

EDUCATION ACT 16 OF 2001

[ASSENTED TO 11 DECEMBER 2001]

[DATE OF COMMENCEMENT: 28 OCTOBER 2002]

(Unless otherwise indicated)

(Signed by the President)

as amended by

Higher Education Act 26 of 2003

ACT

To provide for the provision of accessible, equitable, qualitative and democratic national education service; to provide for the establishment of the National Advisory Council on Education, National Examination Assessment and Certification Board, Regional Education Forums, School Boards, Education Development Fund; to provide for the establishment of schools and hostels; to provide for the establishment of the Teaching Service and the Teaching Service Committee; and to provide for incidental matters.

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PART I

PRELIMINARY PROVISIONS (ss 1-2)

1 Definitions

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

"adult education" means basic education provided to adults, including minors over the age of 16 years;

"Advisory Council" means the National Advisory Council on Education established by section 3;

"auditor" means a person registered as an accountant and auditor in terms of section 23

of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951);

"basic education" means the formal education which is provided from the level of the first grade to the level of the twelfth grade, and includes-

- (a) adult education;
- (b) special education; and
- (c) education of any other nature which the Minister under subsection (2) declares to be basic education;

"Board" means the National Examination, Assessment and Certification Board established by section 6;

"Commission" means the Public Service Commission established in pursuance of Article 112 of the Namibian Constitution, by section 2(1) of the Public Service Commission Act;

"Forum" means a Regional Education Forum established under section 4;

"Fund" means the Education Development Fund established by section 26;

"hostel" means a hostel established under section 33 for the purpose of providing accommodation to learners in a state school;

"learner" means any person who is registered and receiving basic education or a course of study in terms of this Act;

"Learners' Representative Council" means a body of learners established in terms of section 60;

"local authority area" means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

"local authority council" means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

"Minister" means the Minister responsible for basic education;

"Ministry" means the Ministry charged with the administration of affairs relating to basic education;

"parent" means a natural or an adoptive parent or a guardian of any learner, and includes any person taking care of or who assumes responsibility for any learner's education;

"Permanent Secretary" means the Permanent Secretary of the Ministry;

"prescribed" means prescribed by regulation made under section 80;

"primary education" means the basic education provided at primary school level;

"primary school" means a school or part of a school in which basic education from the level of the first grade to the level of the seventh grade is provided;

"principal", in relation to a school, means a teacher who holds the post as the head of the school and includes an acting principal;

"private school" means a school which is established and maintained at the owner's expense, and is registered in terms of section 42;

"Public Service Act" means the Public Service Act, 1995 (Act 13 of 1995);

"Public Service Commission Act" means the Public Service Commission Act, 1990 (Act 2 of 1990);

"region" means a region as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);

"regional council" means a regional council as defined in section 1 of the Regional Councils Act, 1992 (Act 22 of 1992);

"school" means an establishment or place or that part of an establishment or place in or at which basic education is provided;

"**school board**" means a school board established in terms of section 16;
"school development fund" means a school development fund established under section 25;
"school parent" means a parent of a learner of a school;
"secondary school" means a school or part of a school in which basic education from the level of the eighth grade to the level of the twelfth grade is provided;
"socio-economically disadvantaged learner" means a learner whose parent is, directly or indirectly, socially and economically disadvantaged as a consequence of social, economic, educational or employment imbalances;
"special education" means a basic education of a specialized nature provided to learners with special education needs;
"special school" means a school or part of a school in which special education is provided;
"staff member" means a staff member as defined in section 1 of the Public Service Act;
"state school" means a school established under section 33;
"teacher", in relation to state schools, means a staff member who is professionally qualified to teach others in formal education and whose occupation is teaching, and includes a professionally unqualified person whose occupation is teaching; and
"this Act" includes the regulations made under section 80 and the rules made under section 15.

(2) If the Minister considers it necessary or expedient, for the purposes of this Act, the Minister may by notice in the *Gazette* declare any education of any nature to be basic education.

2 Determination of basic education policy and control of system and activities

(1) The Minister must-

- (a) determine the national policy on basic education and ensure that consultations with such consultative bodies established for this purpose in terms of this Act or any other law, or such organizations as the Minister may recognize for this purpose, are undertaken prior to the determination of policy;
- (b) secure the effective co-operation of all public and private bodies concerned with education in formulating and implementing the national policy on basic education in terms of this Act;
- (c) direct, co-ordinate, supervise and control the basic education system and related matters; and
- (d) promote basic education and the establishment and development of schools.

(2) Nothing in this section limits the Minister to consult whomsoever the Minister wishes for advice on the determination of education policy and related matters.

(3) The Minister must table the national policy on basic education in the National Assembly within 90 days after the determination of the policy, if the National Assembly is in session, or, if it is not in session, within 30 days after the commencement of its next session.

PART II

NATIONAL ADVISORY COUNCIL ON EDUCATION (s 3)

3 National Advisory Council on Education

(1) There is established an advisory council to be known as the National Advisory Council on Education.

(2) The powers and functions of the Advisory Council are-

- (a) to advise the Minister on educational matters upon the Advisory Council's own

- initiative or any question referred to the Advisory Council by the Minister; and
- (b) to exercise and perform such other powers and functions conferred or imposed by or under this Act.

(3) The Advisory Council consists of 24 members appointed by the Minister, and for the purposes of appointment, the Minister must select two staff members and one person each from amongst persons nominated under subsection (4).

(4) The Minister must, for the purposes of selecting persons for appointment, by notice in the *Gazette* invite the following bodies to nominate persons for appointment-

- (a) institutions of education higher than basic education;
- (b) each Forum;
- (c) non-governmental organizations;
- (d) national employers' organizations;
- (e) recognized associations and unions of teachers;
- (f) representative bodies of learners and students;
- (g) representative bodies of churches;
- (h) private schools;
- (i) the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act 13 of 1997); and
- (j) the national organization for persons with disabilities.

(5) The Minister must appoint two of the members from a list of four names selected by the members from amongst themselves to be the Chairperson and the Vice-Chairperson of the Advisory Council, respectively.

(6) A member of the Advisory Council holds office for a term of three years and is eligible for re-appointment at the expiry of that term.

(7) A member of the Advisory Council vacates office, if such member-

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns from the Advisory Council after giving the Minister 30 days written notice of his or her intention to resign;
- (c) has been absent for three meetings of the Advisory Council in a year, without the permission of the Chairperson;
- (d) is withdrawn by the nominating body; or
- (e) is removed by the Minister under subsection (8).

(8) The Minister may remove a member of the Advisory Council, if such member-

- (a) is guilty of misconduct;
- (b) fails to comply with or contravenes this Act; or
- (c) is by reason of physical or mental illness or for any other reason incapable of acting as member.

(9) If a member of the Advisory Council dies or vacates office, the vacancy must be filled for the unexpired portion of the term of office of that member in the manner contemplated in subsection (4).

(10) The Advisory Council must determine the Advisory Council's own rules and procedure governing meetings, but such rules and procedure may not be inconsistent with this Act.

(11) The expenses of the Advisory Council relating to the Advisory Council's functions must be defrayed out of money appropriated for this purpose by Parliament.

(12) The members of the Advisory Council who are not staff members may be paid such

allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

PART III EDUCATION FORUMS AND OFFICES (ss 4-5)

4 Regional Education Forums

(1) The Minister must establish a Forum to be known as the Regional Education Forum for a region [*sic*]^{i*} and local authority areas in the region.

(2) The functions of a Forum are-

- (a) to advise the Minister, the regional council and local authority councils in that region on matters concerning education in the region and local authority areas in that region;
- (b) to advise school boards regarding educational matters and the functions of the school boards under this Act; and
- (c) to initiate and facilitate educational development in the region.

(3) A Forum advises upon any question referred to the Forum by the Minister, regional council, local authority council, school board or any interested person, or upon its own initiative as it may consider necessary.

(4) A Forum consists of-

- (a) the regional director of education assigned to the region who is an *ex officio* member and has no right to vote; and
- (b) 20 members appointed by the Minister on the ground of special knowledge, skill and expertise in educational matters from persons nominated under subsection (5).

(5) For the purposes of appointment under subsection (4), the Minister, by notice in the *Gazette*, must invite the following bodies to nominate persons-

- (a) three persons representing the regional council and local authority councils in the region;
- (b) three persons representing the school boards in the region;
- (c) three persons representing the recognized associations or unions of teachers, employees and employers;
- (d) three persons representing the bodies of learners in the region;
- (e) two persons representing the private schools in the region;
- (f) two persons representing the churches;
- (g) two persons representing the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act 13 of 1997); and
- (h) two persons representing the national organization for persons with disabilities.

