subsidies must be paid no later than six weeks after the beginning of each school term.

Monitoring and revision

160. The Ministry of Education, in co-operation with PEDs and representatives of independent schools, will monitor the application of these norms in order to:
- (a) monitor fee levels;
 - (b) monitor subsidy levels;
 - (c) ensure that the overall level of subsidy to independent schools is a reasonable percentage of the total education budget in a province, in relation to the relative size of the independent and public school sectors in the province, and other relevant considerations; and
 - (d) ensure that national education policy objectives are being well served by the norms and their application.
161. In the light of an analysis of these matters, the Ministry, after due consultation, may amend or revise the norms.
-

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES, REGULATIONS 1998

G.N. 1293 of 1998 published in *Government Gazette* No. 19347 dated 12 October 1998

The Minister of Education has, under sections 39(4) and 61 of the South African Schools Act, 1996, (No. 84 of 1996), after consultation with the Council of Education Ministers and the Minister of Finance made the regulations in the Schedule.

SME BENGU
Minister of Education
October 1998

SCHEDULE

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned to it and, unless the context indicates otherwise –

‘application’ means an application by a parent for exemption;

‘combined annual gross income of the parents’ means the gross income of all the parents of a learner as defined in the Act calculated together or, if a learner has only one parent, the total gross income of such parent;

‘exemption’ means the total, partial or conditional exemption of parents who are unable to pay school fees;

‘school fees’ means school fees determined in terms of section 39 of the Act;

‘the Act’ means the South African Schools Act, 1996 (Act No. 84 of 1996).

Scope

2. These Regulations must be interpreted within the framework set by Chapter 4 of the Act, and with reference to the National Norms and Standards for School Funding determined in terms of the Act.

Categories for purpose of exemption

3. (1) If annual school fees are determined in terms of section 39 of the Act, the following categories will be applicable for purposes of exemption of a parent from payment of such school fees –
 - (a) if the combined annual gross income of the parents is less than ten times the annual school fees per learner, the parent qualifies for full exemption;
 - (b) if the combined annual gross income of the parents is less than thirty times but more than ten times the annual school fees per learner, the parent qualifies for partial exemption; and
 - (c) if the combined annual gross income of the parents is more than thirty times the annual school fees per learner, the parent does not qualify for exemption.(2) A person who has the responsibility of a parent of a learner placed in a foster home, foster care or a place of safety is exempted from payment of any school fees.

Procedures for application

4. (1) The governing body must notify all parents in writing of –
 - (a) the amount of the annual school fees to be paid and the equitable criteria and procedures for exemption determined in terms of section 39 of the Act;
 - (b) the fact that parents are liable to pay such fees in terms of section 40 of the Act unless or to the extent that they have been exempted from payment thereof; and
 - (c) the contents of regulations 3, 4 and 5 and at the request of a parent, make a copy of these Regulations available to him or her.(2) A parent who wishes to be exempted from payment of school fees for each individual learner at the particular school, must apply in writing to the chairperson of the governing body on a form similar to the form annexed as annexure A.

- (3) An application referred to in subregulation (2) must contain sufficient particulars to enable the governing body to apply the criteria set out in regulation 5(2) in order to determine in which category referred to in regulation 3, the applicant falls.
- (4) An applicant must furnish such relevant further particulars as requested by the governing body.
- (5) The applicant must prove on a balance of probabilities that the information supplied by him or her on the matters mentioned in regulations 3 and 5(2) is true and correct.
- (6) An applicant must, if he or she so requests, be afforded an opportunity to present his or her application in person, or through a designated representative.

