

Provincial Gazette Extraordinary

6705

Friday, 5 March 2010

Buitengewone Provinsiale Koerant

6705

Vrydag, 5 Maart 2010

Registered at the Post Office as a Newspaper

CONTENTS

*(*Reprints are obtainable at Room 9-06, Provincial Building, 4 Dorp Street, Cape Town 8001.)*

PROVINCIAL NOTICE

The following Bill is hereby published for general information:

Draft Western Cape Provincial School Education Amendment Bill, 2010

P.N. 107/2010

5 March 2010

Any person or organization wishing to comment on the said Bill is requested to lodge such comment in writing before or on 16 April 2010:

- (a) by posting it to:
Adv. Lynn Coleridge
Director: Policy Co-Ordination
Western Cape Education Department
Private Bag X9114
Cape Town
8000
- (b) by e-mail to:
lcoleridge@pgwc.gov.za
Telephone: 021 467-2055
Fax: 021 467-2565
- (c) by delivering it to:
Adv. Lynn Coleridge
Director: Policy Co-Ordination
Western Cape Education Department
Grand Central Towers
Lower Parliament Street
Cape Town
8000
- (d) Copies of Bill available on website: <http://wcedpolicy.pgwc.gov.za>

Afrikaans vertaling van hierdie konsepwetsontwerp volg binnekort

Xhosa Umthetho oyilwayo uzakulandela kwamsinyane



GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

————— Words underlined with a solid line indicate insertions in existing enactments.

DRAFT BILL

To amend the Western Cape Provincial School Education Act, 1997, in order to—

- align the Act with the South African Schools Act, 1996 (Act 84 of 1996), in relation to definitions, compliance with norms and standards, the merger of *public schools*, underperforming *public schools*, the governance and professional management of *public schools*, the functions of *principals* of *public schools*, the functions of *governing bodies* and the allocation of those functions, a code of conduct for the members of *governing bodies*; the admission age of *learners* to *independent schools*, admission of *learners* to *public schools*, *compulsory school attendance* and exemption from such attendance, the suspension and expulsion of *learners* from *public schools*, initiation practices, *representative councils of learners*, and *school fees* at *public schools*;
- expand the power of the Provincial Minister responsible for *education* to determine provincial *education* policy and the power of the Head of the *Western Cape Education Department* to make certain rules;
- make provision for the inspection of *schools* for certain purposes;
- regulate anew the establishment and functions of an *education council* for the *province*;
- provide for the distinction between special schools for learners with barriers to learning and special schools which provide education with a specialised focus;
- authorise the said *Provincial Minister* to prescribe certain norms and standards regarding basic infrastructure and capacity in *public schools*;
- prohibit *dangerous objects*, *illegal drugs* and alcoholic liquor on *school* premises;
- prohibit political activities at *schools* during *school time*;
- prohibit payment of unauthorised remuneration to certain employees;
- provide that certain *educators* shall be deemed to be discharged in certain circumstances;
- reduce the time period for the lodging of certain grievances;
- expand the power of the said *Provincial Minister* to make *regulations*;
- replace certain obsolete expressions;
- and to make provision for matters connected therewith

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape,
as follows:—

Substitution of preamble to Act 12 of 1997

1. The following preamble is substituted for the preamble to the Western Cape Provincial School Education Act, 1997 (the principal Act): 5

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

WHEREAS, to this end, it is essential that all *learners* have access to the highest quality of basic *education* that the *province* can provide and which will uphold the principles and values of the *Constitution* of the Republic of South Africa, 1996, particularly the rights of children, while demanding the highest standards of accountability from these *learners*, their *parents*, school governing bodies, educators and officials.” 10 15

Amendment of section 1 of Act 12 of 1997

2. Section 1 of the principal Act is amended—

(a) by the insertion after the definition of “*authorized person*” of the following definition:

“*basic education*’ means *education from grade R (Reception) to grade 12;*” 20

(b) by the deletion in the definition of “*Constitution*” of the expression “(Act 108 of 1996)”;

(c) by the insertion after the definition of “*Constitution*” of the following definition: 25

“*dangerous object*’ means—

(a) any explosive material or device; 30
(b) any firearm or gas weapon;
(c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or

(d) any object that— 35
(i) the *National Minister* declares to be a dangerous object under the *South African Schools Act* for the purpose of that Act; or
(ii) the *Provincial Minister* declares by notice in the *Provincial Gazette* to be a dangerous object for the purpose of *this Act;*”

(d) by the substitution for the definition of “*education council*” of the following definition:

“*Education Council*’ means the [education council] Western Cape Education Council established by section 11;” 40

(e) by the insertion after the definition of “*educator*” of the following definition:

“*Employment of Educators Act*’ means the *Employment of Educators Act, 1998 (Act 76 of 1998);*”

(f) by the substitution for the definition of “*financial head*” of the following definition: 45

“*financial head*’ means the *Provincial Minister* responsible for the financial affairs of the *province;*”

(g) by the insertion after the definition of “*hostel*” of the following definition:

“*illegal drug*’ means any drug as defined in the *Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992)* that is used or possessed in contravention of section 4 of that Act;” 50

(h) by the deletion of the definitions of “*Legislature*” and “*Member of the Executive Council*”;

- (i) by the insertion after the definition of “**National Minister**” of the following definition:
- “office based educator” means an educator who provides services in the—
- (a) specialist stream as—
- (i) education specialist; 5
- (ii) senior education specialist;
- (iii) deputy chief education specialist; or
- (iv) chief education specialist; or
- (b) management stream as—
- (v) education institution manager; or 10
- (vi) head of district;”;
- (j) by the deletion of the definition of “**organised teaching profession**”;
- (k) by the insertion after the definition of “**Provincial Gazette**” of the following definition:
- “Provincial Minister” means the Provincial Minister responsible for 15
- education in the province;”
- (l) by the substitution for the definition of “**school**” of the following definition:
- “school” means a public school or an independent school which [enrols
- learners in one or more grades from grade zero to grade twelve] provides
- basic education, and includes a hostel of such a school;” 20
- (m) by the insertion after the definition of “**school attendance officer**” of the following definition:
- “school fees” means school fees contemplated in section 49, and includes
- any form of contribution of a monetary nature made or paid by a person in
- relation to the attendance or participation by a learner in any programme of
- a public school;”; 25
- (n) by the insertion after the definition of “**secondary school**” of the following definition:
- “South African Schools Act” means the South African Schools Act, 1996
- (Act 84 of 1996);”; 30
- (o) by the substitution for the definition of “**this Act**” of the following definition:
- “this Act” includes the regulations;”;
- (p) by the substitution for the definition of “**Western Cape Education Department**” of the following definition:
- “Western Cape Education Department” means the provincial department 35
- responsible for education in the province.”.