(6) The members of a Forum must elect two persons from amongst the members as chairperson and vice-chairperson, respectively, who must not be staff members of the Ministry.

(7) Subject to subsection (8), a member of a Forum holds office for a term of three years and is eligible for re-appointment at the expiration of that term.

(8) A member of a Forum vacates office, if such member-

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns from a Forum after giving the Minister 30 days written notice of such member's intention to resign;
- (c) has been absent for three meetings of a Forum in a year without the permission of the chairperson of the Forum;
- (d) is withdrawn by the nominating body; or
- (e) is removed by the Minister under subsection (9).

(9) The Minister may remove a member of a Forum, if such member-

- (a) is guilty of misconduct;
- (b) fails to comply with or contravenes this Act; or
- (c) is by reason of physical or mental illness or for any other reason incapable of acting as member of a Forum.

(10) If a member of a Forum dies or vacates office, the vacancy must be filled for the unexpired portion of the term of office of that member in the manner contemplated in subsection (4).

(11) A Forum must-

- (a) subject to this Act, determine its own rules governing meetings and procedure at meetings; and
- (b) submit an annual report on its activities to the Advisory Council.

(12) The expenses of a Forum relating to the performance of its functions must be defrayed out of money appropriated for this purpose by Parliament.

(13) Members of a Forum who are non-staff members may be paid such allowances, including travel and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

5 Regional, local and district education offices

(1) The Minister must, on the recommendation of the Commission and after consultation with the Advisory Council and the regional council or a local authority council, as the case may be, establish a regional education office for each region and a local or district education office.

(2) A staff member designated as regional director of education and culture administers, manages and controls the regional education office, and performs such functions under the supervision and direction of the Permanent Secretary.

(3) The regional education office is responsible for the administration of the affairs relating to education and culture as may be assigned to the office by or under this Act or any other law, which may include the provision of secretariat services to the Forum.

PART IV

NATIONAL EXAMINATION, ASSESSMENT AND CERTIFICATION BOARD (ss 6-15)

6 Establishment of National Examination, Assessment and Certification Board

There is established a board to be known as the National Examination, Assessment and Certification Board.

7 Constitution of Board

(1) Subject to subsection (7), the Board consists of 28 members appointed by the Minister, as follows-

- (a) four persons selected by the Minister;
- (b) one person nominated by the Council of the University of Namibia referred to in section 9 of the University of Namibia Act, 1992 (Act 18 of 1992);
- (c) one person nominated by the Council of the Polytechnic of Namibia referred to in section 6 of the Polytechnic of Namibia Act, 1994 (Act 33 of 1994);
- (d) one person nominated by the Vocational Training Board established by section 5 of the National Vocational Training Act, 1994 (Act 18 of 1994);
- (e) one person nominated by the Board of Governors of the Namibian College of Open Learning referred to in section 7 of the Namibian College of Open Learning Act, 1997 (Act 1 of 1997);
- (f) one person nominated by the Council of the Namibia Qualifications Authority referred to in section 5 of the Namibia Qualifications Authority Act, 1996 (Act 29 of 1996);

- (g) one person nominated by recognized teachers' unions or associations;
- (h) one person nominated by the Colleges of Education;
- (i) 13 directors of regional education offices;
- (j) the Director and another staff member of the Directorate: National Examinations and Assessment of the Ministry;
- (k) the Director of the Directorate: National Institute for Educational Development of the Ministry; and
- (l) the Director of the Namibia Qualifications Authority referred to in section 10(1)(a) of the Namibia Qualifications Authority Act, 1996 (Act 29 of 1996).

(2) The Minister must, for the purposes of appointment of members of the Board in terms of subsection (1), in writing invite the bodies referred to in subsection (1)(b) to (h), inclusive, to nominate persons within a specified period.

(3) If a nomination referred to in subsection (2) is not received by the Minister within the period specified in the invitation, the Minister may appoint such person as the Minister thinks fit.

(4) The Minister must appoint two of the members referred to in paragraph (a) of subsection (1), and who must be staff members of the Ministry as chairperson and vice-chairperson of the Board, respectively.

(5) The Minister may, for each member of the Board, appoint an alternate member, and must, for the purposes of such appointment for the members contemplated in subsection (1)(b) to (h), inclusive, in writing invite the bodies referred to in subsection (1)(b) to (h), inclusive, to nominate persons within a specified period.

(6) If a nomination referred to in subsection (5) is not received by the Minister within the period specified in the invitation, the Minister may appoint such person as the Minister thinks fit.

(7) At least two of the persons referred to in paragraph (a) of subsection (1), must be females.

8 Term of office of member of Board

Subject to section 9, a member of the Board holds office for a term of three years and is eligible for re-appointment at the expiration of that term.

9 Vacation of office and filling of casual vacancies

(1) A member of the Board vacates office, if such member-

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns from the Board after giving the Minister 30 days written notice of such member's intention to resign;
- (c) has been absent for three meetings of the Board in a year, without the permission of the chairperson of the Board;
- (d) is withdrawn by the nominating body; or
- (e) is removed by the Minister under subsection (2).

(2) The Minister may remove a member of the Board, if such member-

- (a) is guilty of misconduct;
- (b) fails to comply with or contravenes this Act; or
- (c) is by reason of physical or mental illness or for any other reason incapable of acting as member of the Board.

(3) If a member of the Board dies or vacates office, the vacancy must be filled for the unexpired portion of the term of office of that member in the manner contemplated in section 7.

10 Secretariat to Board

(1) There must be a component in the Ministry to act as the secretariat to the Board,

consisting of-

- (a) a staff member of the Ministry designated by the Permanent Secretary as the secretary to the Board; and
- (b) such other staff members of the Ministry as the Permanent Secretary may designate, one of whom must be designated as the deputy-secretary to the Board.

(2) The functions of the secretariat are-

- (a) to provide the required administrative and clerical assistance to the Board and any committee of the Board; and
- (b) to provide all technical support required by the Board or any of the committees of the Board.

(3) The secretary must attend the meetings of the Board but has no right to vote on any matter before the Board.

(4) If the secretary is unable to attend any meeting of the Board or to act as secretary, the deputy-secretary may perform the functions of the secretary.

11 Committees of Board

(1) The Board may establish one or more committees of the Board for the purpose of exercising and performing any power and function of the Board which the Board may delegate to the committee.

(2) A committee established under subsection (1) must consist of such members of the Board, including alternate members, as the Board may appoint to the committee.

(3) The Board may designate any member of a committee to be the chairperson of that committee.

(4) The Board is not divested of any power and function which has been delegated by it to a committee and may amend or set aside any decision of such a committee.

12 Meetings and decisions of Board

(1) The first meeting of the Board must be held at a place and time as the chairperson of the Board may determine and, subject to subsection (3), any meeting of the Board thereafter must be held at a place and time as the Board may determine.

(2) If the Board has determined the place and time of a meeting and there cannot for any reason be a meeting held at that place or time, the secretary of the Board must, in consultation with the chairperson of the Board, determine the place and time of the next meeting of the Board.

(3) The chairperson of the Board may at any time convene a special meeting of the Board.

(4) The majority of the members of the Board forms a quorum for any meeting of the Board.

(5) The chairperson of the Board or, in the absence of the chairperson, the vice-chairperson, presides at all meetings of the Board.

(6) If both the chairperson and the vice-chairperson of the Board are absent from any meeting, the members present must elect a member to preside at that meeting and that member may perform all the functions and exercise all the powers of the chairperson.

(7) The decision of the majority of the members present at any meeting of the Board constitutes a decision of the Board, and in the event of any equality of votes the member presiding has a casting vote in addition to a deliberative vote.

(8) The Board may, subject to this Act, determine rules of the Board governing meetings and procedure at meetings.

(9) The expenses relating to the functions of the Board must be defrayed from money

appropriated for this purpose by Parliament.

13 Payment of allowances to non-staff members

Members of the Board who are non-staff members must be paid such allowances, including travel and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

14 Functions of Board

In relation to basic education, the functions of the Board are-

- (a) to determine, by notice in the *Gazette*-
 - (i) minimum requirements and minimum standards to which the courses of study, curriculums and syllabuses under which such education is provided must comply;
 - (ii) minimum requirements and minimum standards for the conduct of examinations;
 - (iii) minimum requirements and minimum standards for assessments and promotions;
 - (iv) the form and manner of the issuing of certificates and diplomas in respect of examinations; and
- (b) to exercise such powers and perform such functions as may be conferred or imposed upon the Board by or under this Act.