Procedure for consideration of an application by Governing Body

5. (1) The governing body must consider the application subject to these Regulations and make a decision within fourteen days after receipt thereof.
- (2) In considering an application a governing body must take into account
 - (a) the financial position of the applicant including –
 - (i) the total gross annual income of the parents;
 - (ii) the total annual necessary expenses; and
 - (iii) a statement of assets and liabilities;
 - (b) the number of dependants of the applicant;
 - (c) the standard of living of the applicant; and
 - (d) any other relevant information supplied by the applicant.
- (3) If the applicant falls in –
 - (a) the category referred to in regulation 3(1)(a), the applicant is exempted in full;
 - (b) the category referred to in regulation 3(1)(b), the applicant is partially exempted to the extent determined by the governing body having regard to the criteria referred to in subregulation (2); and
 - (c) the category referred to in regulation 3(1)(c), the application is declined.
- (4) A governing body may deviate from the provisions of subregulation (3) if the applicant proves facts which justify such deviation.
- (5) A governing body may attach such conditions to an exemption granted to an applicant as it may deem reasonable.
- (6) Information by the applicant in support of his or her application must be treated in confidence by the governing body and may not be divulged to a third party without the consent of the applicant.
- (7) The governing body must notify each applicant in writing of its decision and the reasons therefor, within seven days after the decision is taken.
- (8) If an application is declined or partially declined, the governing body must notify the applicant of his or her right of appeal in terms of section 40(2) of the Act.

Alteration of decision

6. (1) If a governing body obtains information that the financial position of a parent who was granted exemption, has changed substantially, the governing body may reconsider and rescind, amend, substitute or alter its decision to grant exemption.
- (2) Before taking action in terms of subregulation (1) the governing body must
 - (a) notify the parent concerned of the intended action and of the information on which it will be based; and
 - (b) afford the parent the opportunity to rebut the information and to show cause why the exemption should not be reconsidered.

Procedure for appeal

7. (1) A parent who is dissatisfied with the decision referred to in regulation 5(7) may appeal in writing against the decision to the Head of Department within 30 days after receipt of the notification of that decision.
- (2) The appellant contemplated in subregulation (1) must furnish the Head of Department with –
 - (a) the reasons for the appeal; and
 - (b) all relevant information pertaining to the appeal.
- (3) The Head of Department must within 14 days after receipt of the documentation referred to in subregulation (2) –
 - (a) notify the chairperson of the governing body concerned of the appeal that has been lodged;
 - (b) furnish to the chairperson a copy of the appellant's reasons for appeal; and

- (c) request the chairperson to forward to him or her within 14 days after receipt of the request:
 - (i) the minutes of the meeting of the governing body at which the application was discussed and was decided upon; and
 - (ii) any comments the governing body wishes to make with regard to the appellant's reasons for appeal, and any other information relevant to the appeal.
- (4) After consideration of all information referred to in subregulations (2) and (3), the Head of Department must within 14 days of receipt of the documentation or information contemplated in subregulation (3)(c) –
 - (a) uphold the appeal:
 - (i) in full;
 - (ii) partially; or
 - (iii) conditionally; or
 - (b) dismiss the appeal.
- (5) Within 7 days of deciding the appeal, the Head of Department must notify the appellant and the chairperson of the governing body concerned in writing of his or her decision and the reasons therefor.

Assistance to parents

- 8. (1) A parent who, for whatever reason, needs assistance to apply for exemption or lodge an appeal as contemplated in regulation 7, may request an educator or any other person to assist him or her in making the application or appeal.
- (2) If no assistance is given to the parent after he or she has requested it as contemplated in subregulation (1) the principal must assist the parent in such application or appeal.

Voluntary contributions

- 9. Nothing in these Regulations prevents a parent who is granted exemption from making a voluntary contribution to the school fund.

Short title and commencement

- 10. These Regulations are called the Exemption of Parents from the Payment of School Fees Regulations, 1998 and will come into effect on the date of publication thereof.

ANNEXURE A

APPLICATION FORM FOR EXEMPTION SOUTH AFRICAN SCHOOLS ACT, 1996 (NO. 84 OF 1996)

EXEMPTION OF PARENTS FROM THE PAYMENT OF SCHOOL FEES REGULATIONS, 1998

PARTICULARS OF SCHOOL

Name:

Postal Address:

.....

.....

Physical Address:

.....

.....

Tel:

Fax:

PARTICULARS OF APPLICANT

Name of parent:*

Name/s of learner/s:

Residential address:

.....

.....

Tel:

Fax:

* “parent” means (a) the parent or guardian of a learner; (b) the person legally entitled to custody of a learner; or (c) the person who undertakes to fulfil the obligations of a person referred to in (a) or (b) towards the learner's education at school.

APPLICATION FOR –

1. **Full exemption** (Regulation 3(1)(a))

Combined annual gross income of parents: R.....

Annual school fees per learner: R.....

(Only applicable if combined annual income of a parent is less than 10X the annual school fees per learner)

2. **Partial exemption** (Regulation 3(1)(b))

Combined annual gross income of parents: R.....

