

ACT

To provide for the provision and control of school education in the Province, and matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Free State Province, as follows :- 5

(Afrikaans text signed by the Premier.)
(Assented to 6 February 1996) 10

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CHAPTER 1

DEFINITIONS AND APPLICATION

Definitions

- 1.** In this Act, unless the context indicates otherwise - 5
- "combined school" means a school providing education on all grades falling under a primary school as well as grades falling under a secondary school; 10
- "Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); 15
- "Council" means the Provincial Education and Training Council, established by section 6; 15
- "Department" means the Department of Education and Culture, mentioned in the first column of the Schedule to the Provincial Service Commission Act, 1994 (Act No. 3 of 1994); 20
- "district council" means a district council established in terms of section 11(1)(a); 25
- "education" means instruction, teaching or training provided to learners in terms of this Act; 25
- "education centre" means a provincial resource centre which addresses specific needs through skills - orientated enrichment programmes and projects for - 30
- (i) gifted, talented and committed primary and secondary learners; 35
- (ii) educator in-service training; 35
- (iii) the wider community; 40
- and shall include a school; 40
- "educator" means a principal or any person who teaches, educates or trains learners or provides professional therapy at any school or centre of learning; 45
- "Executive Council" means the Executive Council of the Free State Province contemplated in section 149 of the Constitution; 50
- "governing council" means the governing council of a state school referred to in section 12(1); 50
- "grade" means that part of an educational programme in a school, or of any other educational programme which the Head of Education may deem to be equivalent, which a learner may complete in one school year; 55
- "Head of Education" means the Head : Education and Culture mentioned in the second column of the Schedule to the Provincial Service Commission Act, 1994 (Act No. 3 of 1994); 60
- "hostel" means a hostel attached to a school; 65
- "hostel council" means the person or body managing a hostel in terms of this Act;

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"industrial school" means a school for the reception, care and education of children referred or transferred thereto in terms of the Child Care Act, 1983 (Act No. 74 of 1983);	
"intermediate school" means a school for primary and secondary education up to a grade not higher than the ninth grade;	5
"language policy" of a state school includes matters related to -	
(i) the language or languages in which learning and teaching take place;	10
(ii) the language or languages which may be studied at the school;	
(iii) the language or languages in which the school communicates with educators, learners and parents of learners;	15
(iv) the support the school offers to learners whose language of choice is not one in which learning and teaching take place at the school;	20
"learner" means any person receiving education in terms of this Act;	
"medium of instruction" means the language used for education, instruction or training at an education institution and schools;	25
"national policy" means national education policy determined by a competent authority within the jurisdiction of the national government;	30
"parent" means a parent who in law or by virtue of an order of a competent court has the custody or control of a child, or a legal guardian, or in the absence of such parent or guardian, the person with whom the child resides and to whom the parent or guardian has entrusted in writing the custody or control of such child, or if the child has no parent or legal guardian, the person with whom the child resides and who has the actual custody or control of such child;	35
"pre-primary school" means a school for the education of learners of the age of three years and above but below the age at which they may be admitted to any school other than a pre-primary school;	40
"prescribed" means prescribed by regulation;	45
"primary school" means a school that provides education up to a grade not higher than the seventh grade;	50
"principal" means the person appointed as head of a school;	
"private school" means a school other than a state school and registered in terms of section 19(5);	55
"Provincial Education and Training Council" means the Council established by section 6;	60
"reform school" means a school for the reception, care, education and training of learners sent thereto under the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or transferred thereto under the Child Care Act, 1983 (Act No. 74 of 1983);	65
"regulation" means a regulation made under this Act;	
"responsible Member" means the Member of the Executive Council responsible for Education and Culture;	
"school" means any institution for the education of learners;	

"school attendance officer" means a school attendance officer contemplated in section 36;	
"school funds" means funds that may be contributed voluntarily to a school by the parent of a learner;	5
"secondary school" means a school for education from a standard higher than the seventh grade but not higher than the twelfth grade;	10
"specialised education" means education of a specialised nature provided to address the needs of learners who -	15
(i) cannot benefit sufficiently from the teaching provided in the ordinary course of education;	
(ii) require specialised education to facilitate their adaptation in the community; or	20
(iii) should not attend an ordinary class in an ordinary school, because such attendance is not in their best interest or not in the best interest of the other learners in such class;	25
and includes -	
(a) the psychological, medical, dental, paramedical and therapeutic treatment of, including the performance of operations on, such learners;	30
(b) the provision of artificial medical aids and apparatus to such learners;	35
(c) the care of such learners in a hospital, hostel or other institution;	
(d) the provision of transport, escort and such other services as the responsible Member may deem necessary for such learners; and	40
(e) the provision of guidance to the parents of such learners, including the parents of such learners who are not yet subject to compulsory school attendance, with a view to the instruction, teaching, training or treatment of such learners;	45
"state school" means a school financed and managed by the state;	
"this Act" includes a regulation.	50