15 Rules by Board

Subject to this Act, the Board may, for the purpose of performing the Board's functions referred to in section 14, make rules relating to-

- (a) the conduct of examinations;
- (b) the entering of candidates for examinations;
- (c) the conduct and discipline of candidates prior to, during and after examinations;
- (d) the issuing of certificates and diplomas;
- (e) the safeguarding of the security, confidentiality and validity of examinations and certificates and diplomas; and
- (f) the appointment, conduct, discipline, powers, duties and functions of examiners, moderators, invigilators and other persons whose services are necessary at examinations.

PART V

SCHOOL BOARDS (ss 16-25)

16 Establishment of school boards for state schools

(1) There is, for every state school, established a school board to administer the affairs and promote the development of the school and learners of the school.

(2) The Minister must, out of moneys appropriated for this purpose by Parliament, establish a program with the aim to promote accountability of, active participation, effective exercise of powers and performance of functions by, members of school boards.

17 Powers and functions of school board

Subject to this Act, the powers and functions of a school board are-

- (a) to develop the mission, goals and objectives of the school;
- (b) to advise the school's management on the extra-mural curriculum of the school;
- (c) to advise the regional director of education on educational needs and the curriculum of the school;
- (d) subject to the Public Service Act, to recommend to the Permanent Secretary the appointment of teachers and other staff members at the school;
- (e) subject to the restrictions imposed by the Permanent Secretary and upon conditions as the school board may determine, to allow the reasonable use of the school facilities for

- community purposes;
- (f) to consider any case of misconduct by a learner or staff member of the school with the aim to-
 - (i) ensure that such misconduct is properly investigated; and
 - (ii) recommend to the Permanent Secretary the appropriate disciplinary measures to be taken regarding serious misconduct of a learner; and
 - (g) to exercise other powers and perform other duties and functions as may be authorized or imposed by or under this Act.

18 Constitution of school board

(1) A school board consists of the prescribed number of not less than five and not more than 13 voting members, who must be-

- (a) school parents who are not employed at the school;
- (b) teachers at the school;
- (c) the principal of the school; and
- (d) in the case of a secondary school, not more than two learners at the school nominated by the Learners' Representative Council.

(2) School parents must constitute the majority of members of a school board.

(3) The Minister may approve the constitution of a school board which differs from the constitution contemplated in subsection (1), if-

- (a) the school board has applied in writing to the Minister for a different constitution; and
- (b) the Minister is satisfied that such constitution is in the best interests of education at the school.

(4) If a member of a school board has a direct personal interest in any matter under discussion by the board, that member must not take part in any discussion or decision on the matter, or be present at a meeting at which the matter is being discussed.

19 Election of members of school board

(1) The election of parents and teachers to a school board must be conducted by a staff member designated by the Permanent Secretary and who is not employed at the school concerned.

(2) Elections conducted in terms of subsection (1), must be-

- (a) by secret ballot; or
- (b) where appropriate, with the approval of the Minister, by a show of hands.

(3) A school board must, from amongst its members, elect as office-bearers of the school board-

- (a) a chairperson;
- (b) a secretary; and
- (c) a treasurer.

(4) A principal, teacher or learner of the school must not serve as chairperson of the school board.

(5) A member of a school board holds office for a term of three years and is eligible for re-election at the expiration of that term.

(6) A member of a school board must sign the prescribed oath of secrecy on the date of assumption of his or her duty as such member.

20 School board of special school and school providing special education

(1) A school board of a school which is not a special school but which provides special education, must-

- (a) subject to subsection (3), co-opt at least one person with expertise in special education as a member of the school board; and
- (b) establish a committee to advise the school board on the provision of special education at the school.

(2) Subject to subsection (3), a school board of a special school may, in addition to those persons elected in terms of section 19, co-opt one or more of the following persons-

- (a) a representative of a sponsoring body for the school;
- (b) a representative of organizations of parents of learners with special education needs;
- (c) a representative of organizations of persons with disabilities;
- (d) a person with disability.

(3) A co-opted member of a school board has no right to vote at any meeting of a school board.

21 Committees of school board

(1) A school board may establish one or more committees for the purpose of advising the school board on any matter which the school board may refer to the committee for advice.

(2) A school board may designate any member of a committee to be the chairperson of that committee.

22 Meetings and decisions of school board

(1) The majority of the voting members of a school board forms a quorum for any meeting of a school board.

(2) The chairperson of the school board presides at all meetings of the school board.

(3) If the chairperson is absent from any meeting, the members present must elect a member to preside at that meeting and that member may perform all the functions and all the powers of the chairperson.

(4) The decision of the majority of the members present at any meeting of the school board constitutes a decision of the school board, and in the event of any equality of votes the member presiding has a casting vote in addition to a deliberative vote.

(5) A chairperson of a school board-

- (a) must convene any meeting of the school board after consultation with the principal of the school; and
- (b) may at any time convene a special meeting of the school board.

(6) Subject to this Act, a school board may make rules of the school board governing meetings and procedure at meetings.

(7) A member of a school board who, in the performance of his or her functions under this Act, obtains any confidential information in relation to the affairs of the school board may not disclose such information to any person, except-

- (a) for the purpose of the performance of his or her functions under this Act; or
- (b) when he or she is required to do so by a competent court of law or by or under any law.

23 Vacation of office and filling of casual vacancies

(1) A member of the school board vacates office, if such member-

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) fails to comply with or contravenes this Act;
- (c) resigns from the school board after giving the chairperson 30 days written notice of such member's intention to resign;
- (d) has been absent for three meetings of the school board in a year without the permission of the chairperson of the school board;

- (e) being a learner-
 - (i) is removed as member by the Learners' Representative Council by whom the learner was nominated; or
 - (ii) ceases to be a learner at the school;
- (f) being a co-opted member, is relieved from office by the school board;
- (g) being a teacher, leaves the service of the school; or
- (h) is removed from office by the school board under subsection (3).

(2) Despite section 18(1)(a) and unless the school board otherwise decides, a parent member of a school board does not vacate office on the reason only that such parent's child has ceased to be a learner at the school.

(3) A school board may, after consultation with the school parents at a meeting convened by the school board by at least 30 days' notice to such parents, remove a member of the school board from office, if such member-

- (a) is guilty of misconduct or fails to comply with or contravenes this Act; or
- (b) is by reason of physical or mental illness or for any other reason incapable of acting as member.

(4) If a member of the school board dies or vacates office, the vacancy must be filled for the unexpired portion of the term of office of that member in the manner contemplated in section 18.

24 Dissolution of school board and appointment of administrators

(1) When in the opinion of the Minister a school board of a state school fails to exercise the school board's functions properly under this Act, the Minister may-

- (a) appoint a staff member to investigate into the affairs of the school board and provide a report with recommendations to the Minister within a period not exceeding two months from the date of the appointment; and
- (b) dissolve the school board, if on the staff member's report the Minister is satisfied that the school board cannot function properly.

(2) If a school board is not constituted at a state school or is dissolved under subsection (1), the Minister must-

- (a) appoint three persons to administer the affairs of the school for a period not exceeding three months;
- (b) cause an election of a school board to be held within the period of three months from the date of the appointment of the persons referred to in paragraph (a); and
- (c) if an election cannot be held within the period of three months, extend the appointment and the election referred to in paragraphs (a) and (b), respectively, by a further period not exceeding three months.

25 Establishment of school development fund by school board

(1) Subject to section 81(2), a school board may, with the approval of the majority vote of the school parents present and voting at a meeting convened by the school board by at least 30 days' notice to such parents, establish a school development fund with the aim-

- (a) to provide, develop and improve reasonable and necessary facilities at school; and
- (b) to uplift and improve educational, sport and cultural activities at school.

(2) A school development fund consists of-

- (a) moneys received in respect of contributions referred to in subsection (9)(a);
- (b) moneys received from donations, bequests or any other source; and
- (c) interest earned on investments of money standing to the credit of the fund.

(3) A school development fund must not be used-

- (a) for any purpose which does not directly benefit the learners or the school; or
- (b) for providing loans or any kind of borrowing by any person.

(4) The chairperson of the school board and the principal of the school must, after consultation with the school board, open a banking or savings account in the name of the school with-

- (a) any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia; or
- (b) the Post Office Savings Bank established in terms of the Posts and Telecommunications Act, 1992 (Act 19 of 1992).

(5) The treasurer of the school board must-

- (a) under the supervision and control of the school board, control and manage the school development fund and keep all the books of accounts; and
- (b) never be authorized to sign cheques or other form of withdrawals from the school development fund.

(6) Any withdrawal from the school fund account must be made by means of a cheque or other withdrawal form co-signed by the school principal and the school board chairperson, or by any other two members of the school board specifically authorized by the school board.

