



Republic of Namibia
Annotated Statutes

Basic Education Act 3 of 2020

(GG 7257)

brought into force, *with the exception of section 14*,
on 5 October 2023 by GN 329/2023 (GG 8229)

ACT

To promote and regulate free and compulsory basic education; to ensure equitable inclusive quality education and lifelong learning; to promote and protect the right of learners to education; to provide for the establishment, accreditation, registration, governance and management of State and private schools and hostels; to provide for the establishment of the National Advisory Council on Education, the regional education forums, the National Examination, Assessment and Certification Board, the Teaching Service and the Education Development Fund; and to provide for incidental matters.

(Signed by the President on 12 June 2020)

ARRANGEMENT OF SECTIONS

CHAPTER 1 INTRODUCTORY PROVISIONS

1. Definitions
2. Application of Act
3. Guiding principles in education matters
4. National policy framework on basic education
5. Norms and standards on basic education

CHAPTER 2 LEARNERS

PART 1 GENERAL PROVISIONS APPLICABLE TO LEARNERS

6. Right of learners to education
7. Prohibition on discrimination against learners

Basic Education Act 3 of 2020

8. Prohibition of physical and mental violence and initiation practices against learners
9. Compulsory school attendance
10. Right of learner to transfer
11. Admission of learners to primary school
[The heading of section 11 in the text below is "Admission of learner to primary school".]
12. Learners with disabilities and special needs
13. Prevention and management of learner pregnancy
14. Integrated early childhood development
[This section of the Act has not yet been brought into force.]
15. Right of learners to medium of instruction
[The heading of section 15 in the text below is "Right of learner to medium of instruction".]
16. Learner participation in school governance
17. Learner discipline
18. Parental obligations towards learner

PART 2
LEARNERS AT STATE SCHOOLS

19. Admission to State schools
20. Procedure for admission to State schools
21. Language policy at State schools
22. Code of conduct for learners at State schools
23. Suspension from State school or hostel
24. Expulsion from State school or hostel
25. Academic and progress school reports of learner
[The heading of section 25 in the text below is "Academic and progress reports of learner".]
26. Freedom of religion at State schools
27. Prefects and learners' representative council
28. Administrative directives relating to learners at State schools

PART 3
LIFELONG LEARNING AND ADULT EDUCATION

29. Establishment of National Lifelong Learning and Adult Education Council
30. Lifelong learning
31. Adult education policy and programmes

CHAPTER 3
SCHOOLS

PART 1
SCHOOLS IN GENERAL

32. School environment
33. School health services
34. Minimum standards for schools and hostels
35. Prohibition of certain items and powers of search and seizure
36. Prohibition of political activities at schools
37. Restriction of certain activities at schools

PART 2
STATE SCHOOLS AND HOSTELS

38. Provision of State schools and hostels
[The heading of section 38 in the text below is "Provision of State school and hostels".]
39. Principles governing State schools

Basic Education Act 3 of 2020

40. State schools on State property
41. State schools on private property
42. Legal status of State schools
43. Closure of State schools and hostels
44. Support for under-performing State schools
45. Norms and standards for infrastructure and capacity at State schools

PART 3

PROFESSIONAL MANAGEMENT OF STATE SCHOOLS

[The heading of PART 3 in the text below does not contain the word “PROFESSIONAL”.]

46. Management of State schools
47. Powers and functions of principals at State schools
48. Quality assurance

PART 4

GOVERNANCE OF STATE SCHOOLS

49. Establishment of school boards
50. Functions of school boards
51. Allocated functions of school boards
52. Functions of chairperson of school board
53. Failure by school board to perform functions
54. Constitution of school board of State school
55. Constitution of school board of State school for learners with special education needs
56. Election of members of school boards
57. Codes of conduct for members of school boards

[The heading of section 52 in the text below is “Functions of chairperson of school boards”.]

[The heading of section 57 in the text below is “Code of conduct for member of school boards”.]

58. Enhancement of capacity of school boards
59. Meetings and decisions of school board
60. Reimbursement of member of school board
61. Office-bearers of school boards
62. Committees of school board
63. Term of office of members and office-bearers of school boards
64. Vacation of office and filling of casual vacancies
65. Status of learners on school boards of State schools

[The heading of section 59 in the text below is “Meetings and decisions of school boards”.]

[The heading of section 65 in the text below is “Status of learners on school board of State schools”.]

PART 5

FUNDING OF STATE SCHOOLS

66. Funding of State schools by State
67. Payment of fees at State schools, hostel fees and hostel development fund
68. Norms and standards for school funding
69. School development fund and assets of State schools
70. Prohibition of unauthorised remuneration, of financial benefits or benefits in kind

[The heading of section 70 in the text below does not contain the word “of” before “financial benefits”.]

71. Annual budget of State schools
72. Financial records and statements of State schools
73. Audit or examination of financial records and statements
74. Financial year of State schools

PART 6

PRIVATE SCHOOLS AND HOSTELS

75. Establishment of private schools
 76. Registration of private schools
 77. Register of private schools
 78. Transfer of ownership of private school
 79. De-registration of private school
 80. Non-compliance with requirements by private school
 81. Takeover of management and control of private school
 82. Declaration of private school as State school
 83. Aid to private schools and hostels
 84. Approval of curricula, medium of instruction and examinations at private schools
 85. Powers of private school in relation to staff members
 86. Admission age of learners to private schools
 87. Registration of learner for home schooling
- [The heading of section 87 in the text below is “Registration of learners for home schooling”.]