Application

2. Subject to the Constitution, this Act shall apply in relation to education in the Province. 55

CHAPTER 2

OBJECTIVES OF THIS ACT 60

Objectives of Act

3. The responsible Member shall, taking into account financial constraints, aim to achieve the following objectives with education and training in the Free State Province : 65
- (1) To provide in the Province for the fundamental right to education as set out in the Constitution.
- (2) To effect a system of educational provision and support which serves the needs and the interests of all the people of the Province.

- (3) To effect the full and active participation in education of various interest groups, in particular educators, parents, workers, employers, learners and the broader community.
- (4) To co-ordinate education policy by uniform norms and minimum standards which will apply generally throughout the Province. 5
- (5) To enhance the dignity, stature and status of educators in education centres while developing an effective culture of teaching, professional commitment and learning. 10
- (6) To place emphasis on school facilities as bases for community learning.
- (7) To reflect demographic realities in the siting, resourcing and utilization of all support systems. 15
- (8) To sensitize continually the community to the different types of work by not privileging academic over vocational subjects and in teaching skills necessary for developing practical and income-generating initiatives. 20

CHAPTER 3 25

POWERS AND FUNCTIONS OF THE RESPONSIBLE MEMBER 30

Powers and functions of responsible Member

4. (1) The responsible Member may, by notice in the *Provincial Gazette*, determine an education policy for the Province, which must be adhered to by the Head of Education and all educators in the Province. 35
- (2) In addition to the other functions assigned to him or her by or under this Act, the responsible Member may, out of moneys appropriated for this purpose by the Provincial Legislature - 40
- (a) establish and maintain such education centres as he or she may deem necessary; 45
 - (b) establish and maintain hostels for education centres; 50
 - (c) provide, on such basis and subject to such conditions as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted to an education centre. 55
- (3) The responsible Member may at any time, after consultation with interested parties, close an education centre. 60
- (4) In order to further the objects of this Act, the responsible Member may enter into agreements with other government departments and with non-governmental organisations, but no agreement placing financial obligations on the Department shall be entered into without the concurrence of the member of the Executive Council responsible for Finance and Expenditure. 65

- ✓ (5) Subject to any norms and standards applying nationally, the responsible Member may certify, and withdraw the certification of -
 - (a) the syllabi of and conditions for admission to educational and training programmes at any education centre; 5
 - (b) the contents of and conditions for admission to educational and training programmes at any education centre. 10

CHAPTER 4

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POWERS AND FUNCTIONS OF THE HEAD OF EDUCATION

Powers and functions of Head of Education

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5. (1) The Head of Education shall, in consultation with the responsible Member, take such steps as may be necessary to carry into effect the provincial and national education policy. 25

(2) In addition to the other functions assigned to him or her, the Head of Education may, in consultation with the responsible Member and subject to norms and standards applying nationally - 30

- (a) approve educational programmes for learners; 35
- (b) approve education and training programmes for learners with special education needs; 40
- (c) determine the conditions for admission to such educational and training programmes, as well as the evaluation, by means of inspection or otherwise, of the effectiveness of the teaching and training provided in accordance therewith; 45
- (d) approve courses for the provision of education, including specialized education; 50
- (e) determine the conditions for admission to, and the syllabi of such courses; 55
- (f) in respect of such courses -
 - (i) cause examinations to be conducted and certificates to be issued to learners who passed those examinations; and 60
 - (ii) cause other approved forms of assessment to be conducted;