(7) The financial year of a school development fund ends on 31 December in each year.

(8) The Minister must, by notice in the *Gazette*, prescribe guidelines which must be followed by school boards when determining the school development fund contribution amount, including the procedure for the full or partial exemption of parents who are unable to pay such contribution.

(9) Subject to subsection (8), a school board must, annually and after consultation with the school parents at a meeting convened by the school board by at least 30 days' notice to the school parents, determine-

- (a) the school development fund contribution amount payable by parents; and
- (b) the procedure for the full or partial exemption of parents who are unable to pay the school development fund contribution.

(10) Subject to subsection (9), the school board may, partially or fully exempt any parent from the payment of school development fund contribution.

(11) If a parent is partially or fully exempted by the school board from the payment of the school development contribution, the school board may apply to the Fund for aid to pay such contribution.

(12) If a parent refuses or fails to pay the school development fund contribution, a school board may exclude the learner of such parent from taking part in any activity financed with the school development fund contributions.

(13) If a school development fund contribution amount determined in terms of subsection (9)(a) is too high and not determined in accordance with the prescribed guidelines referred to in subsection (8), the Minister may set aside such amount, and require the school board concerned to review such amount in light of any recommendation which the Minister may make.

(14) A school board must-

- (a) prepare an annual estimation of income and expenditure and present it to the school parents at a general meeting convened by the school board by at least 30 days' notice to such parents, for further input and approval by the majority vote of such parents present and voting at such meeting;

- (b) cause proper books of accounts in respect of the school development fund to be kept;
- (c) for the purpose of auditing, prepare and submit the financial statements and books of account to-
 - (i) the auditor appointed by the school board; or
 - (ii) any other person approved by the Permanent Secretary and appointed by the school board;
- (d) within three months after the end of each financial year, present an annual report, including the audited financial statements, at the school parents annual general meeting convened by the school board by at least 30 days' notice to such parents for-
 - (i) queries and comments by such parents; and
 - (ii) adoption by the majority vote of such parents present and voting at such meeting; and
- (e) furnish a copy of the annual report adopted in terms of paragraph (d)(ii), to the Permanent Secretary.

(15) A school board may not sell, exchange or otherwise encumber any movable or immovable property of a school acquired with the school development fund money without the Minister's approval.

(16) Despite anything to the contrary in any law-

- (a) no tax or charge on income of a school development fund is payable by the fund; and
- (b) no transfer duty, stamp duty or other related moneys is payable by a school development fund.

PART VI

EDUCATION DEVELOPMENT FUND (ss 26-32)

26 Establishment of Education Development Fund

There is established a fund to be known as the Education Development Fund.

27 Constitution of Fund

The Fund consists of-

- (a) moneys appropriated by Parliament for the Fund;
- (b) moneys donated or accruing to the Fund from any source; and
- (c) interest derived from the investment of moneys standing to the credit of the Fund.

28 Object of Fund

(1) The object of the Fund is, through financing by way of grants, loans or other assistance-

- (a) to provide for the establishment, upliftment, upgrading and improvement of educational facilities to the benefit of socio-economically disadvantaged learners;
- (b) to expand the assistance or aid including bursaries to socio-economically disadvantaged learners enrolled or to be enrolled at any school or institution of higher learning; and
- (c) to expand, improve, upgrade and uplift the educational programs for the socio-economically disadvantaged learners.

(2) Specific donations to the Fund may be utilized in a manner as agreed to between the Fund management and the donor.

29 Administration of Fund

(1) The Permanent Secretary is, for the purposes of the State Finance Act, 1991 (Act 31 of 1991), the accounting officer of the Fund.

(2) The Permanent Secretary is responsible for the administration of the Fund, subject to the directions of the Minister given after consultation with the Advisory Council, and to the rules

made under subsection (3).

(3) The Minister may, with the concurrence of the Minister of Finance, make rules relating to the administration of the Fund.

30 Banking account

The Permanent Secretary must, subject to section 29, open and maintain a banking or savings account in the name of the Fund with-

- (a) any banking institution or building society registered under the laws governing banking institutions and building societies in Namibia; or
- (b) the Post Office Savings Bank established in terms of the Posts and Telecommunications Act, 1992 (Act 19 of 1992).

31 Financial year, bookkeeping and auditing of books of account

(1) The financial year of the Fund ends on 31 March in each year.

(2) The Permanent Secretary must-

- (a) keep such books of account as are necessary to represent fairly the state of affairs and business of the Fund and to explain the transactions and financial position of the Fund; and
- (b) not later than three months after the end of each financial year, submit such accounts to the Auditor-General for audit.

(3) The Auditor-General must submit a report on the audit of the Fund to the Minister who must table the report in the National Assembly within 60 days, if the National Assembly is in session, or, if it is not in session, within 30 days after commencement of its next session.

(4) Any money of the Fund which is not required for immediate use may be invested as the Minister, with the concurrence of the Minister of Finance, may direct.

(5) Any unexpended balance in the Fund at the end of any financial year must be carried forward as a credit in the Fund to the ensuing financial year.

32 Exemption from payment of tax and other charges

No tax or charge on income or transfer or stamp duty imposed by or under any law is payable by the Fund.

PART VII

STATE SCHOOLS AND HOSTELS (ss 33-40)

33 Establishment and classification of state schools and hostels

(1) The Minister, out of moneys appropriated for this purpose by Parliament, must-

- (a) establish and maintain state schools and classes for the provision of-
 - (i) primary education;
 - (ii) secondary education;
 - (iii) special education;
 - (iv) adult education; and
 - (v) education referred to in section 1(2); and
- (b) establish and maintain hostels, teachers' resource centres, school clinics and other facilities which may be necessary for the benefit of learners and teachers in attendance at state schools and classes contemplated in paragraph (a).

(2) The Minister may-

- (a) classify schools in categories or sections;
- (b) divide an established school into sections;
- (c) after consultation with the school boards and the Regional Educational Forum concerned, combine two or more established schools into one school; or

(d) name or rename any state school on the recommendation of the school board concerned.

34 Closure of state school or hostel

(1) The Minister may, after consultation with the Forum and the school board concerned, close or change the site of a state school or hostel.

(2) The Minister may temporarily close any state school, class or hostel on the ground of health or public interest.

(3) The temporary closure of a state school, class or hostel referred to in subsection (2), must-

(a) not exceed four months; and

(b) not continue after the ground on which it was based has ceased to exist.

35 Medium of instruction in state school

(1) Subject to subsections (3) and (4), the English language is the medium of instruction in every state school.

(2) Every state school must teach the English language as a subject from the level of the first grade.

(3) The Minister must determine the grade level for all state schools from which English must be used as medium of instruction, and may determine different grade levels for different categories of schools.

(4) The Minister, after consultation with the school board concerned and by notice in the *Gazette*, may declare a language other than English to be used as medium of instruction in any state school as the Minister may consider necessary.

36 Provision of curricula, syllabuses, books and other materials

The Minister, after consultation with the Advisory Council, must determine the curricula, syllabuses, books and other educational materials and, subject to such conditions as the Minister may determine, provide such curricula, syllabuses, books and other materials to all state schools.

37 School calendar and hours of instruction

(1) The Minister, after consultation with the Advisory Council, must determine-

(a) the annual school calendar;

(b) the minimum number of days in the year on which instruction must be given; and

(c) the minimum hours of instruction.

(2) The Minister may approve a deviation from the school calendar determined under this section, either generally or for any particular school.

38 Tuition, boarding and other fees

(1) All tuition provided for primary and special education in state schools, including all school books, educational materials and other related requisites, must be provided free of charge to learners until the seventh grade, or until the age of 16 years, whichever occurs first.

(2) A learner to whom education, other than primary education, is provided in any state school, centre or class or the person responsible for such learner's education, must pay such fees as the Minister may determine.

(3) Any learner to whom boarding is provided in any hostel managed, controlled and maintained by the State, or the person responsible for such learner's maintenance, must pay such boarding fees as the Minister may determine.

(4) Different tuition, boarding or other fees may be determined for-

(a) different state secondary schools or different grades at secondary school level;

(b) any special course of study which does not form part of the normal school curriculum at a school;

- (c) different centres, or classes or different courses provided in such centres or classes;
- (d) different hostels or categories of hostels in which boarding is provided; and
- (e) different learners or categories of learners to whom education or boarding referred to in subsections (2) and (3), respectively, is provided.

39 Exemption from payment of tuition, boarding or other fees

The Minister, in the prescribed manner and form and on such conditions as the Minister may determine, may partially or fully exempt any learner or any category of learners from payment of tuition, boarding or any other fees.