PART 7 EDUCATIONAL CURRICULA AND QUALIFICATIONS

88. Institution of courses of study
89. Examinations, certificates and diplomas
90. Exemption from attending or conducting courses of study

PART 8 MONITORING AND EVALUATION OF SCHOOLS AND HOSTELS

91. Quality assurance
92. Health inspections and examinations
93. Reporting on quality assurance, inspections and examinations

CHAPTER 4 INSTITUTIONAL MATTERS AND DEVELOPMENT FUND

PART 1 NATIONAL ADVISORY COUNCIL ON EDUCATION

94. National Advisory Council on Education
95. Committees of Advisory Council

PART 2 REGIONAL EDUCATION FORUM AND REGIONAL EDUCATION DIRECTORATES

96. Regional education forum
97. Regional education office, circuit offices and resource centres

PART 3 NATIONAL EXAMINATION, ASSESSMENT AND CERTIFICATION BOARD

98. Establishment of National Examination, Assessment and Certification Board
99. Constitution of Board
100. Term of office of member of Board
101. Vacation of office and filling of casual vacancies
102. Secretariat to Board
103. Committees of Board

Basic Education Act 3 of 2020

- 104. Meetings and decisions of Board
- 105. Payment of allowances to non-staff members
- 106. Functions of Board
- 107. Rules by Board

PART 4
TEACHING SERVICE

- 108. Establishment of Teaching Service
- 109. Constitution of Teaching Service
- 110. Object of Teaching Service
- 111. Code of conduct for Teaching Service
- 112. Establishment of Teaching Service Committee
- 113. Functions of Teaching Service Committee
- 114. Teachers and teaching at State schools

PART 5
EDUCATION DEVELOPMENT FUND

- 115. Establishment of Education Development Fund
- 116. Constitution of Fund
- 117. Object of Fund
- 118. Administration of Fund
- 119. Banking account
- 120. Financial year, bookkeeping and auditing of books of account
- 121. Exemption from payment of tax and other charges

CHAPTER 5
GENERAL PROVISIONS

- 122. Expropriation of land
- 123. General offences and penalties
- 124. Delegation of powers and assignment of functions by Minister and Executive Director
- 125. Regulations
- 126. Repeal of laws
- 127. Savings and transitional provisions
- 128. Short title and commencement

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

[Note that this Act uses the spellings “cooperate”-“co-operate” and “co-ordinate”-“co-ordinate”, and related words, inconsistently. It also uses both “learner’s representative council” and “learners’ representative council”.]

CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

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

Basic Education Act 3 of 2020

“accreditation” means a process of evaluating and validating the status and standards of an institution offering basic education as contemplated in section 13 of the Namibia Qualification Authority Act, 1996 (Act No. 29 of 1996);

“adult and continuing education” means the learning processes within the perspective of lifelong learning in which an adult or out-of-school youth is granted an opportunity for the purpose of developing abilities, enriching knowledge and improving skills;

“Advisory Council” means the National Advisory Council on Education established by section 94;

“assistive technology” means any device, piece of equipment or instrument used to increase, maintain or improve the functional capabilities of individuals with disabilities, and includes visual aids, walking sticks, wheelchairs, braille, video magnifiers, screen readers, augmentative communication devices and specialised equipment for computer access that a learner with special education needs may need in order to access and benefit from education;

“auditor” means a person registered as an accountant and auditor in terms of section 23 of the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951), and where applicable, includes any other suitable person with adequate knowledge and experience in accounting;

“basic education” means the formal education which is provided from the level of pre-primary to the last grade of secondary education, and includes -

- (a) special education; and
- (b) 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 98;

“care-giver” means any person other than a parent or guardian, who takes primary responsibility for the day-to-day care of a child and includes -

- (a) a foster parent;
- (b) a kinship care-giver, including a child who is the head of a child-headed household;
- (c) a primary caretaker;
- (d) a person who cares for a child while the child is in a place of safety; and
- (e) a person who is the head of a facility where a child has been placed;

“child” means a person who has not attained the age of 18 years;

[The word “attained” is misspelt in the *Government Gazette*, as reproduced above.]

“code of conduct” means a set of rules or guidelines outlining the social norms and responsibilities, or proper practices that must be adhered to;

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

Basic Education Act 3 of 2020

“community” means persons residing in the neighbourhood of a basic education institution;

“corporal punishment” means any disciplinary action delivered by a teacher or school administrator to a learner such as subjecting such learner to torture or to cruel, inhuman or degrading treatment or punishment, by spanking, slapping or pinching anywhere on the body of a learner, with or without an apparatus such as a cane or other similar device;

“Council” means the National Lifelong Learning and Adult Education Council established by section 29;

“curriculum” means a framework for devising syllabuses, learning materials and textbooks to be used in the various subjects and areas of learning, from which schemes of work of teachers and lesson plans are developed, to put the goal and aims of basic education into practice in a consistent manner;

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“disability” means disability as defined in section 1 of the National Disability Council Act, 2004 (Act No. 26 of 2004);

“early childhood development” means the period from birth to eight years of age focusing on building the foundation of a child for lifelong learning and development through health care, nutrition, child and social protection, child welfare, early learning and stimulation of a child in a variety of settings such as homes, schools, health facilities and community-based centres in terms of section 14;

“Executive Director” means the Executive Director of the Ministry;

“Fund” means the Education Development Fund established by section 115;

“grade” means a level in an educational programme which a learner may complete in one school year, or in any other education programme which the Minister may consider to be equivalent to that level;

“home schooling” means educational instruction in which parents and care-givers or other privately appointed tutors or service providers teach a learner a legally approved academic curriculum at home instead of at a public or private school;

“hostel” means a public or private facility used for providing accommodation to learners outside their family homes, and includes facilities known as boarding schools and community hostels;

“inclusive education” means a process of -

- (a) addressing and responding to the diversity of needs of all children and adults through increasing participation in learning, cultures and communities;
- (b) reducing and eliminating exclusion from the education system; and
- (c) involving changes and modification in content, approaches, structures and strategies, with a common vision which covers all children of appropriate age range and a conviction that it is the responsibility of the regular system to educate all children irrespective of ability, disability, economic or social status;