- (g) make rules as to -
 - (i) the conducting of examinations referred to in paragraph (f), the entering of candidates for those examinations, the conduct and discipline of candidates prior to, during and after those examinations, and the issue of certificates referred to in that paragraph; and 5
 - (ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators and other persons whose services are necessary in connection with the conducting of those examinations; 10
 - (h) make arrangements for medical, psychological or dental examinations of learners and of persons employed at schools and hostels; 20
 - (i) determine the school calendar, school holidays and the minimum length of the school day. 25
- (3) Different programmes, courses, school calendars, school holidays and lengths of the school day may be approved or determined, as the case may be, in respect of different schools. 30
- (4) The Head of Education shall determine and enforce age requirements in educational centres. 35
- (5) The Head of Education may, either entirely or for such period and on such conditions as he or she may determine, exempt a child in writing from compulsory school attendance as determined by or under this Act. 40
- (6) Subject to any law, the Head of Education reserves all right of entry to the premises of an education centre. 45
- (7) The Head of Education may direct a principal of an education centre in writing to submit to him or her within the period mentioned in the direction, such information as he or she may require in connection with the affairs of the education centre. 50
- (8) The Head of Education may, either in general or in a specific case, authorize in writing a person to inspect an education centre. 55

CHAPTER 5

EDUCATION COUNCILS

Establishment of Provincial Education and Training Council

6. There is hereby established a council to be known as the Provincial Education and Training Council, which shall have the powers and functions entrusted to it by section 8.

Composition of Provincial Education and Training Council

7. (1) The Provincial Education and Training Council shall be composed of -

- | | | |
|-----|---|----|
| (a) | the Head of Education, who shall <i>ex officio</i> be a member of the Council but shall have no vote; | |
| (b) | officers on the establishment of the Department designated by the Head of Education; | 5 |
| (c) | one person designated by each organization in the Province registered in terms of section 11(5) of the Education Labour Relations Act, 1993 (Act No. 146 of 1993); | 10 |
| (d) | one person designated by each political party represented in the Provincial Legislature; | 15 |
| (e) | one person designated by each university and technicon in the Province; | 20 |
| (f) | one person designated by the responsible Member on account of that person's knowledge of specialized education; | 25 |
| (g) | one person designated by the rectors of teachers' training colleges in the Province; | 30 |
| (h) | one person designated by the principals of technical colleges in the Province; | 35 |
| (i) | one person designated by the National Economic Development and Labour Council; | 40 |
| (j) | one person from each organisation which the responsible Member recognises for the purposes of this section on account of its interest in education in the Province; | 45 |
| (2) | The responsible Member shall appoint any member of the Council as chairperson. | |

Powers and functions of Provincial Education and Training Council 45

8. (1) The Council shall advise the responsible Member regarding any matter relating to education referred to it by the responsible Member, or any such matter which the Council, of its own accord, wishes to bring to the attention of the responsible Member. 50

(2) The Council shall have the further powers and functions entrusted to it by or under this Act or any other law. 55

Meetings of Provincial Education and Training Council

9. (1) The Council shall, from time to time, meet at the place and on the time determined by the chairperson of the Council. 60

(2) The Council may determine its own rules governing meetings and procedure of meetings. 65

(3) Whenever the chairperson of the Council is absent from a meeting, the Council shall be chaired by one of its members designated by the chairperson.

(4) Whenever the chairperson designated by the chairperson is absent from a meeting, the Council shall elect one of its members as the chairperson.

(4) The Council shall endeavour to exercise its powers and perform its duties on the basis of consensus and, if consensus on any matter cannot be achieved, such matter may be decided by the Council by resolution of a majority of at least two-thirds of its members, or the Council may, if a majority of the members of the Council so decides, submit a report and recommendation on the matter to the responsible Member for a decision. 5

(5) A member of the Council, or its executive committee, who is not in the full-time employ of the State, may be paid, out of moneys appropriated for this purpose by the Provincial Legislature, his or her reasonable subsistence and travelling expenses when attending a meeting of the Council, or its executive committee, as the case may be. 10

(6) The administrative functions of the Council and its executive committee shall be performed by officers on the establishment of the Department. 15

Executive committee of Provincial Education and Training Council 20

10. (1) The Council shall establish an executive committee.