Annual school fees per learner: R.....

(Only applicable if combined annual income of a parent is less than 30X but more than 10X the annual school fees per learner.

Partial exemption may be granted on a sliding scale as contemplated in paragraph 132 in terms of the National Norms and Standards for Funding published in the same *Government Gazette* as this document.)

3. Additional information which you request to be considered by the governing body:

.....

.....

.....

.....

.....

.....

.....

.....

4. All supplementary documentation to prove the application for exemption must be attached for the consideration of the governing body.

5. The application form and accompanying documents must be sealed in an envelope and addressed to the chairperson of the governing body and be marked for his/her attention.

AGE REQUIREMENTS FOR ADMISSION TO AN ORDINARY PUBLIC SCHOOL

G.N. 2433 of 1998 published in *Government Gazette* No. 19377 dated 19 October 1998

amended by

G.N. 1356 of 2001 published in *Government Gazette* No. 22928 dated 11 December 2001

The Minister of Education, after consultation with each Member of the Council of Education Ministers, hereby give notice in terms of section 3(4)(i) of the National Education Policy Act, 1996 (No. 27 of 1996) and section 5(4) of the South African Schools Act, 1996 (No.84 of 1996), of the age requirements for the admission of learners to an ordinary public school or different grades at a school, as set out in the Schedule.

SME Bengu
Minister of Education
October 1998

SCHEDULE

AGE REQUIREMENTS FOR ADMISSION TO AN ORDINARY PUBLIC SCHOOL

Interpretation

1. In this notice any expression to which a meaning has been assigned in the South African Schools Act, 1996 (No. 27 of 1996) and the National Education Policy Act, 1996 (No. 84 of 1996) shall have that meaning.
2. In this notice a reference to grade R will have the same meaning as grade O in the South African Schools Act, 1996.

Age requirements for admission to an ordinary public school

3. The statistical age norm per grade is the grade number plus 6.

Example: Grade 1 + 6 = age 7
 Grade 9 + 6 = age 15
 Grade 12 + 6 = age 18

4. A learner must be admitted to grade 1 if he or she turns seven in the course of that calendar year. A learner who is younger than this age may not be admitted to grade 1.
- 4A. Despite paragraph 4, the Head of Department may allow a learner who wants to be admitted to grade 1, but who will not be turning 7 during the year of such admission, to be admitted at a lower age. This deviation by the Head of Department may only occur if, in the opinion of the Head of Department, reasonable grounds exist to show that such a learner is, based on educational principles, school ready for grade 1 and it is in the best interests of such a learner to be admitted as an underage learner to a public school. The parent of the learner must show that refusal to be admitted to a school will have a detrimental effect on the child's development.

[Para. 4(A) inserted by G.N. 1356 dated 11 December 2001.]

5. A learner may be admitted to grade R only if he or she turns six in the course of that calendar year. Attendance of grade R is not compulsory.
6. The age requirements for learners with special education needs who are able to be admitted to attend ordinary public schools are the same as for other learners in ordinary public schools.

Application

7. These age requirements, and any deviations from the age norm per grade, must be applied in accordance with the Admission Policy for Ordinary Public Schools, published in the same government notice.

Short title and commencement

8. This notice is called the Age Requirements for Admission to an Ordinary Public School, and it comes into effect on 1 January 2000.

TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS

G.N. 1423 of 1999 published in *Government Gazette* No. 20669 dated 26 November 1999

The Minister of Education hereby, in terms of section 52(3) of the South African Schools Act, 1996 (Act 84 of 1996), determines the dates on which and the conditions subject to which funds and other moveable assets used by, or held on behalf of public schools contemplated in section 52(1) of the Act and which in law are the property of the State, devolve upon the public schools, as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education
November 1999

SCHEDULE

TRANSFER OF FUNDS AND OTHER MOVEABLE ASSETS OF THE STATE TO PUBLIC SCHOOLS

Dates of transfer

1. The funds and moveable assets used by, or held for or on behalf of a public school contemplated in section 52(1) of the South African Schools Act 84 of 1996, and which in law are the property of the State, devolve upon the school on –
 - (a) the date of publication of this notice, if the governing body of such a school has applied for the allocated functions in terms of section 21 of the Act and the functions contemplated in section 21(1)(a) have been allocated by the Head of the Department to the governing body; or
 - (b) the date from which the functions contemplated in section 21(1)(a) of the Act are –
 - (i) allocated to the governing body of a school in terms of section 21(3) of the Act on application by the governing body in terms of section 21(1) of the Act; or
 - (ii) assigned to the governing body of a school in terms of section 21(6) of the Act.