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

Basic Education Act 3 of 2020

“learner-centred education” means a teaching and learning approach which focuses on addressing the specific needs and interests of the individual learner by shifting the focus of teaching and learning from the teacher to the learner;

“learner’s representative council” means a body of learners established to represent learners at a secondary school in terms of section 27(2);

“lifelong learning” means learning that takes place throughout life as contemplated in section 30 and is not limited to literacy education;

“local authority area” means a local authority area as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“local authority council” means a local authority council as defined in section 1 of the Local Authorities Act;

“Minister” means the Minister responsible for basic education;

“Ministry” means the Ministry responsible for administering basic education affairs;

“out of school youth” means a child of primary or secondary school age who is not enrolled in primary or secondary school;

“parent” means a natural or an adoptive parent or a guardian of a learner, and includes a care-giver and any person taking care of or who assumes responsibility for the education of the learner;

“prescribed” means prescribed by regulation made under section 125;

“primary education” means the basic education provided from pre-primary level to the last grade of primary education;

“primary school” means a school or part of a school in which basic education from the pre-primary level to the last grade of primary education is provided;

“principal” 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, maintained and owned or operated by private individuals or institutions at the expense of the owner and is registered in terms of section 76;

“Public Service Act” means the Public Service Act, 1995 (Act No. 13 of 1995);

“Public Service Commission Act” means the Public Service Commission Act, 1990 (Act No. 2 of 1990);

“quality assurance officer” means a person designated as a quality assurance officer in terms of section 48(3);

“region” means a region as defined in section 1 of the Regional Councils Act, 1992 (Act No. 22 of 1992);

“regional council” means a regional council as defined in section 1 of the Regional Councils Act;

Basic Education Act 3 of 2020

“regional director” means a staff member designated to a regional education office in terms of section 97(2);

“regional education forum” means a forum established under section 96;

“Registrar” means the registrar of deeds as defined in section 1 of the Deeds Registries Act;

“resource school” means a school or part of a school where special education is provided in order to implement inclusive education practices;

“satellite school” in relation to a registered private school, is a branch of the registered private school that is physically at a distance from the original school area either in the same region or a different region, under the same registration and at times under the same name;

[The word “private” is misspelt in the *Government Gazette* in its first usage in this definition, as reproduced above.]

“school” means an establishment or place or part of an establishment or place where basic education is provided;

“school board” means a school board established by section 49;

“school development fund” means a school development fund established under section 69(1);

“secondary education” means basic education provided from the first grade of secondary school to the last grade of secondary school;

“secondary school” means a school or part of a school in which basic education from grade eight to the last grade of secondary education is provided;

“socio-economically disadvantaged learner” means a learner who is, directly or indirectly, disadvantaged as a consequence of socio-economic and educational imbalances;

“special education needs” means the learning needs of a learner with disabilities and other learning needs which may be cognitive, emotional or behavioural limiting the full participation of a learner in learning and may be provided in mainstream schools, classes or in separate settings;

“staff member” means a staff member as defined in section 1 of the Public Service Act;

“State school” means a school established in terms of section 38;

“teacher” means a staff member who has qualifications to teach others in formal education and whose occupation is teaching, and includes a staff member who does not have a teaching qualification, but has other abilities and qualifications that are relevant to teaching;

“Teaching Service” means the Teaching Service established by section 108; and

“the Act”, includes the regulations made under section 125.

[The comma after “the Act” is superfluous.]

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

Application of Act

Basic Education Act 3 of 2020

2. This Act applies to basic education and related matters and, unless otherwise provided in this Act, to all schools, classes, programmes and other places in which educational activities to which this Act applies are performed.

Guiding principles in education matters

3. In determining any policy or making any decision relating to basic education or implementing any provision of this Act, a person must observe the right of a child to education and give due regard to the following principles -

- (a) the best interests of a child;
- (b) the protection and promotion of the well-being of all children;
- (c) the rights of children as contained in the Namibian Constitution;
- (d) the obligations of Namibia concerning the well-being, development and protection of children in terms of the United Nations Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and other international agreements binding on Namibia;
- (e) the education that is inclusive, learner-centred, focusing on the needs of the learner who is encouraged to express his or her own view or opinion on a matter which concerns or affects him or her;
- (f) the school environment that is safe and conducive to teaching and learning;
- (g) the preference that is given to the mother tongue of the learner as medium of learning and instruction at school in accordance with section 15;
- (h) the prevention of any form of discrimination or any form of child abuse;
- (i) the decentralisation of management and administration of education to regions, local communities and schools;
- (j) the recognition of the needs of a child for development, and to engage in play and other recreational activities appropriate to the age of a child;
- (k) the provision of reasonable access to universal quality education to all children in Namibia; and
- (l) the prioritisation of continuous teachers professional development.

National policy framework on basic education

- 4.** (1) The Minister must -
- (a) determine the national policy framework on basic education and ensure that consultations with bodies established for this purpose in terms of this Act or any other law, or with such organisations as the Minister may recognise for this purpose, are undertaken;

Basic Education Act 3 of 2020

- (b) secure the effective co-operation and coordination of all public and private bodies concerned with basic education in formulating and implementing the national policy framework on education in terms of this Act;
- (c) direct, manage, co-ordinate, supervise, monitor and control the basic education system and related matters; and
- (d) promote basic education and the establishment and development of schools.

(2) The Minister may consult any person that the Minister wishes for advice on the determination of basic education policy and related matters.