(2) The executive committee shall be chaired by the chairperson of the Council and shall consist of a secretary designated by the said chairperson and 3 members elected by the Council from amongst its members. 25

(3) The executive committee shall consider any matter referred to it by the Council and report back on that matter to the Council. 30

District education and training councils

11. (1) The responsible Member may, by notice in the *Provincial Gazette* - 35

(a) divide the province into districts, determine the boundaries thereof and establish a district council for each district; and 40

(b) change the boundaries of such a district at any time and, should he or she deem it desirable, dissolve the district council concerned and establish a new district council with effect from a date determined by him or her in such notice. 45

(2) The responsible Member shall, by notice in the *Provincial Gazette*, determine the composition and functions of district councils. 50

(3) A district council shall be chaired by a person designated by the responsible Member, and the provisions regarding meetings of the Council contemplated in section 9, shall *mutatis mutandis* apply to meetings of a district council. 55

CHAPTER 6

SCHOOL GOVERNANCE 60

Governing councils of state schools and hostels

12. (1) For the purpose of promoting the participation of the people of the Province in the governance of state schools, there shall be a governing council for every such school. 65

(2) If, in the opinion of the responsible Member, it is not expedient to place a hostel under the supervision of the governing council of a particular state school, the responsible Member may establish a separate governing council for one or more of such hostels. 5

Composition of governing councils

13. (1) The principal of a state school shall be a member of the governing council of that school. 10

(2) A majority of members of a governing council of a state school shall be parents of learners of that school. 15

(3) The disabled community served by a state school for specialised education shall be represented on the governing council of that school. 20

(4) Learners shall not be represented on the governing council of a primary state school.

(5) Learners shall be represented on the governing council of a secondary state school. 25

(6) Educators shall be represented on the governing council of that school. 30

Powers of governing councils

14. (1) The governing council of a state school shall be the official mouthpiece of the parents, educators and learners of the school on matters other than those relating to the professional administration of the school. 35

(2) Within the framework of the following principles, the responsible Member shall make regulations setting out the powers and functions of the governing council of a state school : 40

(a) State involvement in school governance should be limited to the minimum level required for legal accountability. 45

(b) The professional administration of a school falls within the ambit of the principal and his or her staff. 50

Capacity building of members of governing councils

15. (1) For the purposes of promoting efficiency and active participation in decentralised school and hostel governance, the responsible Member may institute courses and training programmes for the training of members of governing councils of state schools. 55

(2) The responsible Member may provide for members of a governing council to attend particular courses or training programmes established in terms of subsection (1). 60

Regulations relating to governing councils

16. The responsible Member may make regulations as to - 65

(a) the qualifications for election of, the terms of office of, and the vacation of office by members of governing councils, as well as the filling of incidental vacancies in governing councils;

- | | | |
|-----|---|----|
| (b) | the manner of election and the powers and functions of office bearers of governing councils; | |
| (c) | the convening of, procedure and rules at, and quorum for meetings of governing councils and the keeping of minutes of such meetings; | 5 |
| (d) | the dissolution and reconstitution of governing councils; | 10 |
| (e) | the designation of persons employed by the Department to perform the work relating to the performance of the functions of governing councils; and | 15 |
| (f) | the composition of governing councils. | |

CHAPTER 7 20

DECLARATION, REGISTRATION, ESTABLISHMENT, 25

MAINTENANCE AND CLOSURE OF DIFFERENT

CATEGORIES OF SCHOOLS 30

Establishment and maintenance of state schools

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| 17. | (1) | The responsible Member may, out of moneys appropriated for this purpose by the Provincial Legislature, establish and maintain the following types of state schools, namely - | 35 |
| | (a) | pre-primary schools; | 40 |
| | (b) | primary schools; | |
| | (c) | secondary schools; | 45 |
| | (d) | intermediate schools; | |
| | (e) | combined schools; | 50 |
| | (f) | schools for specialized education; | |
| | (g) | industrial schools; | 55 |
| | (h) | reform schools; and | |
| | (i) | any other type of school which he or she deems necessary for education. | 60 |
| | (2) | The following types of state schools, namely - | 65 |
| | (a) | a pre-primary school; | |
| | (b) | a primary school; | |

(c) a secondary school;	
(d) an intermediate school;	
(e) a combined school;	5
(f) a school for specialized education, a special school, and a home;	
(g) an industrial school; or	10
(h) a reform school,	
established or erected in terms of a law repealed by this Act or deemed to be established or erected in terms of such an Act, and which was controlled and managed by a department referred to in such Act immediately prior to the commencement of this Act, shall with effect from that date be deemed to be -	15
	20
(i) a pre-primary school;	
(ii) a primary school;	25
(iii) a secondary school;	
(iv) an intermediate school;	30
(v) a combined school;	
(vi) a school for specialized education;	35
(vii) an industrial school; or	
(viii) a reform school,	40
respectively, established under this section.	
(3) Existing state schools may be reclassified by the responsible Member in such categories of schools as he or she may determine, and he or she may combine two or more such categories in one school.	45
Closure of state schools	50
18. If the responsible Member considers it necessary, he or she may, after consultation with the governing council of the state school, by notice in the <i>Provincial Gazette</i> , declare that the state school concerned shall be closed from a date mentioned in such notice.	55
Registration as a private school	60
19. (1) No person shall establish, operate or maintain a private school unless that private school is registered in terms of this Act.	
(2) Any person intending to establish, operate or maintain a private school, shall apply to the Head of Education in writing for the registration of that private school.	