40 Freedom to practise religion at state school

(1) A learner at a state school or hostel has the right to practise any religion which is not against public policy and to manifest such practice without fear or intimidation from anybody at the school or hostel.

(2) A school board may, after consultation with the school parents at a meeting convened by the school board by at least 30 days' notice to such parents, determine the conduct of religious observance at a school or hostel.

(3) A learner or staff member at a state school or hostel may attend religious observance at such learner's or staff member's own will.

PART VIII PRIVATE SCHOOLS (ss 41-52)

41 Establishment of private school

(1) A person has the right to establish and maintain a private school at such person's own expense, but is required to register such school in terms of section 42 before education is provided to any person at the school.

(2) The name of the owner of a private school, who may be a natural person, a body corporate, a trust, a church, or a registered welfare organization, and the name of the school must be clearly indicated in the register and on the school premises.

42 Registration of private school

(1) An application for the registration of a private school must be made to the Minister in the prescribed form.

(2) The Minister must register a private school within a reasonable period, if-

- (a) the Minister is satisfied that the school and any hostel premises or other facilities provided or to be provided at the school, are suitable and adequate in accordance with the prescribed minimum requirements applicable to state schools having regard to the total number, ages and gender of the learners who are to attend the school; and
- (b) the owner of the school undertakes, to the satisfaction of the Minister, that-
 - (i) adequate financial provision has been made or guaranteed for the maintenance of the school for a reasonable period;
 - (ii) the teaching staff to be employed at the school are sufficiently qualified for the purpose of efficient provision of qualitative basic education;
 - (iii) the school will provide a standard of education not inferior to the standard maintained in comparable state schools;
 - (iv) the school will not impose restrictions of whatever nature with respect to the admission of learners based on race, ethnic origin, colour or creed; and
 - (v) the school will not impose restrictions of whatever nature with respect to the recruitment and appointment of staff based on race, ethnic origin or colour.

43 Register of private schools

The Minister must cause to be kept and maintained a register of private schools in the prescribed form.

44 Transfer of ownership of private school

(1) If the ownership of a private school is to be transferred, the new owner's name must be entered in the register and the previous owner's name deleted.

(2) If the person to whom a private school is to be transferred proposes to deviate from the terms and conditions under which the school was initially registered, such person must apply anew for the registration of the school.

45 Deregistration of private school

(1) The Minister may, subject to subsection (2), deregister a private school registered in terms of section 42, if-

- (a) any of the circumstances arises on which the Permanent Secretary would have refused such registration under section 42;
- (b) subsequent to the registration of the school, the school has contravened any of the terms and conditions under which the school has been registered;
- (c) the school has ceased to operate or exist; or
- (d) the school has been closed under section 47 and remains closed after a period of six months of such closure.

(2) The Minister must, in writing, notify the owner of the private school of his or her intention to deregister the school under subsection (1), and the owner may, within a period of 30 days from the date of receipt of the notification, make representations in writing to the Minister.

(3) If, after consideration of the representations made under subsection (2), the Minister decides to deregister a private school under subsection (1), he or she must, in writing, notify the owner of the school of his or her decision to deregister.

46 Failure to comply with terms and conditions and issue of notice of warning

If, following an inspection conducted at a private school under section 64, the Minister is satisfied-

- (a) that the owner of the private school fails to comply with the terms and conditions of registration of the school or with any provision of this Act; or
- (b) that the school is being conducted in a way which is prejudicial to the welfare of the learners of the school or the peace, good order or good governance of the Republic of Namibia,

the Minister must by notice in writing inform the owner of the private school accordingly and direct the owner to remedy the defects within such period, not exceeding six months, as may be specified in the notice.

47 Failure to satisfy notice of warning and closure of private school

(1) If the owner of the private school fails to remedy the defects within the period specified in a notice issued under section 46, the Minister may order the closure of the school.

(2) If, after the closure of a private school has been ordered under subsection (1), the owner of the school complies with the notice, the Minister may grant permission to re-open the school.

(3) A private school which has been closed under subsection (1) and remains closed for a period exceeding six months may be deregistered under section 45, and the owner of the school is required to apply for re-registration under section 42 before being allowed to re-open the school.

48 Takeover of management and control of private school

The Minister may take over the management and control of a private school, if-

- (a) the owner of the school has requested the takeover; or
- (b) the school has been deregistered under section 45 or closed under section 47, and the owner of the school has agreed to the Minister's request for the takeover.

49 Aid for private schools

(1) The Minister may, out of money appropriated for this purpose by Parliament, grant aid to private schools on the prescribed conditions and such other conditions as the Minister may impose, which may require a private school-

- (a) to establish a school board or school development fund in accordance with the provisions of Part V;
- (b) to alter the school's power in respect of appointment, transfer or dismissal of teachers referred to in section 51;
- (c) to regulate the admission of learners to the school in accordance with section 54;
- (d) to draft and adopt a learners' code of conduct in accordance with section 55;
- (e) to establish a body of learners in accordance with section 60;
- (f) to offer any course of study instituted under section 61.

(2) The Minister may, by notice in the *Gazette*, categorize the private schools which receive aid under subsection (1), in accordance with the form of aid a school receives.

(3) If a condition subject to which aid was granted to a private school has not been complied with, the Minister may, subject to subsection (4), reduce or terminate the aid.

(4) The Minister may not under subsection (3) reduce or terminate any aid granted to a private school, unless the Minister has given the owner of the private school concerned a reasonable opportunity to make written representations giving reasons why the aid should not be reduced or terminated.

(5) Aid to a private school or hostel may be granted in the form of-

- (a) subsidy;
- (b) the provision of materials;
- (c) the provision of teachers who are staff members of the Ministry;
- (d) the combination of two or more of the forms of aid referred to in paragraphs (a), (b) and (c); or
- (e) any other form of aid determined by the Minister.

(6) As soon as practicable after the commencement of this Act, the Minister must review all existing aid granted to private schools before the commencement of this Act, and may, depending on the terms and conditions of the aid so reviewed-

- (a) extend the aid on improved terms and conditions in accordance with this Act; or
- (b) reduce or terminate the aid.

(7) The owner of a private school must be given a reasonable opportunity to make representations to the Minister before any aid is reduced or terminated under subsection (6)(b).

50 Approval of curriculum, medium of instruction or examining body for private school

(1) Subject to section 41, the Minister may upon application approve a curriculum, a language as medium of instruction, or an examining body for a private school, if such curriculum, medium of instruction or examining body differs from that applicable to state schools.

(2) The Minister may determine the minimum time to be allocated to the teaching of the English language, if the medium of instruction at a private school is not English.

51 Powers of private school in relation to staff matters

Subject to the Labour Act, 1992 (Act 6 of 1992), the power to appoint, transfer or dismiss teachers to or from posts on the establishment of a private school except teachers referred to in section 49(5)(c)-

- (a) vests in the owner or controlling body of the school; and
- (b) is subject to any restrictions determined in the conditions of registration or conditions of aid.

52 Registration of learner for education at home

(1) A parent may apply to the Minister for the registration of a learner to receive education at home.

(2) The Minister may only register a learner under subsection (1), if the Minister is satisfied that-

- (a) a situation exists that prevents the learner from attending or fully benefiting from the regular school attendance;
- (b) the registration is in the best interest of the learner;
- (c) the education to be received by the learner at home-
 - (i) meets the minimum requirements of the curriculum at state schools; and
 - (ii) is of a standard not inferior to the standard of education provided at state schools.

(3) The Minister may grant registration under subsection (2) subject to such conditions as the Minister may impose.

(4) The Minister may withdraw the registration referred to in subsection (1), if-

- (a) the situation contemplated in subsection (2)(a) ceases to exist;
- (b) the best interest of the learner is no longer served; or
- (c) the parent fails to comply with-
 - (i) the minimum requirements or standard referred to in subsection (2)(c); or
 - (ii) the conditions contemplated in subsection (3).

(5) The Minister may not withdraw the registration of a learner under subsection (4), unless the Minister-

- (a) has informed the parent of his or her intention to withdraw the registration and the reasons for such withdrawal; and
- (b) has granted to the parent a reasonable opportunity to make representations in relation to such withdrawal.

PART IX LEARNERS (ss 53-60)

53 Compulsory school attendance

(1) Subject to subsection (2), school attendance is compulsory for every child from the beginning of the year in which the child attains the age of seven years, until-

- (a) the day the child completes primary education before reaching the age of 16 years; or
- (b) the last school day of the year in which the child reaches the age of 16 years.