(3) Subject to subsections (1) and (2), the Minister must determine the national policy framework for the planning, provision, supporting, financing, co-ordination, management, governance, programmes, monitoring, evaluation and well-being of the education system and, without derogating from the generality of this section, may determine the national policy framework for -

- (a) education management information systems, including the provision of data in accordance with national and international obligations of the government;
- (b) the organisation, management and governance of the national education system;
- (c) facilities, finance and development plans for education, including advice to the Ministry responsible for finance;
- (d) innovation, research and development in education;
- (e) the ratio between teachers and learners;
- (f) the professional education and accreditation of teachers;
- (g) the organisation, management, governance, funding, establishment and registration of education institutions;
- (h) compulsory basic education;
- (i) the admission of learners to basic education institutions, which includes the determination of the age of admission to schools;
- (j) the minimum number of hours per day and days per year during which education may be provided for the different phases of education in education institutions;
- (k) co-ordination of the dates of school terms in the regions;
- (l) curriculum frameworks, core syllabuses and education programmes, learning standards, examinations and the certification of qualifications, subject to the provisions of any law establishing a national qualifications framework or a certifying or an accrediting body;
- (m) language in education;
- (n) management and discipline of learners, teachers and other staff members at education institutions;

Basic Education Act 3 of 2020

- (o) education support services, including health, welfare, career and vocational development, counselling and guidance for education institutions, within the functional responsibility of the Ministry;
 - (p) co-operation between the Ministry and other institutions, the private sector and development partners with a view to advancing policy contemplated in this Act and the relevant National Development Plans;
 - (r) international relations in the field of basic education; and executive functions required to implement national basic education policy determined in terms of this Act, including the implementation of measures to address past discriminatory practices.
- (4) The Minister must -
- (a) table any policy determined under this Act in the National Assembly for approval; and
 - (b) within 30 days of the approval under paragraph (a) announce the policy by notice in the *Gazette* for the policy to become effective.

Norms and standards on basic education

5. (1) The Minister, after consultation with the Advisory Council, may prescribe norms and standards for various aspects of basic education or basic education policy.

- (2) The Executive Director must -
- (a) ensure compliance with the norms and standards contemplated in subsection (1);
 - (b) ensure that the policy determined by a school board or the governing body of a private school complies with the norms and standards contemplated in subsection (1); and
 - (c) report annually to the Minister before the end of each school calendar year the extent to which the norms and standards have been complied with or, if they have not been complied with, indicate the measures to be taken to ensure compliance.

**CHAPTER 2
LEARNERS**

**PART 1
GENERAL PROVISIONS APPLICABLE TO LEARNERS**

Right of learners to education

6. (1) The right to education enshrined in Article 20(1) of the Namibian Constitution must be respected and given effect to by all institutions and persons involved in the provision of basic education and educational services, including the State, schools, teachers, parents, care-givers and the community.

- (2) Subject to this Act, a child may not be deprived of the right to education because -
- (a) he or she does not have a birth certificate;

- (b) he or she has not attended pre-primary school, in case of primary education;
- (c) of a disability;
- (d) or any other reason which is inconsistent with this Act or the Namibian Constitution.

Prohibition on discrimination against learners

7. (1) A person may not subject a child or learner who -

- (a) applies for admission at any school; or
- (b) is attending any school,

to any form of direct or indirect discrimination on grounds of race, ethnic origin, colour, sex, religion, creed, social or economic status.

(2) A person who contravenes to subsection (1) commits an offence and is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Prohibition of physical and mental violence and initiation practices against learners

8. (1) A person may not, at any school or hostel, directly or through a third person at the instigation of, or with the consent or acquiescence of, any school personnel, for any reason, subject a learner to -

- (a) any act of physical or mental violence, including injury or abuse, negligent treatment, maltreatment or exploitation and sexual abuse; or
- (b) conducting or participating in any form of initiation.

(2) For the purposes of this section -

- (a) “initiation practice” means any act which in the process of initiation, admission into or affiliation with a school, a group, intramural or extramural school activities, inter-schools sports team or organisation -

- (i) endangers the mental or physical health or safety of a learner;
- (ii) undermines the intrinsic worth of human beings by treating some as inferior to others;
- (iii) subjects individuals to humiliating or violent acts which undermine the constitutional guarantee to dignity in the Namibian Constitution;
- (iv) undermines the fundamental rights and values that underpin the Namibian Constitution;
- (v) impedes the development of a democratic culture that entitles an individual to be treated as worthy of respect and concern; or
- (vi) destroys public or private property.

Basic Education Act 3 of 2020

- (b) “mental violence” means, inter alia, any act including mental harassment, confinement, isolation, verbal assault, humiliation, intimidation or any other treatment which may diminish the sense of identity, dignity, and self-worth of a learner; and
- (c) “physical violence” means any measure which imposes any degree of physical harm to a learner, including corporal punishment.

(3) Schools must follow the prescribed positive discipline which must be read in conjunction with the provisions of school safety and school health.

[The word “of” should be “on”.]

Compulsory school attendance

9. (1) It is compulsory for a learner to attend school during school hours from the first school day of the academic year in which he or she reaches the age of six years until -

- (a) the last school day of the year in which he or she attains the age of 18 years;
- (b) he or she has completed the specialised education programme he or she is enrolled in;
- (c) the day on which he or she completes secondary education; or
- (d) he or she, in the opinion of the Executive Director, is ready to leave school.

(2) Despite the provisions of subsection (1), the Executive Director may -

- (a) direct that attendance at a school for specialised education is compulsory for any child with specialised educational needs who is older than three years, if the Executive Director has reason to believe that it would be in the best interests of the child; or
- (b) exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

(3) Where a child older than six years has not been admitted in any school or admitted, but could not complete his or her primary education, then he or she must be admitted in a grade appropriate to his or her ability and age.