- (3) An application in terms of subsection (2) shall -
- (a) be made in the prescribed form; and
- (b) be accompanied by the prescribed fee : Provided that the responsible Member may, in any deserving case, waive the payment of such fee. 5
- (4) An applicant for the registration of a private school shall furnish such additional particulars in connection with his or her application as the Head of Education may require. 10
- (5) If in relation to an application in terms of subsection (2), the responsible Member is satisfied that - 15
- (a) the application is *bona fide*; 20
- (b) there is a need for the private school concerned;
- (c) the financial resources of the applicant are sufficient for the proper conduct of the affairs of the private school in accordance with the provisions of this Act; and 25
- (d) the prescribed requirements have been complied with, 30
- he or she shall grant the application, subject to the conditions determined by him or her, and register the private school, specifying the scope of its registration, and issue to it a certificate of registration in the prescribed form. 35
- (6) The responsible Member shall not register any private school if he or she has reasonable grounds for believing that the application for its registration does not meet the requirements of subsection (5). 40
- (7) If the responsible Member refuses to grant permission for registration, he or she shall notify the applicant in writing of such refusal and the reasons therefore. 45
- (8) The registration of a private school may, after consultation with the owner of such school, be withdrawn by the responsible Member if he or she is of the opinion that the school does not comply with the prescribed requirements any more, or that any of the conditions subject to which the registration of the school was approved, is not complied with. 50

Management of private schools 55

20. The owner of a private school may manage such school himself or herself, or he or she may appoint or authorise any person to manage the school on his or her behalf, subject to the provisions of this Act : Provided that the owner of the school shall, for the purposes of this Act, remain responsible for compliance with the prescribed requirements or any condition subject to which approval was granted for registration of the school. 60

Closure of private schools 65

21. If the responsible Member considers it necessary, he or she may, after consultation with the owner of the private school, by notice in the *Provincial Gazette*, declare that the private school concerned shall be closed from a date mentioned in such notice.

Discrimination at private schools

22. Admission requirements for private schools shall not directly or indirectly discriminate on any of the grounds mentioned in section 8(2) of the Constitution. 5

Subsidies to private schools

23. (1) A private school may annually, on or prior to the prescribed date, apply to the Head of Education in writing for a subsidy. 10

(2) The Head of Education may grant, subject to such conditions as he or she may determine, or refuse an application referred to in subsection (1) : Provided that no subsidy shall be granted to a private school - 15

(a) which does not comply with the prescribed conditions for receiving a subsidy; or 20

(b) that is operated for profit unless the responsible Member has consented to the grant of such subsidy. 25

(3) If, in the opinion of the Head of Education, a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, the Head of Education may terminate or reduce the subsidy from a date determined by him or her. 30

(4) The Head of Education shall not terminate or reduce a subsidy under subsection (3) unless he or she has granted the owner of the private school concerned an opportunity to make written representations to him or her giving reasons why the subsidy should not be reduced or terminated, as the case may be. 35

Annual Registration Fee and Guarantee Fund

24. (1) Every private school shall in each year, not later than the prescribed date, pay to the Head of Education the prescribed annual registration fee. 40

(2) In addition to the registration fee referred to in subsection (1), every private school shall pay to the Head of Education for the benefit of the Private Schools Guarantee Fund referred to in section 25, the prescribed annual guarantee fee. 45

Private Schools Guarantee Fund

25. (1) There is hereby established a fund to be known as the Private Schools Guarantee Fund. 50

(2) The moneys of the fund referred to in subsection (1) shall consist of - 55

(a) the fees which have been paid for the benefit of the fund in terms of section 24(2); 60

(b) any other moneys that may accrue to the fund by way of grants, donations or otherwise. 65

(3) The fund referred to in subsection (1) shall vest in the responsible Member and shall, subject to his or her general or specific direction, be applied -

(a) to defray any expenses that may be incurred by the Head of Education in ensuring that acceptable standards of education are maintained in all private schools; and

- (b) to refund, wholly or partly, to learners any fees paid by them in the event of insolvency of any private school to which such fees have been paid, or in the event of failure by such school for whatever reason to meet its obligations to its learners.