Conditions for transfer

2. The transfer of the funds and moveable assets is subject to the following conditions:
 - (a) The principal of a public school must draw up a financial statement of the funds and compile an inventory of the moveable state assets used by, or held for or on behalf of the public school and which in law are the property of the State. A designated official of the provincial department of education must be assigned by the Head of Education to verify in writing that the financial statement and inventory have been compiled correctly.
 - (b) The chairperson of the governing body must sign an acknowledgement of receipt of the funds and moveable assets from the State on behalf of the school and submit it to the first meeting of the governing body after signature. (ANNEXURE A.)
 - (c) A copy of the financial statement and the inventory must thereafter be made available to the Head of Department together with the signed acknowledgement of receipt. The Head of Department must keep a running record of all such documents.
 - (d) A copy of the financial statement and the inventory must be kept on record at the school.
 - (e) The moveable property listed in the inventory may not be alienated without value unless agreed to by the Head of Department.
 - (f) Any alienation of the property contemplated in paragraph (a) contrary to the provisions of paragraph (e) is invalid and the ownership of such property will revert to the State.

ANNEXURE A

**PRO-FORMA ACKNOWLEDGEMENT OF RECEIPT OF FUNDS AND OTHER MOVABLE ASSETS
TRANSFERRED TO A PUBLIC SCHOOL IN TERMS OF SECTION 52(3) OF THE SOUTH AFRICAN SCHOOLS
ACT, 1996 (ACT 84 OF 1996)**

I, (name of the chairperson of the governing body)
on behalf of the public school (name of the public school),
duly acknowledge receipt from the State of the funds in the enclosed financial statement, that were paid into the bank
account of the school, and the assets listed in the enclosed inventory.

THUS DONE and SIGNED at on this
day
of 1999 (date of receipt)

.....
Chairperson of governing body

WITNESSES:

1.
2.

REGULATIONS FOR SAFETY MEASURES AT PUBLIC SCHOOLS

G.N. 1040 of 2001 published in *Government Gazette* No. 22754 dated 12 October 2001.

The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 61 of the South African Schools Act, 1996 of the regulations relating to safety measures at public schools as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education

SCHEDULE

REGULATIONS FOR SAFETY MEASURES AT SCHOOLS

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context indicates otherwise –

“**dangerous object**” means –

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

unless such objects are used for education purposes;

“**HOD**” means the Head of Education Department in a province;

“**illegal drug**” means any unlawful intoxicating or stupefying substance;

“**public school premises**” includes a building, structure, hall, room, office, convenience, land, enclosure, which is under the control of a public school, to which a member of the public has a right of access, or is usually admitted, or to which he or she may be admitted.

Scope of applicability

2. These regulations apply to all public schools.

Application of other laws

3. Notwithstanding the provisions of these Regulations, a public school is not exempted from complying with the provisions of any other applicable law and these Regulations are intended to support such applicable laws.

Violence and drug free public schools

4. (1) All public schools are hereby declared drug free and dangerous object free zones.
- (2) No person may –
- (a) allow any dangerous object in the public school premises;
 - (b) carry any dangerous object in the public school premises;
 - (c) store any dangerous object in the public school premises except in officially designated places identified by the principal;
 - (d) possess illegal drugs on public school premises;
 - (e) enter public school premises while under the influence of an illegal drug or alcohol;

- (f) cause any form of violence or disturbances which can negatively impact on any public school activities;
 - (g) wittingly condone, connive, hide, abet, encourage possession of dangerous objects or refuse, fail, neglect to report the sighting or presence of any dangerous objects to the departmental authorities or the police as soon as possible;
 - (h) directly or indirectly cause harm to anyone, who exposes another person who makes an attempt to frustrate the prevention of the dangerous objects and activities.
- (3) A police official or in his absence, the principal or delegate may, without warrant –
- (a) search any public school premises if he or she has a reasonable suspicion that a dangerous object or illegal drugs may be present in the public school premises in contravention of the regulations;
 - (b) search any person present on the public school premises; and
 - (c) seize any dangerous object or illegal drugs present on public school premises or on the person in contravention of these regulations.