(2) Notwithstanding the provision of subsection (1), the Minister may-

- (a) on grounds of health or other considerations pertaining to the public interest, by notice in the *Gazette* determine that during a specified period compulsory school attendance does not apply-
 - (i) to children who reside in a geographic area which is specified in the notice; or
 - (ii) to children of an age group which is specified in the notice; or
- (b) exempt a child entirely or partially from compulsory school attendance, if it is in the best interest of the child or in the public interest.

(3) Subject to subsection (2), the parent of a child for whom regular school attendance is compulsory, must ensure that such child is registered with a school and regularly attends school.

(4) The Minister may appoint any staff member to investigate the registration and the school attendance of any child for whom school attendance is compulsory.

(5) If the parent of a child referred to in subsection (3), fails or refuses to comply with subsection (3), the Minister must issue a notice in writing to the parent requesting the parent to comply with that subsection within the period specified in the notice.

54 Admission of learner to state school

(1) An application for admission of a learner to a state school must be made by the parent to the principal of the school in the prescribed form.

(2) The principal must inform the applicant in writing of the outcome of the application, whether successful or not, and if the application is unsuccessful, the reasons must be provided.

(3) The principal must notify the Minister in writing of any learner refused admission to the school on ground other than the school being full or the preferred subject choice not being offered at the school, and state that reason.

(4) The parent of a learner who has been refused admission to a state school may, within 14 days from the date of receipt by such parent of the letter of refusal, appeal in writing to the Minister against the principal's decision referred to in subsection (2).

(5) The Minister, within 20 days of receipt of the appeal referred to in subsection (4) and after considering the reasons and all the circumstances surrounding the matter and the representations made by the parent on appeal, may take any decision the Minister thinks fit.

55 General rules of conduct and learners' code of conduct

(1) The Minister must make general rules of conduct which must be incorporated into the learners' code of conduct of all state schools.

(2) Subject to subsection (1), a school board of a state school must, after consultation with the school parents, learners and teachers of the school, draft and adopt a learners' code of conduct.

56 Corporal punishment upon learner

(1) A teacher or any other person employed at a state school or hostel or private school or hostel commits misconduct, if such teacher or person, in the performance of his or her official duties imposes or administers corporal punishment upon a learner, or causes corporal punishment to be imposed or administered upon a learner.

(2) For the purposes of the Labour Act, 1992 (Act 6 of 1992), misconduct contemplated in subsection (1) constitutes a valid and fair reason for any disciplinary action.

57 Suspension of learner from state school or hostel

(1) If the principal of a state school has reason to believe that a learner at that school or accommodated in a hostel of that school is guilty of misconduct, the principal may charge the learner in writing with misconduct.

(2) The principal may suspend a learner from school or hostel or both at any time-

- (a) before the learner is charged with misconduct under subsection (1); or
- (b) after the learner is charged with misconduct under subsection (1), pending the conclusion of the disciplinary hearing in terms of subsection (6).

(3) A learner may be suspended only if-

- (a) the nature of the misconduct dictates that the learner be removed from school or hostel;
 - (b) the possibility exists that the learner may interfere or tamper with witnesses or evidence;
- or

- (c) it is in the interest of the school or hostel community or public interest.
- (4) The suspension of any learner may at any time be cancelled-
 - (a) by the principal who has suspended the learner under subsection (2), if-
 - (i) in the principal's opinion all the reasons for the suspension have lapsed; or
 - (ii) the school board has recommended to the principal the cancellation thereof; or
 - (b) by the Permanent Secretary, if in the Permanent Secretary's opinion no valid cause exists for the suspension.

(5) The cancellation of a suspension of a learner does not affect any proceedings in connection with the charge of misconduct against the learner.

(6) The disciplinary hearing on a charge of misconduct in terms of subsection (1) must be held before the school board within 20 days from the date the learner was charged, which may, upon a finding that the learner is guilty of misconduct-

- (a) impose any prescribed penalty; or
- (b) make a recommendation to the Permanent Secretary to expel the learner from school or hostel, if the learner is guilty of serious misconduct.

(7) The chairperson of the school board must-

- (a) in writing notify the parent of the decision of the school board made in terms of subsection (6), and if the learner is found guilty of misconduct, the reasons must be stated;
- (b) at the request of the parent, made within seven days of receipt of the notification referred to in paragraph (a), furnish the parent with a copy of the record of proceedings, documentary evidence and reasons; or
- (c) within seven days of the school board's finding and recommendation under subsection (6)(b), furnish the Permanent Secretary with the record of proceedings, documentary evidence, reasons and recommendation.

(8) A parent may, within 14 days from the date of receipt of the copy of the record of proceedings, documentary evidence and reasons, appeal in writing to the Permanent Secretary against the finding of the school board, or any penalty imposed under subsection (6)(a) or against both.

(9) The Permanent Secretary, within 20 days from the date of receipt of an appeal by the parent and after consideration of all the documents referred to in subsection (8) and the representations made by the parent, may-

- (a) allow the appeal in whole or in part and vary or set aside the finding;
- (b) dismiss the appeal and confirm the finding; or
- (c) send the matter back to the school board to hold a further inquiry and to make a finding in terms of subsection (6).

(10) A parent may, within 14 days from the date of receipt of the Permanent Secretary's decision under subsection (9)(b), appeal to the Minister against the decision of the Permanent Secretary, and the Minister may within 20 days of receipt of an appeal by the parent-

- (a) allow the appeal in whole or in part and vary or set aside the decision; or
- (b) dismiss the appeal and confirm the decision.

58 Expulsion of learner from state school or hostel

(1) The Permanent Secretary, within 14 days of receipt of the recommendation of the school board and all documents submitted to the Permanent Secretary in terms of section 57(7)(c) and after consideration of such recommendation and documents, may expel a learner from the state school or hostel.

- (2) The Permanent Secretary must-
- (a) in writing notify the parent of the Permanent Secretary's decision to expel the learner from the state school or hostel; or
 - (b) at the request of the parent made within seven days of receipt of the notification referred to in paragraph (a), furnish the parent with-
 - (i) a copy of the record of proceedings, documentary evidence, reasons and recommendation submitted to the Permanent Secretary in terms of section 57(7)(c); and
 - (ii) the Permanent Secretary's reasons.

(3) A parent may, within 14 days from the date of receipt of the record of proceedings, documentary evidence, reasons and recommendation referred to in subsection (2)(b), appeal in writing to the Minister against-

- (a) the finding of the school board or the decision of the Permanent Secretary to expel the learner from the state school or hostel; or
- (b) both the finding of the school board and the decision of the Permanent Secretary to expel the learner from school or hostel.

(4) The Minister, within 20 days from the date of receipt of an appeal referred to in subsection (3) and after consideration of the documents referred to in that subsection, may-

- (a) allow the appeal in whole or in part and vary or set aside the finding of the school board, or the decision of the Permanent Secretary, or both; or
- (b) dismiss the appeal and confirm the finding of the school board, and the decision of the Permanent Secretary.

59 Learner school reports

(1) The principal of a state school must ensure that the parent of each learner is provided with regular reports in writing on the academic progress, general behaviour and conduct of the learner.

(2) Non-payment of the school development fund contribution contemplated in section 25(9)(a) in respect of any learner is not sufficient reason for withholding a report to be issued under subsection (1).

60 Learners' Representative Council

(1) Every state secondary school must establish a body of learners to be known as the Learners' Representative Council in accordance with the prescribed guidelines which must determine the composition and duties and functions of such a council.

(2) The Minister, in the prescribed manner and form, may exempt a special school from complying with subsection (1), if it is not practically possible for a Learners' Representative Council to be established at the school.

PART X

STUDY COURSES, EXAMINATIONS, CERTIFICATES AND DIPLOMAS (ss 61-63)

61 Institution of courses of study

(1) Subject to subsection (2) and after consultation with the Advisory Council, the Minister may-

- (a) institute courses for the education, instruction or training of persons in state schools; or
- (b) abolish any course instituted under paragraph (a).

(2) The courses instituted under subsection (1) must comply with the minimum requirements and standards prescribed by the Board under section 14.

(3) The Minister must determine the nature and duration of, and the conditions for

admission to, any course instituted under subsection (1).

62 Examinations, certificates and diplomas

(1) The Minister may cause-

- (a) examinations and other forms of assessment to be conducted in respect of courses instituted under section 61; and
- (b) certificates or diplomas to be issued to learners who have satisfied the minimum requirements and minimum standards prescribed by the Board in respect of such courses.

(2) No person may issue certificates or diplomas regarding any course of study in education or training provided for in this Act, except in accordance with this Act.