Regulations relating to private schools

- 26. (1) The responsible Member may make regulations as to - 5
 - (a) the admission of pupils of a private school to examinations conducted by or under the supervision of the Department; 10
 - (b) the keeping of registers or other documents by a private school;
 - (c) the manner in which any subsidy, if the application therefore has been granted, shall be payable to a registered private school; 15
 - (d) the lapse or withdrawal of the registration of a private school; and 20
 - (e) any matter relating to private schools which shall or may be prescribed by him or her. 25
- (2) Different regulations may be made under subsection (1) in respect of different private schools. 30

Accommodation of learners with special education needs in ordinary state schools 30

27. Every state school shall, as far as is reasonably possible, attempt to accommodate the special education needs of any learner who attends such school. 35

Admission of learners to state schools for special education 35

28. (1) Subject to the provisions of any other law, the Head of Education may, at the request of the parent of a learner, approve that the learner be admitted to a state school for special education. 40

(2) The Head of Education shall not grant his or her approval under subsection (1) unless- 45

- (a) he or she is of the opinion that the learner concerned has special education needs; and 50
- (b) those needs cannot be accommodated in an ordinary state school which the learner concerned can attend. 55

(3) If the special education needs of a learner cannot be accommodated in the state school which the learner currently attends, but can be accommodated at another ordinary state school which the learner can attend, the Head of Education may direct that the learner be admitted to that ordinary state school. 60

Assessments to identify learners with special education needs

29. If the Head of Education believes that a learner who is subject to compulsory school attendance has special education needs which cannot be accommodated at the school which he or she attends, the Head of Education may, after consultation with the parent of the learner, arrange that the learner be assessed in order to determine whether he or she has such needs. 5

Action in case of learners with special education needs 10

30. (1) The Head of Education shall make the results of an assessment available to, and discuss them with the parent of the learner. 15

(2) If the Head of Education, after satisfying the requirements of subsection (1), believes that the learner has special education needs which cannot be accommodated at the school which he or she attends, the Head of Education shall notify the parent of the learner in writing that he or she has found that the learner has special education needs for which he or she should receive specialised education and of the reasons for this finding. 20

Placement of learners with special education needs

31. (1) Unless - 25

(a) the parent of a learner found to have special education needs within the period determined by the Head of Education, takes such steps as the Head of Education, after consultation with the parent, determines as adequate to ensure that the learner receives suitable education or treatment; or 30

(b) the Head of Education at any time after that period is of the opinion that the learner is receiving suitable education or treatment, 35

the Head of Education may, after consultation with the parent, designate a state school for specialised education, or an ordinary state school capable of accommodating the learner's special education needs, at which the learner shall be placed. 40

(2) If the Head of Education has designated a state school under subsection (1) and the parent concerned fails to send the learner to that school within the period determined by the Head of Education, the Head of Education may cause the learner to be taken to the school concerned. 45

Additional powers of children's court in relation to children with special education needs

32. (1) A children's court may, in the case of a learner in respect of whom it has made an order in terms of section 15(1) of the Child Care Act, 1983 (Act No. 74 of 1983), direct that the case be referred to the Head of Education in order to determine whether the learner has special education needs. 55

(2) If the Head of Education finds that the learner referred to him or her under subsection (1) has special education needs, the Head of Education may approve that the learner be admitted to a state school for specialised education. 60

Transfer of learners with special education needs

33. The Head of Education may, after consultation with the parent of a learner attending a state school for specialised education, transfer that learner to another state school for specialised education.

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Exemption from attendance of a school for specialised education

34. The Head of Education may, after consultation with the parent of a learner attending a state school for specialised education, exempt such learner from attendance at a state school for specialised education if he or she is of the opinion that the learner should attend an ordinary school or should be placed in a care centre which accommodates his or her specialised education needs.