Amendment of section 3 of Act 12 of 1997

3. Section 3 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) Subject to the provisions of the *South African Schools Act [1996 (Act* 40
- 84 of 1996),]** and the *Constitution*, the [*Member of the Executive Council*]
- Provincial Minister may, where necessary, from time to time determine the
- policy which is to be pursued in respect of *education in schools* in the
- province*, [**within the framework of**] taking into account the following
- principles, namely that— 45
- (a) every *learner* shall be entitled to [**ordinary**] basic education at his or
- her nearest ordinary public school, insofar as it is reasonably
- practicable;
- (b) every *learner* shall be entitled to [**equal**] equitable access to *public*
- schools*; 50
- (c) every *learner* shall have the right to [**mother tongue**] receive
- education in the official language or languages of choice, including the

- right to take **[his or her mother tongue]** any official language as a subject insofar as it is reasonably practicable;
- (d) **[every learner shall have the right to receive religious education insofar as it is reasonably practicable; and (e)]** education shall—
- (i) be provided in accordance with the needs, **[ability, aptitude and interest]** abilities, aptitudes and interests of the learners and the needs of the country **[and appropriate guidance shall be available to learners as far as it is reasonably practicable];**
 - (ii) be directed toward achieving equitable *education opportunities and the redress of past education inequality;*
 - (iii) promote a culture of respect for teaching and learning in education institutions;
 - (iii) enhance the quality of *education through monitoring and evaluating delivery and performance and through training educators and education managers;*
 - (iv) ensure broad public participation in the development of *education policy* and the representation of role-players in the governance of *all aspects of the education system.*”.

Amendment of section 7 of Act 12 of 1997

4. Section 7 of the principal Act is amended—
- (a) by the substitution for subparagraph (ii) of subsection (1)(g) of the following subparagraph:
- “(ii) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators, markers and other persons whose services are necessary in connection with the conducting of those examinations; and”
- (b) by the addition to paragraph (g) of subsection (1) of the following subparagraphs:
- “(iii) the management and conduct of *school based assessments; and*
 - (iv) *quality assurance of national, provincial or school based assessments.*”

Insertion of section 7A in Act 12 of 1997

5. The following section is inserted after section 7 of the principal Act:

“Compliance with norms and standards

- 7A.** (1) The *Provincial Minister* shall, in accordance with an implementation protocol contemplated in section 35 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005), ensure compliance with—
- (a) norms and standards determined by the *National Minister* in terms of sections 5A, 6 (1), 20 (11), 35 and 48 (1) of the *South African Schools Act*;
 - (b) minimum outcomes and standards set in terms of section 6A of the *South African Schools Act*; and
 - (c) performance standards contemplated in item 2 (2) of Schedule 1 to the *Employment of Educators Act*, (in this section jointly referred to as “norms and standards”).
- (2) The *Provincial Minister* shall ensure that the policy determined by a governing body in terms of sections 5 (5) and 6 (2) of the *South African Schools Act*, complies with the norms and standards.
- (3) The *Provincial Minister* shall, annually, report to the *National Minister* the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures that will be taken to comply.
- (4) Any dispute between the *National Minister* and the *Provincial Minister* in respect of non-compliance with the norms and standards shall—

- (a) be dealt with in accordance with the principles of co-operative governance referred to in section 41 (1) of the *Constitution* and the provisions of the Intergovernmental Relations Framework Act, 2005; and
- (b) whenever necessary, be settled in accordance with Chapter 4 of the Intergovernmental Relations Framework Act, 2005. 5
- (5) The *Head of Department* shall comply with all norms and standards within a specific *public school* year by—
- (a) identifying resources with which to comply with the norms and standards; 10
- (b) identifying the risk areas for compliance;
- (c) developing a compliance plan for the *province*, in which all norms and standards and the extent of compliance shall be reflected;
- (d) developing protocols with the *schools* on how to comply with norms and standards and manage the risk areas; and 15
- (e) reporting to the *Provincial Minister* on the state of compliance and on the measures contemplated in paragraphs (a) to (d), before 30 September of each year.
- (6) The *Head of Department* shall—
- (a) in accordance with the norms and standards contemplated in section 5A of the *South African Schools Act* and section 20B of *this Act* determine the minimum and maximum capacity of a *public school* in relation to the availability of classrooms and *educators*, as well as the curriculum programme of the *school*; and 20
- (b) in respect of each *public school* in the *province*, communicate such determination to the chairperson of the *governing body* and the *principal*, in writing, by not later than 30 September of each year.”. 25

Substitution of section 9 of Act 12 of 1997

6. The following section is substituted for section 9 of the principal Act:

“Inspection of schools [and hostels] 30

9. The *Head of Department* may, either generally or in a specific case, authorize, in writing, a person to inspect a *school* [or *hostel*, in], after consultation with the *principal* of the *school* [concerned], for the purpose of—

- (a) evaluating performance in accordance with national and provincial norms and standards; 35
- (b) monitoring compliance with national and provincial norms and standards.”

Substitution of section 11 of Act 12 of 1997

7. The following section is substituted for section 11 of the principal Act: 40

Establishment and functions of Education Council

11. (1) There is hereby established an Education Council known as the Western Cape Education Council.

- (2) The *Education Council* shall—
- (a) advise the *Provincial Minister* and the *Western Cape Education Department* in regard to matters relating to *education*, including laws and *regulations*, referred to it by the *Provincial Minister* or that Department or which the *Education Council* wishes to bring to the attention of the *Provincial Minister* or that Department; and 45
- (b) perform such other functions as may be assigned to it by or under *this Act* or any other law. 50
- (3) The *Provincial Minister* may make *regulations* in relation to—
- (a) the categories, qualifications and term of office of members of the *Education Council*; 55
- (b) the filling of vacancies and the removal of members;

- (c) the appointment and functions of the executive committee of the *Education Council*;
- (d) any other matter necessary for the proper management and operation of the *Education Council*.
- (4) The *Education Council* shall consist of—
- (a) a chairperson and vice-chairperson appointed by the *Provincial Minister*;
- (b) the *prescribed* number of persons designated by the *Head of Department* from his or her staff;
- (c) the *prescribed* number of persons designated by the *Provincial Minister* out of nominations made in the *prescribed* manner in the various categories referred to in the subsection (2)(a).
- (5) An act of the *Education Council* shall not be invalid merely by reason of a vacancy on the Council.
- (6) A member of the *Education Council* who is not in the full-time employment of the State may be paid, out of moneys appropriated for this purpose by the *Provincial Parliament*, such allowances as the *Provincial Minister* may, with the concurrence of the *financial head*, determine.
- (7) The administrative functions of the *Education Council* shall be performed by *officers* of the *Western Cape Education Department*.
- (8) The *Education Council* shall determine its own rules governing meetings and procedures at those meetings, subject to the regulations.”.