Access to public schools premises

5. (1) Subject to the Constitution, laws and national and provincial policies, the HOD or principal of any public school may and for such timeframes as may be necessary –
- (a) take such steps as he or she may consider necessary for the safeguarding of the public school premises, as well as for the protection of the people therein; and
 - (b) direct that the school may only be entered in accordance with the provisions of subregulation (2).
- (2) No person shall without the permission of the principal or HOD enter into any public school premises in respect of which a direction has been issued under subregulation (1)(a), and for the purpose of the granting of that permission the principal or HOD may require of the person concerned to –
- (a) furnish his or her name, address and any other relevant information required by the principal or HOD;
 - (b) produce proof of his or her identity to the satisfaction of the principal or HOD if necessary;
 - (c) declare whether he or she has any dangerous object or illegal drugs in his or her possession or custody or under his or her control;
 - (d) declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he or she has in his or her possession or custody or under his or her control, and show those contents to him or her;
 - (e) subject himself or herself and anything which he or she has in his or her possession or custody or under his or her control to a search by a person of the same gender, an examination by an electronic device, sniffer dogs or other apparatus in order to determine the presence of any dangerous object or illegal drug; and
 - (f) hand to the principal or HOD anything which he or she has in his or her possession or custody or under his or her control for examination or custody until he or she leaves the premises.
- (3) Without derogation of the provisions of the Trespass Act, 1959 (Act No. 6 of 1959), the principal or HOD may at any time remove any person from any public school premises if –
- (i) that person enters the public school premises concerned without the permission contemplated in subregulation (2);
 - (ii) that person refuses or fails to observe any steps contemplated in subregulation (1)(a); and
 - (iii) the principal or HOD considers it necessary for the safeguarding of the public school premises concerned or for the protection of the people thereon.
- (4) If it is not practicable to examine or keep in custody, on or in the public school premises concerned, anything which may be examined or kept in custody under subregulation (2), it may be removed to a suitable place for that purpose.

Exemption of certain persons

6. The provisions of regulation 5 do not apply in respect of any member of a police service established by or under any law, a member of the South African Defence Force, the Minister of Education, the Member of the Executive Council responsible for education in a province or an official of the Department or provincial departments of Education who is required in the performance of his or her functions to enter or enters upon any public school premises and who produces proof of his or her identity to the satisfaction of the principal or HOD concerned.

Visits to public schools by public and political office bearers

7. (1) Members of the public and political office bearers, public representatives and the media have a right to visit public schools in the interests of public accountability, but this right must be regulated to ensure that schools are not disrupted by such visits, and to avoid the politicisation of such visits. This right is subjected to reasonable controls to ensure the proper functioning of education.

- (2) If such visits are desired, the person intending to visit must request and obtain written permission from the principal or HOD prior to the visit. The request must be made at least thirty days before the intended visit, unless there are sound reasons for a shorter notification period. This request must clearly indicate the date, time and purpose of the visit, the names of all participants, and the aspects which are intended to be looked at. The principal of the public school shall not refuse reasonable access to a person who has such written permission.
- (3) In cases where the written permission is granted by the HOD, the HOD, before granting such permission must consult the principal of the public school to be visited, to determine whether it is feasible for them to receive such a visit, and whether or not the school programme is likely to be seriously affected thereby.
- (4) Wherever possible a Departmental office-based representative should accompany such visitors.

Visits to public schools by parents

8. (1) Parents have the right to visit the public school where their children have been admitted but such visits may not disrupt any of the school activities.
- (2) Parents are required to make an appointment with the principal of the school for a personal appointment with him or her prior to the visit and must state the reason for the visit and the persons who may be involved during the visit.