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CHAPTER 8

EDUCATION, LEARNERS AND EDUCATORS

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Compulsory school attendance

35. (1) Attendance of a school during school hours shall be compulsory for a learner from the first school day of the year in which he or she reaches the age of seven years until -

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(a) in case of a learner with specialised education needs -

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(i) the last school day of the year in which he or she reaches the age of eighteen years; or

(ii) he or she has completed the specialised education programme he or she is following; or

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(iii) he or she, in the opinion of the Head of Education, is ready to leave school; and

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(b) in the case of any other learner -

(i) the last school day of the year in which he or she reaches the age of fifteen years; or

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(ii) the day on which he or she completes the ninth grade,

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whichever is the earlier.

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

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(3) The responsible Member may, on receipt of a written application, either entirely or for such period and on such conditions as he or she may determine, exempt a learner in writing from compulsory school attendance if he or she is of the opinion that it will be in the interest of the child and of education to be so exempted.

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(4) Notwithstanding the provisions of this section, the responsible Member shall have the power to allow a learner to attend a school, even if he or she does not satisfy the age requirements prescribed in respect of the school concerned.

School attendance officers

36. In order to ensure compulsory school attendance, the responsible Member may designate officials on the establishment of the Department to act as school attendance officers and he or she may determine their powers and functions.

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Duties of principals relating to compulsory school attendance

37. (1) Where a learner is repeatedly absent from school without reasonable cause, the principal or an educator designated by him or her shall consult jointly with the learner, his or her parent and an appropriate officer of the Department of Health and Welfare, in order to reach an agreement on the appropriate measures to remedy the problem.

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(2) Where it is impossible to reach an agreement contemplated in subsection (1), or where after reaching such an agreement, there is no material improvement in the school attendance of the learner, the principal shall report the matter to the Head of Education.

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Offences relating to compulsory school attendance

38. (1) If a parent of any learner who is subject to compulsory school attendance in terms of section 35 fails, without reasonable cause and after a written warning by the Head of Education, to cause such learner to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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(2) Any person who, during school hours, employs a learner who is subject to compulsory school attendance in terms of section 35, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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

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School funds and boarding fees

39. (1) The governing council of a state school may levy school funds to be paid by a parent of a learner admitted to that school.

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(2) The parent of a learner to whom boarding in a hostel is provided by the Department, shall pay such boarding fees as the governing council concerned, may determine.

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(3) The payment of school funds contemplated in subsection (1) shall not be compulsory.

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Medium of instruction

40. The Head of Education shall approve the medium of instruction of a state school or a centre of learning.

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Language policy of state schools

41. The language policy of a state school shall be made by the governing council of the school concerned, in consultation with the Head of Education and subject to the approval of the responsible Member.

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Freedom of conscience and of religion

42. Freedom of conscience and of religion shall be respected in all state schools.

Corporal punishment not to be administered

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43. No person shall administer corporal punishment to a learner in any state school or private school.

Visits to state schools and the entering of school premises

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44. No person except -

(a) a learner, educator or an employee of the state school in question;

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(b) the responsible Member, the Head of Education or any officer of the Department;

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(c) a member of the governing council of the school concerned, or of the governing council of the hostel attached to the school concerned, who acts with the written approval of the chairperson of such council;

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(d) a parent, who has an interest in a matter regarding the education of his or her child, or who intends attending a sports meeting, concert or any other event at the school in which his or her child has an interest;

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(e) a visitor from some other school for the purposes of participating in school sports or other school activities; or

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(f) members of the community who attend a particular school activity at the invitation of the principal, or such educational programme as the Head of Education may approve,

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may, without the written permission of the Head of Education, visit a state school or any hostel attached to such school or enter the school grounds or premises of such school or hostel.

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Employment of educators

45. The Department shall be the employer of all educators at state schools.

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Political rights of educators

46. (1) The freedom of association of all educators shall be respected by governing councils.

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(2) Educators shall be entitled to be members of political parties.

(3) No educator shall use his or her position as an educator, to advance or to attempt to advance the interests of any political party.