63 Exemption from attending or conducting courses of study

(1) The Minister may, on the recommendation of the Board, exempt-

- (a) a learner from attending any course instituted under section 61(1); or
- (b) a school from conducting any course instituted under section 61(1).

(2) The Minister may only grant an exemption under subsection (1), if the Minister is satisfied that-

- (a) the learner has already satisfied the minimum requirements in such course or another similar course and the examination or other form of assessment in such other similar course is equal to the minimum requirements and standards prescribed by the Board for such course;
- (b) the school is already conducting or proposes to conduct a course with similar minimum requirements and contents and the examination or other form of assessment in such other similar course is equal to the minimum requirements and standards prescribed by the Board for such course;
- (c) the exemption is in the public interest or the best interest of the learner, or the school concerned.

PART XI

INSPECTION AND INVESTIGATION OF SCHOOLS (ss 64-66)

64 General inspections, investigation and information

(1) All schools, classes, hostels and programs are subject to inspection and investigation to ascertain whether the provisions of this Act are being complied with.

(2) The principal or any other person in charge of a school, class, program or hostel must provide all the information required by the Minister in connection with the affairs of the school, class, program or hostel.

(3) Subject to subsection (4), the Minister may authorize any staff member to enter any school or hostel to inspect, investigate and monitor-

- (a) educational progress;
- (b) general administration;
- (c) services and facilities;
- (d) financial and other records;
- (e) teachers and other staff;
- (f) learners and boarders; or
- (g) any other matter which needs to be inspected or investigated.

(4) The inspection and investigation and monitoring of a private school must be on matters as determined by the terms and conditions of registration of the school.

(5) Any person carrying out any inspection or investigation referred to in subsection (3)

or section 65(2), may at any reasonable time, with or without prior notification-

- (a) enter any school or hostel to which such inspection or investigation relates;
- (b) question any person who may be able to furnish any information which may be of any relevance for such inspection or investigation; or
- (c) by notice in writing direct any person who may be able to produce any material, book or document, or to furnish any information, which may be of any relevance to such inspection or investigation-
 - (i) to produce such material, book or document to such person; or
 - (ii) to furnish such information to such person.

65 Health inspections and examinations

(1) The Minister, after consultation with the Minister of Health and Social Services and after notification of school parents, may cause medical and dental examinations and inspections to be carried out in respect of learners and staff at any school or hostel.

(2) Subject to section 64(5), the Minister may, after consultation with the Minister of Health and Social Services, cause an inspection and examination of the premises, buildings and accessories of any school or hostel to be carried out regarding any health hazard.

(3) Subject to subsection (4), the Minister may, in consultation with the Minister of Health and Social Services, take such measures as may be necessary-

- (a) for the improvement of the physical and mental well-being of learners and staff referred to in subsection (1); and
- (b) for the promotion and preservation of hygienic conditions in, at or on the buildings and premises referred to in subsection (2).

(4) A learner or staff member referred to in subsection (1) or the learner's parent-

- (a) has the right to have examinations and inspections and measures referred to in subsections (1) and (3), respectively, carried out at such learner's or staff member's own cost by a private medical practitioner of such learner's or staff's own choice; and
- (b) must provide proof of such examinations or inspections or measures within a period determined by the Minister.

66 Reporting on inspections and examinations

The person who carried out an inspection, investigation or examination in terms of section 64 or 65(2) must, within a period of 30 days-

- (a) issue a written report to the Minister on the findings and recommendations on such findings; and
- (b) furnish copies of the report to the principal, school board and any person in charge of the school or hostel so inspected or examined.

PART XII

ADULT EDUCATION (s 67)

67 Adult education and literacy programs

(1) The Minister, out of moneys appropriated for this purpose by Parliament and upon application by any community, may establish, maintain, and support adult education and literacy programs, and may prescribe-

- (a) minimum requirements for admission of minors over the age of 16 years;
- (b) the entitlement of adults to free or subsidized tuition;
- (c) the measures for the control, monitoring and evaluation of adults study groups;
- (d) curricula for and standards of courses of study;
- (e) the provision of staff training and materials development;

- (f) requirements and procedure for registration and subsidization of private and public sector bodies providing basic education to adults, including the manner of reporting on the progress of programs; and
- (g) the fees payable by persons enrolled for adult education or literacy programs or the fees payable in respect of any examinations or the issue of certificates to persons enrolled for such education or programs.

(2) The Minister may, after consultation with the Advisory Council, regional council and local authority councils and other bodies interested in education, establish such councils or other bodies for the co-ordination and efficient administration of adult education programs on a national, regional or local level.

PART XIII

CULTURAL INSTITUTIONS AND PRE-PRIMARY EDUCATION (ss 68-69)

68 Establishment of cultural institutions or organizations

The Minister may, out of moneys appropriated for this purpose by Parliament-

- (a) establish cultural institutions or organizations, or facilitate or assist in the establishment of cultural institutions or organizations by private persons in order to promote culture and to ensure the enjoyment of cultural opportunities;
- (b) cause cultural activities to take place at schools to enable the practice, maintenance and promotion of any culture, language or tradition;
- (c) enter into agreements with any organization for the purpose of enhancing culture and related activities; and
- (d) after consultation with the Advisory Council, regional and local authority councils and other bodies interested in culture, establish such councils or other bodies as may be necessary for the co-ordination and administration of cultural programs on national, regional or local level.

69 Support for pre-primary education

The Minister may provide support and assistance to any registered person or community providing pre-primary education, including-

- (a) professional advice and training of early childhood developers; and
- (b) the provision of appropriate programs and materials.

PART XIV

TEACHING SERVICE (ss 70-75)

70 Establishment of Teaching Service

There is established a service to be known as the Teaching Service.

71 Constitution of Teaching Service

The Teaching Service consists of the persons employed in the Public Service, suitable and sufficient in number to provide education, both basic education and higher education, having regard to any arrangements for the utilization of persons who are teachers by qualification but employed otherwise than teachers.

72 Object of Teaching Service

The object of the Teaching Service is-

- (a) to secure the provision of education appropriate to the ages, abilities, aptitudes and needs of the persons receiving it; and
- (b) to serve the educational interests and the educational needs of all the people of the Republic of Namibia.

73 Code of conduct for Teaching Service

The Minister, in consultation with the Minister responsible for higher education, must, in addition to the regulations made by the Prime Minister under section 34(1)(i) of the Public Service Act, prescribe a code of conduct for the Teaching Service which determines, among others-

- (a) the professional conduct for teachers; and
- (b) the procedure to be followed and the measures to be taken in case of contravention of or failure to comply with any provision of the code.

74 Establishment of Teaching Service Committee

Notwithstanding the provisions of section 6(4)(a) of the Public Service Commission Act, the Commission must, in consultation with the Ministers responsible for education and the Prime Minister, establish a committee of the Commission to be known as the Teaching Service Committee to perform the functions referred to in section 75.

75 Functions of Teaching Service Committee

The functions of the Teaching Service Committee are-

- (a) to assist and advise the Commission on any matter concerning education;
- (b) to assist and advise the Commission on any matter concerning the Teaching Service; and
- (c) to exercise any power and perform any function or duty which the Commission may delegate or assign to the Teaching Service Committee in relation to the Teaching Service.

PART XV

GENERAL PROVISIONS (ss 76-84)

76 Prohibition of certain materials from schools or hostels

The Minister may by notice in the *Gazette* prohibit any substance, article or publication from being distributed, traded, shown or used in or on the premises of a school or hostel to which this Act applies, if in the Minister's opinion such material is contrary to public interest or the best interest of learners.

77 General offences and penalties

(1) A person commits an offence, if such person-

- (a) discloses any confidential information on any examination conducted, or any certificate or diploma issued, in terms of section 62(1), in contravention of any rule made under section 15, or encourages another person to do so;
- (b) refuses to give information or knowingly gives false information relating to any matter of suspected breach of confidentiality regarding any examination conducted, or any certificate or diploma issued, in terms of section 62(1);
- (c) falsifies or counterfeits or causes to be falsified or counterfeited any certificate or diploma purporting to have been issued in terms of section 62(1);
- (d) presents or utters a false certificate or diploma purporting to have been issued in terms of section 62(1) knowing such certificate or diploma to be false;
- (e) alters or tampers with a certificate or diploma issued in terms of section 62(1);
- (f) issues a certificate or diploma for any course of study in education or training provided under this Act in contravention of section 62(2);
- (g) during the normal hours of school attendance employs, whether for remuneration or otherwise, or harbours a child who is subject to compulsory school attendance;

(Date of commencement of para (g): 28 October 2003.)