Insertion of sections 12A and 12B in Act 12 of 1997

8. The following sections are inserted after section 12 of the principal Act:

“Merger of public schools

- 12A.** (1) Subject to subsection (2), the *Provincial Minister* may, by notice in the *Provincial Gazette*, merge two or more *public schools* into a single *school*.
- (2) Before merging two or more *public schools* the *Provincial Minister* shall—
- (a) give written notice to the *schools* in question of the intention to merge them;
- (b) publish a notice giving the reasons for the proposed merger in one or more newspapers circulating in the area where the *schools* in question are situated;
- (c) give the governing bodies of the *schools* in question and any other interested persons an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in paragraph (b);
- (d) consider such representations; and
- (e) be satisfied that the employers of staff at the *public schools* have complied with their obligations in terms of the applicable labour law.
- (3) If one or more of the *schools* that are to be merged in terms of subsection (1) are *public schools* on private property, the *Provincial Minister* shall also—
- (a) notify the owner of the private property of the intention to merge the *schools* in question;
- (b) consider any contractual obligations in terms of the agreement contemplated in section 14 of the *South African Schools Act*;
- (c) renegotiate any obligations in terms of the existing agreement if necessary; and
- (d) negotiate a new agreement in terms of section 14 of the *South African Schools Act*, if the single *school* contemplated in subsection (1) is to be situated on private property.
- (4) The single *school* contemplated in subsection (1) shall be regarded as a *public school*.
- (5) All assets, liabilities, rights and obligations of the *schools* that are merged, shall, subject to the conditions of any donation, bequest or trust

contemplated in section 37 (4) of the *South African Schools Act*, vest in the single *school*.

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

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

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

Identification of underperforming public schools

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

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

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

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

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

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

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

- (a) implementing the incapacity code and procedures for poor work performance referred to in section 16 of the *Employment of Educators Act*;
- (b) withdrawing the functions of the *governing body* in terms of section 8 (5) of *this Act*; or
- (c) appointing persons in terms of section 25 of the *South African Schools Act*, to perform the functions or specified functions of the *governing body*.

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

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

Substitution of section 13 of Act 12 of 1997

9. The following section is substituted for section 13 of the principal Act:

“Governance and professional management of public schools

13 (1) Subject to *this Act* and the South African Schools Act, the governance of every *public school* is vested in its *governing body* and it may perform only such functions and obligations and exercise only such rights as prescribed by those Acts. 5

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

(3) Subject to *this Act* and [any applicable provincial law] the *South African Schools Act*, the professional management of a *public school* [is vested in] shall be undertaken by the *principal* under the authority of the *Head of Department*. 10

(4) The *Head of Department* [must delegate such powers to the principal of a public school that are required for the effective professional management of such public school] may close a *public school* temporarily in the case of an emergency if the *Head of Department* believes on reasonable grounds that the lives of *learners* and staff are endangered or that there is a real danger of bodily injury to them or of damage to property. 15

(5) [A delegation contemplated in subsection (4), may be withdrawn on reasonable grounds] When the *Head of Department* decides that a *school* contemplated in subsection (4) should be reopened, the *Head of Department* shall inform the *governing body* and the *principal* of the date on which the *school* shall reopen. 20

(6) The *principal* or a person designated by the *Head of Department* shall inform the *educators* and *parents* of the date contemplated in subsection (5). 25

(7) If a new *public school* is provided in terms of section 12 of the *South African Schools Act*, the governance of that *school* shall vest in the *Head of Department* until a *governing body* has been constituted in terms of that Act.”. 30

Insertion of section 13A in Act 12 of 1997

10. The following section is inserted after section 13 of the principal Act:

“Functions and responsibilities of principal of public school

13A. (1) (a) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23 (1) (b) and 24 (1) (j) of the *South African Schools Act*. 35

(b) The *principal* shall prepare and submit to the *Head of Department* an annual report in respect of— 40

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

(ii) the effective use of available resources. 45

(c) (i) The *principal* of a *public school* identified by the *Head of Department* in terms of section 12B, shall annually, before the beginning of the first *school* term, prepare a plan setting out how academic performance at the *school* will be improved. 50

(ii) The academic performance improvement plan shall be— 50
(aa) presented to the *Head of Department* on a date determined by the *Head of Department*; and
(bb) tabled at a *governing body* meeting.

(iii) The *Head of Department* may approve the academic performance improvement plan or return it to the *principal* with such recommendations as may be necessary in the circumstances. 55

- (iv) If the *Head of Department* approves the academic performance improvement plan, the *principal* shall, by 30 June, report to the *Head of Department* and the *governing body* on progress made in implementing that plan.
- (v) The *Head of Department* may extend the date contemplated in subparagraph (iv) on good cause shown. 5
- (2) The *principal* shall—
- (a) in undertaking the professional management of a *public school* as contemplated in section 13 (3), carry out duties which include, but are not limited to— 10
- (i) the implementation of all the *educational* programmes and curriculum activities;
- (ii) the management of all *educators* and support staff;
- (iii) the management of the use of learning support material and other equipment; 15
- (iv) the performance of functions delegated to the *principal* by the *Head of Department* in terms of *this Act*;
- (v) the safekeeping of all *school* records; and
- (vi) the implementation of policy and legislation; 20
- (b) attend and participate in all meetings of the *governing body*; 20
- (c) provide the *governing body* with a report about the professional management relating to the *public school*;
- (d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;
- (e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*; 25
- (f) inform the *governing body* about policy and legislation; and
- (g) provide accurate data to the *Head of Department* when requested to do so. 30
- (3) The *principal* shall assist the *governing body* in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with—
- (a) instructions of the *Head of Department*;
- (b) legislation or policy; 35
- (c) any obligation towards the *Head of Department*, the *Provincial Minister* or the *National Minister*; or
- (d) a provision of the *Employment of Educators Act*, and the *Personnel Administration Measures determined in terms thereof*.”.