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CHAPTER 9**REGULATIONS AND DELEGATIONS**

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Regulations

47. (1) The responsible Member may make regulations -

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| (a) | as to any matters which by this Act are required or permitted to be prescribed; | |
| (b) | determining additional duties and powers of the Head of Education or any other officer of the Department in connection with the control, supervision and administration of education; | 5 |
| (c) | as to the establishment, maintenance, management, control and disestablishment and the suspension of activities at state schools; | 10 |
| (d) | as to the registration of private schools; | 15 |
| (e) | as to the making of grants-in-aid to private schools and the circumstances in which grants-in-aid may be terminated, reduced or withdrawn; | 20 |
| (f) | relating to the control and treatment of learners at state schools and any hostel attached to such schools, the suspension of, or the imposition or infliction of other punishment upon learners at such schools and hostels, and their expulsion therefrom; | 25 |
| (g) | as to the mental, physical or other examination of any learner who is suspected of being a handicapped or mentally retarded learner; | 30 |
| (h) | as to the inspection of schools and hostels; | |
| (i) | as to the conducting of examinations, including the appointment, discipline, conduct, duties and powers of examiners, moderators, invigilators and other persons whose services are required in connection therewith, the enrolment of candidates for examinations, the conduct and discipline of candidates before, during and after examinations and the issue of diplomas and certificates; | 35 |
| (j) | as to the constitution, powers, duties and functions of a governing council of a state school; | 40 |
| (k) | as to the establishment, maintenance and control of any hostel attached to a school, and the treatment of learners at such a hostel; | 45 |
| (l) | as to the admission of learners to state schools; | 50 |
| (m) | generally, as to any other matter in respect of which the responsible Member may deem it necessary or expedient to make regulations in order to achieve the objectives of this Act. | 55 |
| (2) | The generality of the power conferred by paragraph (m) of subsection (1), shall not be limited by the provisions of the other paragraphs of the said subsection. | 60 |
| (3) | The responsible Member shall not make any regulations as to any fee or allowance payable to or by any person, or as to the control of any moneys, except with the concurrence of the Member of the Executive Council responsible for Finance and Expenditure. | 65 |

Delegations

48. (1) The responsible Member may, subject to such conditions as he or she may determine, delegate any power or function conferred upon him or her under this Act, except the power to make regulations, to the Head of Education and he or she may authorize the Head of Education to delegate that power or function to any officer on the establishment of the Department. 5

(2) The Head of Education may, subject to such conditions as he or she may determine, delegate any of his or her powers or functions under this Act, to an officer on the establishment of the Department. 10

(3) A delegation under subsection (1) or (2) shall not prevent the responsible Member or Head of Education, as the case may be, from exercising such powers or performing such duties himself or herself. 15

CHAPTER 10 20

TRANSITIONAL PROVISIONS 25

Transitional provisions relating to school attendance officers

49. Any school attendance officer appointed or deemed to have been appointed under the provisions of an act repealed by this Act, shall be deemed to have been appointed under this Act. 30

Transitional provisions relating to governing councils 35

50. (1) Any management council, board of management, local or domestic council, committee, board or other body for the control or management of a state school, a community school or a centre of learning established under the provisions of an act repealed by this Act, shall be deemed to be a governing council referred to in section 12(1). 40

(2) The responsible Member may, by notice in the *Provincial Gazette*, dissolve a body referred to in subsection (1) and replace it with a governing council constituted in terms of this Act. 45

Repeal of laws, and savings 50

51. (1) The laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column of the Schedule. 55

(2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1), and which may or shall be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act. 60

Short title and commencement

52. This Act shall be called the School Education Act, 1995, and shall be deemed to have come into operation on 1 January 1996.

SCHEDULE

LAWS REPEALED

(SECTION 51)

Number and year of law	Short title of law	Extent of repeal
Act 47 of 1963	Coloured Persons Education Act, 1963	The whole
Act 61 of 1965	Indians Education Act, 1965	The whole
Act 2 of 1979	Bophuthatswana National Education Act, 1979	The whole
Act 90 of 1979	Education and Training Act, 1979	The whole
Act 104 of 1986	Private Schools Act (House of Assembly), 1986	The whole
Act 7 of 1987	QwaQwa Education Act, 1987	The whole
Act 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole (except in so far as it relates to state-aided schools)

MEMORANDUM

The proposed bill repeals the different laws dealing with school education in respect of the different population groups and consolidate their provisions in one piece of legislation. The current legislation with regard to state-aided schools is however not repealed and remains in place until negotiations with interested parties have taken place.

The bill basically provides for 2 types of schools namely state schools and private schools and further regulates in detail the following aspects :

- objectives of Act;
- powers and functions of the responsible Member;
- powers and functions of the Head of Education;
- education councils;
- school governance;
- declaration, registration, establishment, maintenance and closure of different categories of schools;
- education, learners and educators;
- regulations and delegations;
- transitional provisions.