General

9. (1) All public schools must display clear signs at the entrance that any person who enters the school may be subjected to a search.
- (2) Any person who contravenes these regulations may be removed from the public school premises.
- (3) Public schools must cooperate with police stations to ensure that visible policing is present during all sporting and cultural events at the school.
- (4) Public schools must encourage governing body members and parents to participate in community policing forums.
- (5) Public schools must develop action plans to counter threats of violence which have the potential to have a negative impact on school activities and to implement regulation 4(1).
- (6) The plans in subregulation (5) must ensure the safety of all learners, staff members and parents during school activities.
- (7) Public schools must engage in advocacy campaigns to communicate to the public the status of the schools concerning the regulations and the right to protection against violence.
- (8) The HOD must provide guidelines to assist the public schools in developing the action plans contemplated in subregulations (5) to (7).
- (9) The HOD must be provided with action plans contemplated in subregulations (5) to (7) within 6 months after the commencement of the Regulations.

Delegation of powers

10. The HOD may, on such conditions as he or she may determine, delegate the exercise of any of his or her powers under these regulations and the performance of any of his or her duties in terms of these regulations to any employee in the Provincial Department of Education.

Short title and commencement

11. These regulations may be cited as the *Regulations for Safety Measures at Public Schools* and come into operation on the date of publication thereof.

REGULATIONS TO PROHIBIT INITIATION PRACTICES IN SCHOOLS

G.N. 1589 of 2002 published in *Government Gazette* No. 24165 dated 13 December 2002

The Minister of Education, after consultation with the Council of Education Ministers, hereby gives notice in terms of section 61(f) as read with the Preamble to the South African Schools Act, 1996 and in compliance with section 4(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) of the regulations relating to the prohibition of initiation practices as set out in the Schedule.

PROFESSOR KADER ASMAL, MP
Minister of Education

SCHEDULE

Scope of application

1. These regulations apply to all public and Independent schools.

Definitions

2. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have that meaning and, unless the context indicates otherwise –

“assault” means the unlawful and intentional –

- (a) application of force, directly or indirectly, to another person, or
- (b) threatening another with immediate personal violence in circumstances which lead the threatened person to believe that the other intends or has the power to carry out the threat;

“crimen injuria” means the unlawful and intentional violation of the dignity or privacy of another, in circumstances where such violation is not of a trifling nature;

“degradation” means any behaviour towards humiliating another, causing loss of respect or standing in the school community;

“harassment” means behaviour which is hostile or offensive to a reasonable person and which unreasonably interferes with an individual’s work, academic performance or social life and any behaviour that creates an undermining of the integrity or dignity of an individual. Such behaviour can make a reasonable person feel uncomfortable, unsafe, frightened, embarrassed, and may be physical, verbal or non-verbal. The common link is that the behaviour would be unwanted by any reasonable person and could not be justified through a personal or family relationship;

“humiliation” means any word or act which causes another to lose self-respect or the respect of others;

“initiation practice” means any act which in the process of initiation, admission into, or affiliation with, or as condition for continued membership of a school, a group, intramural or extramural activities, interschools sports team, or organization –

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

Any activity irrespective of its designation other than referred to in regulation 3.5.4 which has a similar effect and object as initiation is deemed to be an initiation practice;

“in loco parentis” means acting in the place of a parent who has entrusted the custody and control of his or her child to an educator or another person during normal intramural or extramural school activities.

“intimidation” means any act by a person with the intent to compel or induce a particular person to do or to abstain from doing any act or to assume or to abandon a particular standpoint by means of –

- (a) assault, injury or causing damage to that person or any other person; or
- (b) threats to kill, assault, injure or cause damage to that person or any other person.

“peer pressure” means the influencing factor –

- (a) whereby a learner feels pressured by any learner to act or not to act and to participate or not to participate in an activity in order not to be ostracized;
- (b) whereby a learner would not come forward after being initiated for fear of victimization.

“protect” means the act of guarding a person or an object against current or future loss, damage or harm.

Principles and values

3. The Preamble to the Act requires that rights of learners, parents and educators are upheld and to promote the acceptance of responsibility for the organization and governance of schools in partnership with the State. Such rights include but are not limited to the following:

3.1 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

3.2 Privacy, respect and dignity

3.2.1 Every learner has the right to privacy, which includes the right not to have his or her person or property searched or his or her possessions seized. Notwithstanding this the principal or an educator may search learners based on his or her reasonable suspicion that the learner is in possession of an illegal object, using search methods that are reasonable in scope.

3.2.2 Every learner has a right to dignity and has the right to have his or her human dignity respected. Recognizing a right of dignity is an acknowledgement of the intrinsic worth of human beings. That implies mutual respect including respect for one another's convictions and cultural traditions.