- (h) refuses or fails-

- (i) to furnish to any staff member appointed under section 53(4) to investigate the school attendance of any learner, any information relating to the investigation; or
 - (ii) to comply with the notice issued by the Minister under section 53(5);
(Date of commencement of para (h): 28 October 2003.)
 - (i) obstructs, hinders, handicaps or disturbs any staff member referred to in paragraph (h)(i) in the conduct of any investigation under section 53(4);
(Date of commencement of para (i): 28 October 2003.)
 - (j) obstructs, hinders, handicaps or disturbs any authorized person who carries out an inspection or investigation in terms of section 64(3);
 - (k) refuses or fails to allow any authorized person referred to in section 64(3) to enter any premises for inspection or investigation referred to in that section;
 - (l) refuses or fails to answer properly any question during any inspection or investigation referred to in Part XI;
 - (m) gives an answer to any question under section 64(5) which is false or incorrect in any material respect, knowing it to be so false or incorrect; or
 - (n) refuses or without reasonable excuse fails to produce any material, book or document, or to furnish any information in accordance with any directive referred to in subsection 64(5);
 - (o) distributes, trades, shows or uses in or on the premises of a school, or a hostel to which this Act applies, any substance, article or publication which has been prohibited by the Minister under section 76; or
 - (p) contravenes section 22(7).
- (2) A person convicted of an offence-
- (a) in terms of subsection (1)(a) to (f), inclusive, is liable to a penalty not exceeding a fine of N\$12 000 or a period of four years imprisonment, or both such fine and such imprisonment; or
 - (b) in terms of subsection (1)(g) to (p), inclusive, is liable to a penalty not exceeding a fine of N\$6 000 or a period of two years imprisonment, or both such fine and such imprisonment.

78 Delegation of powers and assignment of duties or functions by Minister and Permanent Secretary

(1) The Minister may-

- (a) by notice in the *Gazette*, delegate any power conferred upon the Minister by this Act, excluding the power to make regulations and to determine any appeal under this Act, to the Permanent Secretary or any staff member in the Ministry; and
- (b) in writing assign any duty or function imposed upon the Minister by this Act to the Permanent Secretary or any staff member in the Ministry.

(2) The Permanent Secretary may-

- (a) by notice in the *Gazette* delegate any power conferred upon the Permanent Secretary by this Act, excluding the power to determine any appeal under this Act, to any staff member in the Ministry; and
- (b) in writing assign any duty or function imposed upon the Permanent Secretary by this Act to any staff member in the Ministry.

(3) The Minister or Permanent Secretary-

- (a) is not divested of any power delegated or any duty or function assigned under subsection (1) or (2);

- (b) may vary or set aside any decision made under the power so delegated or perform any duty or function so assigned; and
- (c) at any time withdraw the delegation of any power or the assignment of any duty or function, as the case may be.

(4) If a decision varied or set aside under subsection (3)(b) relates to any person, that person may, within 14 days after the variation or setting aside of the decision, make written representation to the Minister or the Permanent Secretary, as the case may be, regarding such variation or setting aside.

79 Limitation of legal proceedings

(1) No legal proceedings of whatever nature may be brought in respect of anything done, omitted or purported to have been done or omitted in terms of this Act, unless such proceedings are brought within the period of 12 months from the date on which the claimant had knowledge of the claim, or might reasonably have been expected to have knowledge of the claim, whichever occurs first.

(2) No legal proceedings referred to in subsection (1) may be commenced before the expiry of 30 days after written notice of intention to bring such proceedings, containing full particulars of the claim, has been served on the defendant.

(3) If a notice contemplated in subsection (2) is given, the running of the period of 12 months referred to in subsection (1) is suspended during the period of 30 days referred to in subsection (2).

80 Regulations

(1) The Minister may make regulations in relation to-

- (a) the minimum standards for the health and safety of learners and staff of schools and hostels;
- (b) the inspection and investigation of schools and hostels;
- (c) the measures for the provision of remedial and special education;
- (d) the conditions and procedure under which grants, scholarships, bursaries, loans and other financial assistance may be granted, increased or withdrawn under section 28;
- (e) the maximum fees and other charges payable in respect of learners at any state school;
- (f) the appropriation of money of a school development fund and the manner of keeping records, books of accounts and stock taking;
- (g) the appointment of auditors and related matters;
- (h) the form of any application or agreement and further conditions, classification and procedures for registration, deregistration and re-registration of private schools;
- (i) the records to be kept and the information and statistics to be provided by private schools;
- (j) the requirements for admission of learners from private schools to examinations conducted by or under the supervision of the Ministry;
- (k) the minimum and maximum age limit for learners to be admitted to state schools or to certain grades in such schools;
- (l) the general criteria for admission of learners to state schools and the transfer of a learner from one school to another;
- (m) the acts constituting misconduct by learners at state schools, including-
 - (i) procedures for dealing with cases of misconduct; and
 - (ii) responsibilities and powers of school principals, school boards and staff members of the Ministry in respect of misconduct;

- (n) the qualification and nomination of candidates for, and procedure at, school board elections;
- (o) any matter which in terms of this Act is required or permitted to be prescribed; and
- (p) generally, any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation made under this section may prescribe penalties not exceeding a fine of N\$2 000 or imprisonment not exceeding a period of six months, or both such fine and such imprisonment, for any contravention of or failure to comply with that regulation.

81 Savings and transitional provisions

(1) The school boards and school committees and other governing bodies for state schools which exist at the date of commencement of this Act must, within a period of 12 months from the date of commencement of this Act, be dissolved and constituted in terms of this Act.

(2) Any school fund, trust fund and other funds for a state school established in terms of any law repealed by this Act and existing at the date of commencement of this Act is deemed to be a school development fund established under section 25.

(3) A state school, class, hostel, teachers' resource centre, school clinic, and other facility, established under a law repealed by this Act and existing at the date of commencement of this Act, is deemed to have been established under this Act.

(4) A private school which has been registered in terms of any law repealed by this Act must be re-registered in terms of section 42 within the period of 12 months from the date of commencement of this Act.

(5) Unless otherwise provided in this Act, anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision.

82 Application of Act

This Act applies to basic education and related matters, and to all schools, classes, programs and other places in which educational activities, to which this Act applies, are performed.

83 Repeal of laws

The laws set out in the Schedule are repealed to the extent indicated in the third column thereof.

84 Short title and commencement

(1) This Act is called the Education Act, 2001, and comes into operation, subject to subsection (2), on a date to be determined by the Minister by notice in the *Gazette*.

(2) The provisions of paragraphs (g), (h) and (i) of subsection (1) of section 77 come into operation 12 months after the date determined under subsection (1).

Schedule REPEAL OF LAWS

(section 83)

[Sch amended by sec 46 of Act 26 of 2003.]

Number and year of law	Short title	Extent of repeal
Ordinance 27 of 1962	Education Ordinance, 1962	The whole
Act 24 of 1964	Black Special Education Act, 1964	The whole
Act 44 of 1970	Black Education Amendment Act, 1970	The whole

Act 63 of 1972	Coloured Persons in South-West Africa Education Amendment Act, 1972	The whole
Act 85 of 1972	Basters of Rehoboth Education Act, 1972	The whole
Act 86 of 1972	Nama in South-West Africa Education Act, 1972	The whole
Ordinance 21 of 1975	Education Ordinance, 1975	The whole
Act 30 of 1976	Coloured Persons in South-West Africa Education Amendment Act, 1976	The whole
Act 31 of 1976	Basters of Rehoboth Education Amendment Act, 1976	The whole
Act 32 of 1976	Nama in South-West Africa Education Amendment Act, 1976	The whole
Ordinance 16 of 1976	Education Amendment Ordinance, 1976	The whole
Act 56 of 1977	Black Education Amendment Act, 1977	The whole
Ordinance 3 of 1978	Education Amendment Ordinance, 1978	The whole
Act 67 of 1978	Black Education Amendment Act, 1978	The whole
Proclamation AG. 76 of 1978	Mentally Retarded Coloured, Baster and Nama Children's Training Proclamation, 1978	The whole
Ordinance 7 of 1979	Education Amendment Ordinance, 1979	The whole
Ordinance 15 of 1979	Second Education Amendment Ordinance, 1979	The whole
Act 30 of 1980	National Educational Act, 1980	The whole except in so far as it applies to teachers' education colleges and agricultural colleges providing tertiary education.
Ordinance 3 of 1986	Education Ordinance, 1986	The whole
Act 12 of 1988	National Education Amendment Act, 1988	The whole except in so far as it applies to teachers' education colleges and agricultural colleges providing tertiary education.

ⁱIt appears the "a region" should read "the regional".