Insertion of sections 20A and 20B in Act 12 of 1997 40

11. The following sections are inserted after section 20 of the principal Act:

“Schools for learners with special education needs

20A. (1) A public school for learners with special education needs as contemplated in section 12(3) of the *South African Schools Act* may consist of— 45

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

(2) The *Provincial Minister* may, subject to applicable national norms and standards, *prescribe* by *regulation* admission criteria, funding and governance models for the *schools* contemplated in subsection (1). 50

Norms and standards for basic infrastructure and capacity in public schools

20B. (1) Subject to any applicable national norms and standards contemplated in section 146 (2) of the *Constitution*, the *Provincial Minister* may, after consultation with the *Education Council*, *prescribe* by *regulation* minimum uniform norms and standards for— 55

- (a) school infrastructure;
 - (b) capacity of a *school* in respect of the number of *learners* a *school* can admit; and
 - (c) the provision of learning and teaching support material.
- (2) When determining policy in terms of sections 5 (5) and 6 (2) of the *South African Schools Act*, a *governing body* must comply with the norms and standards contemplated in subsection (1) and any norms and standards prescribed by the *National Minister* under section 5A of the *South African Schools Act*.
- (4) A *governing body* must, within a period of 12 months after the *Provincial Minister* has *prescribed* the norms and standards contemplated in subsection (1) or the *National Minister* has *prescribed* the norms and standards contemplated in section 5A of the *South African Schools Act*, review any policy that it has determined in terms of sections 5 (5) and 6 (2) of that Act to ensure that such policy complies with the norms and standards.”

Insertion of section 21A in Act 12 of 1997

12. The followings section is inserted after section 21 of the principal Act:

“Functions of all governing bodies

- 21A** (1) Subject to *this Act* and the *South African Schools Act*, the *governing body* of a *public school* shall—
- (a) promote the best interests of the *school* and strive to ensure its development through the provision of quality *education* for all *learners* at the *school*;
 - (b) adopt a constitution;
 - (c) develop the mission statement of the *school*;
 - (d) adopt a code of conduct for *learners* at the *school*;
 - (e) support the *principal*, *educators* and other staff of the *school* in the performance of their professional functions;
 - (f) adhere to any actions taken by the *Head of Department* in terms of section 16 of the *Employment of Educators Act* to address the incapacity of a *principal* or *educator* to carry out their duties effectively;
 - (g) determine times of the *school* day consistent with any applicable conditions of employment of *members of staff* at the *school*;
 - (h) administer and control the *school*’s property, and buildings and grounds occupied by the *school*, including *school hostels*, but the exercise of this power shall not in any manner interfere with or otherwise hamper the implementation of a decision made by the *Provincial Minister* or *Head of Department* in terms of any law or policy;
 - (i) encourage *parents*, *learners*, *educators* and other staff at the *school* to render voluntary services to the *school*;
 - (j) recommend to the *Head of Department* the appointment of *educators* at the *school*, subject to the *Employment of Educators Act* and the Labour Relations Act, 1995 (Act 66 of 1995);
 - (k) recommend to the *Head of Department* the appointment of non-educator staff at the *school*, subject to the Public Service Act, 1994 (Proclamation 103 of 1994), and the Labour Relations Act, 1995;
 - (l) make the recommendation contemplated in paragraph (k) within the time frames contemplated in section 6 (3) (l) of the *Employment of Educators Act*;
 - (m) at the request of the *Head of Department*, allow the reasonable use under fair conditions determined by the *Head of Department* of the facilities of the *school* for *educational* programmes not conducted by the *school*;
 - (n) discharge all other functions imposed upon the *governing body* by or under *this Act* or the *South African Schools Act*; and

- (o) discharge other functions consistent with the *South African Schools Act*, as determined by the *National Minister* by notice in the *Government Gazette*, or by the *Provincial Minister* by notice in the *Provincial Gazette*.
- (2) The *governing body* may allow the reasonable use of the facilities of the *school* for community, social and *school* fund-raising purposes, subject to such reasonable and equitable conditions as the *governing body* may determine, which may include the charging of a fee or tariff which accrues to the *school*.
- (3) The *governing body* may join a voluntary association representing *governing bodies* of *public schools*.
- (4) Subject to *this Act*, the Labour Relations Act, 1995, and any other applicable law, a *public school* may establish posts for *educators* and employ *educators* additional to the establishment determined by the *Provincial Minister* in terms of section 5 (1) of the *Employment of Educators Act*.
- (5) Subject to *this Act*, the Labour Relations Act, 1995, and any other applicable law, a *public school* may establish posts for non-educators and employ non-educator staff additional to the establishment determined in terms of the Public Service Act, 1994.
- (6) An *educator* and a non-educator employed in a post established in terms of subsection (4) or (5) shall comply with the requirements set for employment in *public schools* in terms of *this Act*, the Labour Relations Act, 1995, and any other applicable law.
- (7) A *public school* may employ an *educator* in a post established in terms of subsection (4) only if the *educator* is registered as an *educator* with the South African Council of Educators.
- (8) The staff contemplated in subsections (4) and (5) shall be employed in compliance with the basic values and principles referred to in section 195 of the *Constitution*, and the factors to be taken into account when making appointments include, but are not limited to—
- (a) the ability of the candidate;
 - (b) the principle of equity;
 - (c) the need to redress past injustices; and
 - (d) the need for representivity.
- (9) When presenting the annual budget contemplated in section 38 of the *South African Schools Act*, the *governing body* of a *public school* shall provide sufficient details of any posts envisaged in terms of subsections (4) and (5), including the estimated costs relating to the employment of staff in such posts and the manner in which it is proposed that such costs will be met.
- (10) Despite section 60 of the *South African Schools Act*, the State is not liable for any act or omission by the *public school* relating to its contractual responsibility as the employer in respect of staff employed in terms of subsections (4) and (5).
- (11) Subject to any applicable national norms and standards determined by the National Minister in terms of section 20(11) of the *South African Schools Act*, 1996, the *Provincial Minister* may determine norms and standards by notice in the *Provincial Gazette* regarding the funds used for the employment of staff referred to in subsections (4) and (5), but such norms and standards may not be interpreted so as to make the State a joint employer of such staff.”