3.3 Non-violence and the freedom and security of a person

3.3.1 Every learner has the right to freedom and security of his or her person, which includes the right to be free from all forms of violence or assault, and not to be treated or punished in a cruel, inhuman or degrading way.

3.3.2 Learners have the right not to be locked up in solitary confinement or detention or to be locked out of safe environments.

3.4 Protection from maltreatment, neglect, abuse or degradation

Every child has the right to be protected from maltreatment, neglect, abuse or degradation. All appropriate social and educational measures must be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who acts *in loco parentis*.

3.5 School environment and discipline

3.5.1 A safe environment that is conducive to education including security of property, security of person, well-cared for school facilities, school furniture and equipment, toilet facilities, absence of harassment in attending classes, writing tests and examinations, partaking in extramural activities or sport, all create an atmosphere that is conducive to education and training. All parties have a responsibility to maintain such an environment.

3.5.2 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. The Act empowers school authorities to discipline learners, but it is unlawful to delegate this authority to learners.

3.5.3 Learners have the responsibility to learn and develop their own full potential and to allow fellow learners, without any hindrance, to reach their full potential.

3.5.4 Schools are encouraged to engage in positive orientation which involves a process of induction that seeks to introduce learners to their new academic environment in a manner where dignity is enhanced as learners are advised, guided and mentored. This process focuses on self-discipline, self-motivation and self-respect together with academic and sporting achievements.

Prohibited initiation practices

- 4.1 No principal, educator or learner may allow or participate in any act or practice which involves initiation practices or may cause or contribute to the humiliation, degradation, harassment, assault, crimen injuria, intimidation or maltreatment of learners.
- 4.2 There should be a relationship of mutual trust and respect between learners, and between learners and educators. Victimisation of the one by the other is unacceptable, and peer pressure cannot be regarded as a justification for engaging in acts of victimisation.

- 4.3 The Learner Representative Council should represent the interests and views of all the learners and promote proper conduct of learners. However, no learner has the right or authority to punish other learners.
- 4.4 Learners should be protected from abuse by adults or other learners and learners' behaviour must be free of any violence and in line with the democratic values of human dignity, equality and freedom.

Responsibilities of principals and governing bodies

- 5.1 A principal must ensure that no initiation practices take place in his or her school, including hostels, or during any school activities away from the school premises. The principal must put systems in place to encourage learners to bring such practices to his attention and to ensure that such learners be free from victimisation. The Head of Department must ensure that this system is in place in every school in his or her province within a year after the commencement of these regulations.
- 5.2 The principal, as head of the institution in terms of section 16(3) of the Act, has a primary responsibility to ensure that learners are not subjected to crimen injuria, assault, harassment, maltreatment, degradation, humiliation or intimidation from educators or learners and must protect learners from such practices. A principal must also take reasonable steps to ensure that such practices are not caused by peer pressure.
- 5.3 A disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault. Educators have a duty to care for and protect learners from violence because of their *in loco parentis* status.
- 5.4 If any initiation practices or acts take place through the actions of learners, the school governing body as the authority responsible for the discipline of learners, must take appropriate action in terms of section 8 of the Act or a Code of Conduct to prevent such practices and to protect learners from such practices.
- 5.5 If any initiation practices or acts take place in a school and members of staff are involved or allow such actions to take place or fail to take the necessary precautions to prevent such practices from taking place, the employer must take disciplinary actions in terms of applicable law against such perpetrators.

Responsibilities of educators

- 6.1 Educators must protect, promote and respect the rights of learners as contemplated in clause 3.
- 6.2 Every educator is responsible to assist the school governing body with discipline at the school and school related activities.
- 6.3 Every educator has a duty to control the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators must take reasonable measures where necessary to prevent a learner from harming himself or herself or others.
- 6.4 In cases where a learner cannot adjust to the school and where his or her behaviour is objectionable in that it violates the rights of others, an educator has the obligation to refer such a learner to the principal and to inform the learner's parents and the school governing body.
- 6.5 An educator at the school has the same rights and obligations as a parent to protect, control and discipline a learner according to the Code of Conduct during the time the learner is in attendance at the school, or at any school function, school excursion or school related activity.

Short title and commencement

- 7. These regulations may be cited as the Regulations to Prohibit Initiation Practices in Schools and come into operation on the date of publication thereof.