(4) Where a child, referred to in subsection (3), is directly admitted in a grade appropriate to his or her age, then he or she, in order to be at par with others, has a right to receive appropriate support, in such manner and within such time-limits, as may be prescribed.

(5) Despite subsections (3) and (4), a learner who is 21 years or younger who left school for whatever reason may be re-admitted to the formal education system under prescribed conditions.

(6) The Executive Director may appoint a staff member to investigate the registration and the school attendance of any child for whom school attendance is compulsory.

(7) 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 instructions are given; and

[The phrase “instructions are” should be “instruction is”.]

- (c) the minimum hours of instructions.

[The word “instructions” should be “instruction”.]

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

Right of learner to transfer

9. (1) Where a learner is enrolled at a school where there is no provision for completion of primary or secondary education phases, such learner has the right to seek a transfer to any other school, with the facilitation of the Ministry, for the completion of the primary or secondary education phase.

(2) Where a learner is for any reason required to move from one school to another, either within or outside a region, such learner has the right to seek transfer to any other school, for completing his or her education.

(3) Where a learner is to be transferred from one school to another in terms of this section, the principal of the school where the learner was last admitted must immediately issue a transfer certificate and a cumulative card to enable the child to be admitted to the school where he or she is transferred.

(4) A delay in producing a transfer certificate and cumulative card by the principal referred to in subsection (3) is not a ground for the new school to either delay or deny a learner admission.

Admission of learner to primary school

[The heading of section 11 in the ARRANGEMENT OF SECTIONS is
“Admission of learners to primary school”.]

11. (1) For the purposes of admission to primary school, the age of a child is determined on the basis of the birth certificate issued in accordance with the relevant legislation or on the basis of such other document as may be prescribed.

(2) A child may not be denied admission to a school for lack of a birth certificate or any other documentation.

(3) A child is admitted to a school at the commencement of the academic year or within such extended period as may be prescribed, but -

- (a) a child may not be denied admission if such admission is sought subsequent to the extended period; and
- (b) a child admitted during the extended period must complete his or her studies in such a manner as may be prescribed.

(4) A child admitted to a school must have access to structured learning support to gain the minimum competencies required to allow the child to move up to the next grade until completion of primary and secondary education.

Learners with disabilities and special needs

12. (1) The Minister must -

- (a) ensure that the national policy on inclusive education is applied in all schools;
- (b) ensure that there are available resources, tools and facilities required to effectively implement national policy on inclusive education;
- (c) provide for a separate vote for the funding of education for learners with disabilities to cater for inclusive education and resource schools in accordance with the decentralisation policy; and
- (d) where it is reasonably possible, establish specialised centres of resources which support schools in the implementation of the policy on inclusive education addressing the specific needs of learners with disabilities and special needs in education.

(2) To give effect to the policy of inclusive education, school boards and governing bodies of private schools must ensure that -

- (a) education provision includes procurement of specialised essential equipment and assistive technology or devices;
- (b) the curriculum is inclusive and disability sensitive and that adequately trained human resources and adequate instructional resources are catered for at the school level;
- (c) learners with disabilities are accommodated -
 - (i) in mainstream schools;
 - (ii) in resource units within mainstream schools; or
 - (iii) in specialised resource schools for learners with multiple or severe disabilities;
- (d) learners with disabilities have equal access to mainstream schools in accordance with Namibian laws;
- (e) learners having specific learning difficulties or severe disabilities are provided with learning and psycho-social support at all levels;
- (f) all facilities at their respective schools gradually become fully accessible in terms of infrastructure, technology, teaching and learning materials and are disability friendly; and
- (g) learners with disabilities, special needs in education and those from disadvantaged socio-economic backgrounds, vulnerable families and orphans are provided with, at least, one nutritious meal per day through the school feeding programme.

(3) To give effect to this section, the Minister may, prescribe matters relating to learners with disabilities and special needs in education with individual educational needs, including -

[The comma after “may” is superfluous.]

Basic Education Act 3 of 2020

- (a) the multi-disciplinary assessment of their condition;
- (b) the process of determining, formulating and application of an individual educational programme;
- (c) special arrangements on the assessment, tests and examinations of concerned learners;
- (d) the programmes in specialised resource schools and units;
- (e) the application of therapies and administration of medicines as prescribed by registered medical practitioners and administered to learners by a designated staff member according to any law;
- (f) reconsideration, of and appeals from, decisions on an application for the determination of placement of a learner;

[The comma before the word “of” is misplaced and should come after that word.]

- (g) on any other matter connected with the provision of education to learners with disabilities and special needs in education; and
- (h) establishing a school feeding programme at both primary and secondary school levels to provide meals, especially to learners with disabilities, disadvantaged socio-economic backgrounds, vulnerable families and orphans, to contribute to keeping all learners in school and to enhance their cognitive and psycho-social development.

Prevention and management of learner pregnancy

13. (1) The Minister, with a view to strengthen the principle of access to inclusive quality education to all children in Namibia and in accordance with section 4, must develop a learner pregnancy policy focusing on the prevention and management of learner pregnancies in schools.

(2) Without limiting the generality of subsection (1), the learner pregnancy policy must address -

- (a) the establishment of a monitoring mechanism to assess the implementation of the policy in schools;
- (b) the issuing of guidelines to strengthen the life skills curriculum in schools with a strong emphasis on prevention;
- (c) the teaching of life skills education by trained teachers;
- (d) the permission of health professionals and school counsellors in schools to provide training and regular information sharing on reproductive health topics;
- (e) the teaching of comprehensive sexuality education to all learners from grade four or at an appropriate age; and
- (f) the referral of pregnant learners to social workers at the Ministry responsible for child welfare, especially orphans and vulnerable children so that they can obtain relevant information on child care and legal obligation.