Insertion of section 26A in Act 12 of 1997

13. The following section is inserted after section 20 of the principal Act:

“Code of conduct of governing body

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

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

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

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

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

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

Insertion of section 27A of Act 12 of 1997

14. The following section is inserted after section 27 of the principal Act.

“Admission age to independent school

27A. (1) The admission age of a *learner* to an *independent school* to—

- (a) grade R is age four turning five by 30 June in the year of admission;
- (b) grade 1 is age five turning six by 30 June in the year of admission.

(2) An *independent school* may admit a *learner* who is under the age contemplated in subsection (1) if—

- (a) good cause is shown to the *Head of Department*; and
- (b) the *learner* complies with the criteria contemplated by section 45A (c) of the *South African Schools Act*.

(3) For the purpose of subsection (2) (a), good cause shown means that—

- (a) it can be shown that exceptional circumstances exist which necessitate the admission of an underage *learner* because admission would be in the *learner's* best interest; and
- (b) the refusal to admit that *learner* would be severely detrimental to the *learner's* development.”

Substitution of section 41 of Act 12 of 1997

15. The following section is substituted for section 41 of the principal Act:

“Admission to public schools

41. (1) A *public school* shall 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 a test.

(3) No *learner* may be refused admission to a *public school* on the grounds that the *learner's* parent—

- (a) is unable to pay or has not paid the *school* fees determined under section 39 of the *South African Schools Act*;
- (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 is under the age contemplated in paragraph (a) if—

- (i) good cause is shown to the *Head of Department*; and

- (ii) the *learner* complies with the criteria contemplated by section 5(4)(c) of the *South African Schools Act*.
- (c) 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 the *learner's* interest; and
- (ii) the refusal to admit that *learner* would be severely detrimental to the *learner's* development
- (5) Subject to *this Act* and the *South African Schools Act*, the admission policy of a *public school* is determined by the *governing body* of the *school*.
- (6) An application for the admission of a *learner* to a *public school* shall be made to the *Western Cape Education Department* in a manner determined by the *Head of Department*.
- (7) If an application in terms of subsection (6) is refused, the *Head of Department* shall inform the *parent* in writing of the refusal and the reason therefor.
- (8) Any *learner* or *parent* of a *learner* who has been refused admission to a *public school* may appeal against the decision to the *Provincial Minister*.”

Substitution of section 42 of Act 12 of 1997 20

16. The following section is substituted for section 42 of the principal Act:

“Compulsory school attendance

- 42.** (1) Subject to the *South African Schools Act*, every *parent* shall cause every *learner* for whom he or she is responsible to attend a *school* from the first *school* day of the year in which the *learner* reaches the age of seven years until the last *school* day of the year in which the *learner* reaches the age of seventeen years or the twelfth *grade*, whichever occurs first.
- (2) The *Provincial Minister* shall ensure that there are enough *school* places so that every child who lives in the *province* can attend *school* as required by subsection (1).
- (3) If the *Provincial Minister* cannot comply with subsection (2) because of a lack of capacity existing at the date of commencement of the *Western Cape Provincial School Education Amendment Act, 2010*, he or she shall take steps to remedy any such lack of capacity as soon as possible and shall make an annual report to the *National Minister* on the progress achieved in doing so.
- (4) 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).
- (5) Subject to the *South African Schools 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;
- (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.”

Amendment of section 43 of Act 12 of 1997

17. Section 43 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The *Head of Department* 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 entirely, partially or conditionally from *compulsory school attendance* introduced under section 42 if it is in the best interests of the learner.”.

Amendment of section 45 of Act 12 of 1997

18. Section 45 of the principal Act is amended by the substitution for subsection (2) of the following subsections:

“(2) A governing body may, on reasonable grounds and as a precautionary measure, suspend a *learner* who is suspected of serious misconduct from attending *school*, but may only enforce the suspension after the *learner* has been granted a reasonable opportunity to make representations to it in relation to the suspension.

(3) A *governing body* shall conduct disciplinary proceedings in the manner contemplated in section 8 of the *South African Schools Act* against a *learner* within seven *school* days after the suspension of the *learner*.

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

(5) A *governing body* may, if a *learner* is found guilty of serious misconduct during the disciplinary proceedings contemplated in section 8 of the *South African Schools Act*—

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

(b) make a recommendation to the *Head of Department* to expel the *learner* from the *public school*.

(6) The *Head of Department* shall consider the recommendation by the *governing body* referred to in subsection (5) (b) and shall decide whether or not to expel a *learner* within 14 days of receiving the recommendation.

(7) A *governing body* may suspend or extend the suspension of a *learner* for a period not longer than 14 *school* days pending the decision by the *Head of Department* whether or not to expel the *learner* from the *public school*.

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

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

(b) if found guilty of serious misconduct after disciplinary proceedings contemplated in section 8 of the *South African Schools Act* were conducted.

(9) The *Provincial Minister* shall 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 safeguarding the interests of the *learner* and any other party involved in disciplinary proceedings.

(10) 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 *Provincial Minister* within 14 *school* days of receiving the notice of expulsion.

(11) If a *learner* who is subject to compulsory attendance in terms of section 42(1) is expelled from a *public school*, the *Head of Department* shall make an alternative arrangement for his or her placement at a *public school*.

(12) A *learner* who has appealed in the manner contemplated in subsection (10), shall, pending the outcome of the appeal, be given access to *education* in the manner determined by the *Head of Department*.

(13) The *Head of Department*, in determining the manner of attendance contemplated in subsection (12)—

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

(b) may consider an alternative method of providing *education* to the *learner* contemplated in subsection (12).

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

(15) If the *Head of Department* decides not to impose a sanction on the *learner*, the *Head of Department* shall refer the matter back to the *governing body* for an alternative sanction, other than expulsion, in terms of the code of conduct contemplated in subsection (1).

(16) The *governing body* shall implement the sanction contemplated in subsection (14).”

Insertion of section 45A in Act 12 of 1997

19. The following section is inserted after section 45 of the principal Act:

“Prohibition of dangerous objects, illegal drugs and alcoholic liquor on school premises

45A. (1) Unless authorised by the *principal*, no person may bring any *dangerous object*, alcoholic liquor or *illegal drug* onto *school* premises or have in his or her possession any such object, alcoholic liquor or drug on *school* premises or during any *school* activity or event.

(2) The *principal* or his or her delegate may—

- (a) search any *learner*, or the property of any *learner*, for any *dangerous object*, alcoholic liquor or *illegal drug*, if the *principal* reasonably suspects the presence of a *dangerous object*, alcoholic liquor or *illegal drug* on the *school* premises or during a *school* activity or event; and
- (b) seize any *dangerous object*, alcoholic liquor or *illegal drug*, found during the search.

(3) A person conducting a search contemplated in subsection (2) shall do so in a manner that is reasonable and proportional to the aims and objects of the search.

(4) Where a search contemplated in subsection (3) entails the body search of any *learner*, the person searching the learner—

- (a) may not require the learner to remove any clothing other than outer clothing;
- (b) shall be of the same gender as the *learner*; and
- (c) may carry out the search only in the presence of another *member of staff* who is also of the same gender as the *learner*.

(5) If, as a result of a search or as a result of reliable information received, or for any other reason, the *principal* has good reason to believe that any *dangerous object*, alcoholic liquor or *illegal drug* is concealed on the body or person of a particular *learner*, the *principal* may request a member of the South African Police Service to conduct a more extensive search of that *learner's* person, which may entail the removal of clothing.

(6) Any *dangerous object*, alcoholic liquor or *illegal drug* that has been seized shall be—

- (a) clearly and correctly labelled with full particulars, including—
 - (i) where it was found and, if applicable, the name of the *learner* in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of the person who conducted the search;
 - (v) the name of the *member of staff* in whose presence the search was conducted, where applicable; and
 - (vi) any other details that may be necessary to identify the item and incident;

(b) recorded in the *school* record book; and

(c) handed over to a member of the South African Police Service immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(7) If the Police cannot collect the *dangerous object*, alcoholic liquor or *illegal drug* from the *school* immediately, the *principal* or his or her delegate shall—

- (a) take the *dangerous object*, alcoholic liquor or *illegal drug* to the nearest police station; and
- (b) hand the *dangerous object*, *illegal drug* or alcoholic liquor over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977. 5
- (8) The police officer who receives the *dangerous object*, alcoholic liquor or *illegal drug* shall issue an official receipt for it to the *principal* or delegate.
- (9) The *principal* or his or her delegate may administer a urine or other non-invasive test to any *learner* if the *principal* has reasonable ground for suspecting that the *learner*? 10
- (a) is in possession of or using alcoholic liquor or *illegal drugs*; or
- (b) is under the influence of alcoholic liquor or *illegal drugs*, during school hours or at a school activity or event.
- (10) A *learner* contemplated in subsection (9) may be subjected to a urine or other non-invasive test for alcoholic liquor or *illegal drugs* only if— 15
- (a) the test is conducted by a person of the same gender as the *learner*;
- (b) it is done in a private area;
- (c) one adult witness, of the same gender as the *learner*, is present;
- (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (6), with the necessary changes; and 20
- (e) a device contemplated in section 8A(11) of the *South African Schools Act* is used.
- (11) The *principal* or his or her delegate shall— 25
- (a) within one working day, if practicable, inform the *parent* of the *learner* concerned that a test or search and seizure was done in respect of the *learner*; and
- (b) inform the *learner* and *parent* of the result of the test immediately after it becomes available.
- (12) A person who exercises a power under this section may use such force as is reasonable in the circumstances for exercising that power. 30
- (13) A *learner* may be subjected to disciplinary proceedings if—
- (a) the *learner* is in possession of a *dangerous object*, alcoholic liquor or *illegal drug* during school hours or at a school activity or event; or
- (b) the *learner* tested positive for alcoholic liquor or an *illegal drug* in the circumstances described in sub-section (10). 35
- (14) Any disciplinary proceedings in respect of a *learner* shall be conducted in terms of the code of conduct contemplated in section 45(1).
- (15) In this section— 40
- (a) “outer clothing” means—
- (i) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or
- (ii) a hat, shoes, boots, gloves or a scarf;
- (b) “property” in relation to a *learner* includes any goods over which the *learner* has or appears to have control. 45

Insertion of sections 46A and 46B in Act 12 of 1997

20. The following sections are inserted after section 46 of the principle Act:

“Prohibition of initiation practices

46A. (1) A person may not conduct or participate in any initiation practices. against a *learner* at a *school*. 50

(2) (a) Any person who contravenes subsection (1) is guilty of misconduct and disciplinary action shall be instituted against such a person in accordance with the applicable code of conduct, contemplated in section 13 or 45(1) of *this Act* or contained in Schedule 2 to the *Employment of Educators Act*. 55

(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, inter *schools* 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.”

Prohibition of political activities during school time

46B. (1) *School* time shall be used for educational activities only.

(2) No person may conduct party political activities on *school* premises during *school* time, including—

- (a) campaigning;
- (b) conducting a rally;
- (c) distributing party political literature; and
- (d) hanging of posters.

(3) A *governing body* or *principal* may not allow a political party or a member of such a party to conduct political party activities at a *school* during *school* time.

(4) A *school* may not allow the display of material of a party political nature within the premises of the *school*, other than as part of the prescribed curriculum.

(5) For the purposes of this section, ‘*school* time’ means the times of the *school* day determined by the *governing body* under section 21A (1) (g), and any other time during which curricular or extra curricular activities are taking place on the *school* premises

(6) If a *governing body* allows the premises of a *school* to be used by a political party, it must do so in accordance with the *Constitution* and *this Act*.”

Substitution of section 48 of Act 12 of 1997

21. The following section is substituted for section 48 of the principal Act:

“Representative council of learners

48. (1) A *representative council of learners* at the *school* shall be established at every *public school* enrolling *learners* in the eighth *grade* or higher, and that council is the only recognised and legitimate representative *learner* body at the *school*.

(2) Subject to policy made in terms of section 3 (4) (g) of the National Education Policy Act, 1996 (Act 27 of 1996), the *Provincial Minister* shall, by notice in the *Provincial Gazette*, determine the functions and the procedures for the establishment and election of *representative councils of learners*.

(3) The *Provincial Minister* 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*.”