Basic Education Act 3 of 2020

(3) A learner may not be denied the right to admission or re-admission to a State school or private school after the learner has given birth.

- (4) The Minister must ensure that any person who impregnates a learner -
- (a) where such a learner is under the age of 16, is reported to the relevant authorities in accordance with the relevant laws; and
 - (b) in the case of a staff member, is, in addition to paragraph (a), charged in accordance with the Public Service Act or any other law.

Integrated early childhood development

[This section of the Act has not yet been brought into force.]

14. (1) The Minister, in developing the national policy framework on basic education under section 4, must include a policy on integrated early childhood development which is aimed at -

- (a) recognising the importance of the first 1000 days of a child in terms of health and safety, protection, nutrition and stimulation;
- (b) promoting contact with early childhood development and child care centres to facilitate the smooth transition between community based early childhood care or early childhood development centres;
- (c) preparing children above the age of three years for primary education and to provide early childhood care and education for all children until they reach the age of eight years; and

[The verb “to provide” should be “providing”.]

- (d) the provision of progressive access to universal pre-school education for all children in Namibia.

(2) When developing the integrated early childhood development policy in terms of subsection (1), the Minister must -

- (a) consult with the Ministers responsible for finance, health, disability, social services, birth registration, child care and protection, local government and other relevant Ministries; and
- (b) include a comprehensive national strategy aimed at securing a properly resourced, coordinated and managed early childhood development system, giving due consideration to children with disabilities or chronic illnesses and children from poor and marginalised communities.

(3) The Minister may, in accordance with section 5, prescribe national norms and standards or any other requirements that early childhood development programmes must comply with.

- (4) To give effect to this section the Minister may prescribe -

- (a) the requirements for registration and de-registration of early childhood development services;

Basic Education Act 3 of 2020

- (b) the procedure to be followed in connection with the lodging and consideration of applications for registration for the renewal of registrations of early childhood development services;
 - (c) the assessment and compulsory monitoring of early childhood development programmes and centres;
 - (d) a national curriculum for children 0 to four years of age;
 - (e) guidelines for establishing a feeding programme at early childhood development centres; and
 - (f) any other matter necessary to facilitate the implementation of equitable, quality integrated early childhood development programmes and centres.
- (5) For the purposes of this section -
- (a) “early childhood development services” means services -
 - (i) related to early learning and stimulation and school readiness;
 - (ii) intended to promote early childhood development; and
 - (iii) provided by a professional person or care-giver on a regular basis to children up to school-going age; and
 - (b) “early childhood development programme”, includes -

[The comma after “early childhood development programme” is superfluous.]

- (i) a programme structured within an early childhood development service to provide early learning and support appropriate to the developmental age and stage of the child; and
- (ii) the provision of health care and nutrition, water and sanitation, child care and social protection and welfare in line with the responsibilities of other ministries involved.

Right of learner to medium of instruction

[The heading of section 15 in the ARRANGEMENT OF SECTIONS is
“Right of learners to medium of instruction”.]

15. (1) The Minister, in developing the national policy on education under section 4, must include a national language policy which is based on the principle that every learner has the right to instructions in the language of his or her choice where this is reasonably practicable.

[The word “instructions” should be “instruction”.]

(2) The Minister may, in accordance with subsection (1), determine norms and standards for language policy for schools in Namibia.

(3) The right of education of a learner may not be denied or hindered because he or she expresses himself or herself in a language which is not the language of learning at the school.

(4) A recognised sign language has the status of a language for the purposes of learning and communication at any school and bilingual education must be considered as a basic practice in all schools that have learners with hearing impairments.

Learner participation in school governance

16. (1) In order to give effect to the principle of learner participation in school governance, all schools must create appropriate spaces, platforms and an environment where learners meaningfully participate from early childhood development through the highest grade in the school system according to their evolving age and capacity.

(2) In order to give effect to the principle of learner participation in school governance, every school must include as part of its core-curriculum, and extra curricula activities, governance principles such as accountability, transparency and participation, and leadership.

[The term “extra curricula” should be “extracurricular”.]

(3) Learners should be encouraged to participate in sports for development, school prefects programmes, learners’ representative councils, peer support groups, school clubs, school committees or sub-committees and in other major related activities.

(4) The Minister may, in writing, direct a regional director to -

- (a) prepare guidelines or manuals on how to assist schools to encourage and effectively engage the participation of learners in school governance with best practice advice and guidance on how this may be achieved at individual level, classroom level and school level through curriculum planning, classroom teaching, learning, peer support, learner to learner approaches, school prefects programmes and learners’ representative councils;
- (b) revise the guidelines and incorporate a broadened perspective on roles, functions and responsibilities of school prefects and learners’ representative councils as mentors to their peers, including learner discipline and participation in the school boards, and other relevant forums as appropriate;
- (c) develop guidelines and training materials with clearly articulated competencies for governance, democracy and civic engagement towards a knowledge based and democratically active Namibia; and
- (d) ensure that the participation of learners in school boards activities may not exclusively come from school prefects and learners’ representative councils, but must include both learners’ representative councils and other learner committee members to ensure a democratic character of learner representation on committees and boards.

[The phrase “school boards activities” should be “school board activities”.]

Learner discipline

17. (1) The Minister, in developing the national policy on basic education, must include a policy relating to good conduct and discipline in all schools, the safeguarding of learners against substance abuse, addressing absenteeism, ensuring inclusive education, and any relevant policy which the Minister may from time to time adopt, and ensure that such policies are well understood by all teaching and non-teaching staff members, parents and care-givers and learners and that they are being effectively followed or implemented.

(2) Parents have the primary responsibility to motivate their children for education and their disposition for good behaviour and discipline, and for this reason the parents and care-givers must cooperate fully and with due respect to teachers.