Substitution of section 49 of Act 12 of 1997

22. The following section is substituted for section 49 of the principal Act:

“School fees at public schools

- 49.** (1) Subject to the South African Schools 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) of that Act. 5
- (2) A resolution contemplated in subsection (1) shall provide for—
- (a) the amount of *school fees* to be charged;
 - (b) equitable criteria and procedures for the total, partial or conditional exemption of *parents* who are unable to pay *school fees*; and 10
 - (c) a *school* budget that reflects the estimated cumulative effect of—
 - (i) the established trends of non-payment of *school fees*; and
 - (ii) the total, partial or conditional exemptions granted to *parents* in terms of the regulations contemplated in section 39 (4) of the *South African Schools Act*. 15
- (3) The *governing body* shall implement a resolution adopted at the meeting contemplated in subsection (1).
- (4) A *public school* may not charge any registration, administration or other fee, except *school fees* as defined in section 1. 20
- (5) A *public school* may not charge a *parent* of a *learner* different *school fees* based on curriculum or extramural curriculum within the same *grade*.
- (6) The *Provincial Minister* shall identify and draw a list of all the *schools* contemplated in section 39(7) of the *South African Schools Act*, within the *province*. 25
- (7) The *schools* contemplated in section 39(7) of the *South African Schools Act* may, despite that section, charge *school fees* if they receive less than the no fee threshold referred to in section 39(8) of the *South African Schools Act* from the *Western Cape Education Department*.
- (8) The right of the *school* to charge *school fees* in terms of subsection (7) is limited to an amount equal to the sum obtained if the actual amount received from the State is deducted from the no fee threshold.” 30

Insertion of section 51A in Act 12 of 1997

23. The following section is inserted after section 51 of the principal Act:

“Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees 35

- 51A.** (1) Subject to subsection (2), a governing body may not pay or give to a state employee employed in terms of the *Employment of Educators Act* or the *Public Service Act, 1994* (Proclamation 103 of 1994), any unauthorised— 40
- (a) remuneration;
 - (b) other financial benefit; or
 - (c) benefit in kind.
- (2) A *governing body* may apply to the *Head of Department* for approval to pay a state employee any payment contemplated in subsection (1). 45
- (3) Such an application shall be lodged in writing in the office of the *Head of Department* and shall state—
- (a) full details of the nature and extent of the payment;
 - (b) the process and resources that will be used to compensate or remunerate the state employee; and 50
 - (c) the extent of compliance with section 21A (5) to (9).
- (4) The *governing body* shall make the application contemplated in subsection (2) at least four months prior to the finalisation of the *school's* budget.
- (5) Despite subsection (1), a *governing body* may pay travel and subsistence expenses relating to official *school* activities but such expenses 55

may not be greater than those that would be payable to a public servant in similar circumstances.

(6) The *Head of Department* shall not unreasonably refuse an application contemplated in subsection (2).

(7) In considering the application, the *Head of Department* shall take into account—

- (a) the implications for the employer in terms of the employment contract and labour law;
- (b) whether the service concerned in the application will interfere with the normal service delivery of the employee;
- (c) whether the service concerned in the application has already been paid for by the employer; and
- (d) whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the *school*.

(8) The payment contemplated in subsection (1) shall be reflected in the *school's* budget, as presented to the general meeting of *parents* as contemplated in section 38 (2) of the *South African Schools Act*.

(9) If a *governing body* pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the *Head of Department*, the amount of money paid or benefit given shall be recovered by the *Head of Department* on behalf of the *school* from members of the *governing body* who supported that decision, excluding a member of the *governing body* who is a minor.

(10) A *governing body* may appeal to the *Provincial Minister* against—

- (a) the refusal by the *Head of Department* of an application contemplated in subsection (2); or
- (b) the failure of the *Head of Department* to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the *Head of Department*.”

Insertion of sections 54A, 54B and 54C in Act 12 of 1997

24. The following sections are inserted after section 54 of the principal Act:

Application of section 14 of the Employment of Educators Act in respect of temporary educators and educators employed on contract

54A. Section 14 of the Employment of Educators Act applies, with the necessary changes required by the context, to *educators* appointed to temporary posts, *educators* appointed on a fixed term contract and *educators* on probation.

Deemed discharge of educator

54B. (1) If an *educator*, whether appointed permanently, or in a temporary post or on probation, resigns after being served with disciplinary charges but before the disciplinary proceedings have been completed, the *educator* shall be deemed to have been discharged on account of such disciplinary charges for the purposes of seeking future employment as an *educator* or as an employee in the public service.

(2) The failure to disclose the fact of such disciplinary charges and of the resignation prior to the completion of the disciplinary proceedings in an application for appointment as an *educator* or to the *Western Cape Education Department* constitutes a ground for discharge.

(3) If the *Head of Department* is considering not appointing an *educator* because of the deemed discharge under subsection (1), the *Head of Department* shall request written submissions from the *educator* in the *prescribed* manner, and may initiate any process as may be *prescribed*, before deciding on the appointment.

Time period for lodging grievances concerning appointment or promotion

54C. Notwithstanding item 3.1(b)(i) of the Personnel Administrative Measures, grievances concerning the appointment or promotion of an *educator* or officer of the *Western Cape Education Department* made by the *Head of Department* shall be lodged within 30 days of notification of the decision concerned.”

5

Amendment of section 55 of Act 12 of 1997

25. Section 55 of the principal Act is amended by the substitution for paragraph (i) of subsection (1) of the following paragraph:

10

“(i) a person or persons from **[organised teachers organisations]** a trade union which is a member of the Education Labour Relations Council, who, for purposes of meeting with *educators*, have been granted approval by the *principal*.”

Amendment of section 63 of Act 12 of 1997

15

26. Section 63 of the principal Act is amended—

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

“(a) the management and control of **[hostels and]** *public schools* and the control over the immovable property and equipment of the *Western Cape Education Department*;”;

(b) by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph:

“(i) the receipt and use of funds or other goods by *public schools* **[and hostels attached to such public schools]** and the books, records and statements to be kept in connection therewith by the bodies or persons mentioned in the *regulations*; and”;

(c) by the insertion after paragraph (c) of subsection (1) of the following paragraphs:

“(cA) effective performance evaluation of *schools*, *educators* and *learners*;

30

(cB) performance agreements between the *Head of Department* and *principals*, deputy principals and office based *educators*;

(cC) minimum teaching hours per *school* week and *school* day;

(cD) the declaration of personal interest of members of *governing bodies* in the procurement of goods and services for *schools*;

35

(cE) disciplining, suspension and expulsion of *learners*;

(cJ) norms and standards for basic infrastructure and capacity in *public schools*.”

Substitution of certain expressions in Act 12 of 1997

40

27. The principal Act is amended by the substitution for the expressions in the first column of the Schedule of the expressions in the second column.

Short title and commencement

28. This Act is called Western Cape Provincial School Education Amendment Act, 2010, and comes into effect on a date set by the Premier by proclamation.

45

SCHEDULE (Section 27)

Educators' Employment Act, 1994 (Proclamation 138 of 1994)	<i>Employment of Educators Act</i>
<i>Member of the Executive Council</i>	<i>Provincial Minister</i>
<i>Legislature</i>	<i>Provincial Parliament</i>
South African Schools Act, 1996 (Act 84 of 1996)	<i>South African Schools Act</i>

5

**MEMORANDUM ON THE OBJECTS OF THE DRAFT WESTERN
CAPE PROVINCIAL SCHOOL EDUCATION
AMENDMENT BILL, 2010**

1. BACKGROUND

On 19 June 2009 the Honourable Provincial Minister for Education announced in the Western Cape Provincial Parliament that the review of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997) (the WCPSEA) as a strategic priority for the Western Cape Education Department.

The Draft Western Cape Provincial School Education Amendment Bill, 2010 (the Draft Amendment Bill) proposes to amend the WCPSEA so as to align it with developments in the education landscape, and to ensure that systems of learning and excellence in education are put in place in a manner which respects, protects, promote and fulfills the right to basic education enshrined in section 29(1) of the Constitution.

The Draft Amendment Bill seeks to amend the WCPSEA so as to make certain technical and substantive adjustments, to clarify matters and to insert certain provisions to cover matters which are not provided for by the existing provisions of the Act.

The Draft Amendment Bill furthermore seeks to consolidate and align the WCPSEA with the provisions of the South African Schools Act, 1996.

2. OBJECTS OF THE DRAFT BILL

- 2.1 Clause 1** provides for the amendment of the preamble to the WCPSEA so as to capture the spirit, nature and purport of the Draft Amendment Bill within the context of a globalised environment, affording all learners access to the highest quality of basic education.
- 2.2 Clause 2** provides for the insertion of a number of definitions and seeks to amend certain other definitions.
- 2.3 Clause 3** seeks to amend section 3 of the WCPSEA so as to increase the Provincial Minister's policy making powers, provide for better standards of performance by educators, learners, moderators and supervisors, better monitoring and assessment of performance to ensure accountability, efficiency and increased effectiveness.
- 2.4 Clause 4** seeks to amend section 7 of the WCPSEA by including markers as a category of persons in respect of whom the Head of Department may make rules.
- 2.5 Clause 5** seeks to insert a new section 7A to require the Provincial Minister and the Head of Department to ensure compliance with and implementation of the national norms and standards.
- 2.6 Clause 6** seeks to amend section 9 of the WCPSEA to provide for access by the employer and employer's nominees including outside agencies, to schools, to monitor performance and professional management of the school.
- 2.7 Clause 7** seeks to amend section 11 of the WCPSEA in relation to the composition of the Education Council.
- 2.8 Clause 8** seeks to insert a new section 12A which provides for the merger of two or more public schools and sets out procedures and processes to be followed for such mergers. A new section 12B is inserted which provides for the identification of underperforming schools, and the procedures to be followed in addressing the underperformance by those schools.
- 2.9 Clause 9** seeks to amend section 13 of the WCPSEA to provide for the professional management of a public school to be undertaken by the principal under the authority of the Head of Department.

- 2.10 Clause 10** seeks to insert a new section 13A to provide for functions and responsibilities of a principal of a public school.
- 2.11 Clause 11** seeks to insert sections 20A and 20B. Section 20A distinguishes between special schools for learners with barriers to learning and special schools which provide education with a specialised focus or in any other key identified focus area. Section 20B provides for norms and standards for basic infrastructure, capacity in public schools, and the provisioning of learning and teaching support material.
- 2.12 Clause 12** seeks to insert a new section 21A which provides for the functions of a governing body of a public school.
- 2.13 Clause 13** provides for the insertion of section 26A which provides for the determination of a code of conduct for members of the governing body.
- 2.14 Clause 14** provides for the insertion of section 27A which provides for the admission age to independent schools and exemptions thereto.
- 2.15 Clause 15** seeks to amend section 41 and provides for the admission criteria for learners to public schools.
- 2.16 Clause 16** seeks to amend section 42 of the WCPSEA in respect of compulsory school attendance.
- 2.17 Clause 17** seeks to amend section 43 of the WCPSEA so as to provide for entire, partial or conditional exemption from compulsory school attendance if it is in the best interests of the learner.
- 2.18 Clause 18** seeks to amend section 45 so as to provide for the suspension and expulsion procedures of learners from a public school.
- 2.19 Clause 19** seeks to insert section 45A which provides for the prohibition of dangerous objects, illegal drugs and alcoholic liquor on school premises or during any school activity or event. It also provides for the authorisation of search and seizure procedures, and for drug and alcohol testing.
- 2.20 Clause 20** seeks to insert sections 46A and 46B. Section 46A provides for the prohibition of initiation practices in public schools. Section 46B prohibits political activities during school hours on school premises.
- 2.21 Clause 21** seeks to amend section 48 of the WCPSEA by providing for the establishment of representative council of learners, the functions and procedures for the establishment and election of representative councils of learners, and exemptions from establishing representative councils of learners.
- 2.22 Clause 22** seeks to amend section 49 of the WCPSEA by providing that public schools determine and charge school fees subject to a resolution adopted by the majority of parents of learners.
- 2.23 Clause 23** seeks to insert section 51A which provides for the prohibition of payment of unauthorised remuneration or giving of a financial benefit or benefit in kind to state employees by the school governing body subject to approval by the Head of Department.
- 2.24 Clause 24** seeks to insert sections 54A, 54B and 54C. Section 54A provides for the application of section 14 of the Employment of Educators Act to apply to educators in temporary posts, educators on fixed-term contracts, and educators on probation. Section 54B provides for the conditions under which an educator is deemed to be discharged from service. This provision will apply to educators in temporary posts, educators on fixed-term contracts, and educators on probation. Section 54C provides for a time-period for lodging a grievance concerning the appointment or promotion of an educator or state employee.

2.25 Clause 25 seeks to amend section 55 of the WCPSEA by replacing the reference to organised teachers organisations with reference to a trade union which must be a member of the Education Labour Relations Council.

2.26 Clause 26 seeks to amend section 63 of the WCPSEA in respect of matters that the Provincial Minister may make regulations on.

2.27 Clause 27 seeks to substitute certain expressions in the WCPSEA so as to align these expressions with the Provincial Constitution of the Western Cape, 1997 and relevant national legislation.

3. CONSULTATION

Internal workshops, consultations and discussions were held within WCED. The amendments received further legal and constitutional scrutiny by the Chief Directorate: Legal Services.

4. FINANCIAL IMPLICATIONS FOR THE STATE

None.

5. LEGISLATIVE COMPETENCE

The Provincial Minister responsible for education in the Western Cape is satisfied that all the provisions in the Draft Bill fall within the Province's legislative competence.