(3) The Minister may issue guidelines to schools, parents and care-givers on how to provide psycho-social support to learners with learning, behavioural and emotional challenges.

(4) Every -

- (a) school board must establish a code of conduct for learners at its school in accordance with section 22; and
- (b) governing body of a private school must establish a code of conduct for learners at its school which must contain the matters specified in subsection (3) of section 22 and be based on the guidelines issued under subsection (4) of that section.

Parental obligations towards learner

18. (1) The parent of a child must -

- (a) apply for enrolment of the child at the school of choice of the parent by end of September in the year preceding the enrolment; and
- (b) enrol the child at a State or private school for the purpose of education no later than 14 days after the day school starts in a calendar year; or
- (c) apply for admission for a child at a registered home school subject to section 87, not later than -
 - (i) 10 school days after the start of the school year; or
 - (ii) the day the child turns six years old.

(2) If the enrolment of a learner at school is cancelled by the parent of such learner, the parent must within 14 days after the day the enrolment is cancelled -

- (a) enrol the learner at another school; or
- (b) apply to register the child for home schooling and ensure proper monitoring and inspection of home school programmes.

(3) If the registration of a learner for home schooling is cancelled, the parent must enrol the learner at a school of the choice of the parent not later than 14 days after the day the cancellation takes effect.

(4) The parent of a learner must ensure that the learner attends school regularly, in particular all mandatory classes and school related events.

(5) The parent of a learner must ensure that all learning material issued to a learner is returned to the school in good condition at the end of each academic year.

(6) The parent of a learner is accountable for all losses and damages caused by the learner to the school.

Basic Education Act 3 of 2020

(7) Subsection (6) does not apply if the parent of a learner has a good reason to the satisfaction of the Executive Director for not complying with that subsection.

(8) The Executive Director may give a written notice to the parent of a child if the Executive Director believes on reasonable grounds that -

- (a) the learner is not enrolled at an educational institution;
- (b) the learner is not registered for home schooling;
- (c) even though the learner is enrolled at a school, the learner is not attending classes; or
- (d) the learner is not participating in any training or employment alternative in accordance with what is provided for in this Act.

(9) The notice referred to in subsection (8) may require the parent to take appropriate action to ensure that the learner receives suitable basic education or training.

(10) A parent of a learner must instil in the learner the discipline and a sense of responsibility -

- (a) to take good care of the property of the school which is placed at the disposal of the learner; and
- (b) to return to the school any equipment or materials issued to the learner on or before a date specified by the school.

(11) The parent of a learner is liable for any damage to, or loss of, school property in respect of which the learner concerned is liable to the school concerned.

(12) The parent of a learner must assist the governing body of a school to promote a culture of -

- (a) responsibility and respect for school property;
- (b) tolerance and respect for the human rights of others;
- (c) learning and teaching at the school; and
- (d) promoting and contributing towards the financial well-being of the school.

PART 2 LEARNERS AT STATE SCHOOLS

Admission to State schools

19. (1) A State school must admit learners and serve their educational requirements without discriminating in any way.

(2) Subject to this Act, the national admission policy must be in line with inclusivity, accessibility, equity and equality.

(3) A learner may not be subjected to a screening test for the purpose of admission to a State school.

Basic Education Act 3 of 2020

(4) A learner may not be refused admission to a State school on the grounds that his or her parent -

- (a) is unable to make voluntary contribution to the school; or

[The word “a” should appear before the phrase “voluntary contribution”; alternatively, that phrase should be “voluntary contributions”.]

- (b) has refused to enter into any contract imposed by the school management.

(5) For admission to a State school, a learner must be -

- (a) turning six by the year of admission for pre-primary; or
- (b) turning seven in the year of admission for grade one.

(6) Subject to the availability of suitable school places and other educational resources, the Minister may permit the admission of a learner who -

- (a) is under the age contemplated in subsection (5)(a), if good cause is shown; and
- (b) complies with the criteria contemplated in subsection (8)(a).

(7) For the purpose of subsection (6)(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 his or her best interest; and
- (b) the refusal to admit that learner would be severely detrimental to his or her development.

(8) The Minister may prescribe the -

- (a) criteria for the admission to a State school, at an age lower than the admission age, of an underage learner who complies with the criteria; and
- (b) age requirements for different grades at a State school.

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

Procedure for admission to State schools

20. (1) An application for admission of a child or learner to a State school must be made by the parent to the principal of the school in the prescribed manner.

(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 regional director 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.

[The word “ground” should be “grounds”.]

(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 regional director against the decision of the principal referred to in subsection (3).

(5) The regional director must, within 20 days of receipt of the appeal and after considering the reasons and all the circumstances surrounding the matter and the representations made by the parent on appeal, take any decision the regional director considers fit.

(6) The parent of a learner who is aggrieved by the decision of the regional director made under subsection (5) may, within 14 days from the date of receipt of the decision, appeal in writing to the Executive Director against the decision of the regional director.

Language policy at State schools

21. (1) The Minister, after consultation with the school board of a State school, must determine the language policy of the school subject to the national language policy determined under section 15(1).

(2) Despite subsection (1), the Minister, by notice in the *Gazette*, must determine the grade level for all State schools from which English is used as medium of instruction, and may determine different grade levels for different categories of schools.

(3) 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.

(4) The language policy of a State school is developed within the framework of the following principles -

- (a) the education process is aimed at the development of a national democratic culture of respect for the diverse language communities of the country;
- (b) within practical limits, a learner has the right to the language of his or her choice in education;
- (c) school language policy is designed to facilitate the maximum participation of learners in the learning process;
- (d) special measures to be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the languages of learning of his or her school;
- (e) school language policies to be co-ordinated at a regional level and must take into account the availability of human and material resources;
- (f) special measures to be taken to promote the status and use of languages which have previously been neglected or discriminated against by education authorities in the regions;
- (g) special measures to be taken to introduce and promote the status and use of sign language in all schools; and

Basic Education Act 3 of 2020

- (h) the obligation on all State schools and on the Ministry to ensure that teachers acquire the language skills necessary for teaching in a multilingual educational environment.

(5) If, at any time, the Minister has reason to believe that the language policy of a State school does not comply with the principles set out in this Act or the Namibian Constitution, the Minister may, after consultation with the school board of the school concerned, direct that the language policy of the school be re-formulated in accordance with this Act.

(6) If the school board of a State school is aggrieved by a directive of the Minister, the school board may, within 30 days after receiving a directive contemplated in subsection (5), request in writing that the matter be referred to the Advisory Council, setting out the reasons for referral.

(7) On receipt of a referral made under subsection (6), the Advisory Council must as soon as practicable -

- (a) prepare and submit an advisory opinion to the Minister; and
- (b) notify the appellant school board of its action.

(8) After receipt of the advisory opinion in terms of subsection (7)(a), the Minister must decide whether to -

- (a) reconsider his or her original decision and allow the school to retain its language policy; or
- (b) stand by his or her original decision and direct the school to re-formulate its language policy in accordance with this Act within 60 days after the date on which the school board is notified of the decision of the Minister.

Code of conduct for learners at State schools

22. (1) The Minister must prescribe general rules of conduct which must be incorporated into the code of conduct of learners at all State schools.

(2) Subject to subsection (1), the school board with the concurrence of the parents, learners and teachers, must draft and adopt a code of conduct aimed at establishing a disciplined, purposeful, healthy, caring and supportive school environment, dedicated to the improvement and maintenance of the quality of the teaching and learning process.

(3) A code of conduct must -

- (a) contain provisions for due process, safe-guarding the safety and interests of the learner and any other party involved in disciplinary proceedings, where suspension or expulsion is the last resort; and

[The term “safe-guarding” should be “safeguarding”.]

- (b) provide for support measures or structures for counselling a learner involved in disciplinary proceedings.

(4) The Minister, after consultation with interested parties, may prescribe procedures to be followed by school boards in adopting a code of conduct for learners.

(5) Nothing in this Act exempts a learner from the application of the code of conduct of the school attended by the learner.

Suspension from State school or hostel

23. (1) Any suspension from a State school or hostel is considered with the best interests of the child in mind.

(2) A learner and his or her parent have the right to representation at disciplinary proceedings.

(3) If the principal of a State school has reason to believe that a learner at the school or accommodated in a hostel of the school commits or has committed an act of misconduct, the principal may, in the prescribed manner, charge the learner with misconduct.

[The word “an” is misspelt as “and” before the phrase “act of misconduct”.]

- (4) The principal may suspend a learner from a State school or hostel or both at any time -
- (a) before the learner is charged with misconduct under subsection (3) pending investigation; or
 - (b) after the learner is charged with misconduct under subsection (3), pending the conclusion of the disciplinary hearing in terms of subsection (7);

[Paragraph (b) should end with a full stop instead of a semicolon; there are no additional provisions in the Government Gazette.]

- (5) Any suspension referred to in subsection (4) is for such periods as may be prescribed.
- (6) A learner may be suspended if -
- (a) the behaviour of such learner is of such a nature that it is putting the lives of learners, teachers and other staff members at risk or poses a threat to their safety;
 - (b) the possibility exists that the learner may interfere or tamper with witnesses or evidence;
 - (c) poses a threat to the safety of property of the school or hostel; or

[Some words appear to be missing at the beginning of paragraph (c).]

- (d) is detrimental or possibly detrimental to the good order and discipline of the school or hostel and the progress of other learners.

[Some words appear to be missing at the beginning of paragraph (d).]

- (7) The suspension of any learner may at any time be cancelled -
- (a) by the principal who has suspended the learner under subsection (4), if -
 - (i) in the opinion of the principal all the reasons for the suspension have lapsed; or
 - (ii) the school board has recommended to the principal the cancellation of the suspension; or

- (b) by the regional director, if in the opinion of the regional director there is no valid cause for the suspension.

(8) The cancellation of a suspension of a learner referred to in subsection (7) does not affect any proceedings in connection with the charge of misconduct against the learner.

(9) The disciplinary hearing on a charge of misconduct in terms of subsection (3) is led by a pro forma complainant appointed as prescribed, and must be held before the school board, within 20 days from the date the learner was charged, and the Board may, on a finding that the learner is guilty of misconduct -

[The word “prescribed” is misspelt in the *Government Gazette*, as reproduced above.]

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

(10) 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 (9), 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; and
- (c) within seven days of the finding and recommendation of the school board under subsection (9)(b), furnish the Executive Director with the record of proceedings, documentary evidence, reasons and recommendation.

(11) A parent, within 14 days from the date of receipt of the copy of the record of proceedings, documentary evidence and reasons referred to in subsection (10)(b), may appeal in writing to the Executive Director against the finding of the school board, or any penalty imposed under subsection (9)(a).

(12) The Executive Director, 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 (11) and the representations made by the parent, may -

- (a) vary or set aside the finding of the school board in whole or in part;
- (b) dismiss the appeal and confirm the finding of the school board; or
- (c) send the matter back to the school board to hold a further inquiry and to make a finding in terms of subsection (9).

(13) A parent, within 14 days from the date of receipt of the decision of the Executive Director under subsection (12), may appeal to the Minister against the decision of the Executive Director, 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.

Expulsion from State school or hostel

24. (1) The Executive Director, within 14 days of receipt of the recommendation of the school board and all relevant supporting documents submitted to the Executive Director in terms of section 23(10)(c) and after consideration of such recommendation and documents, may expel a learner from the State school or hostel, as a last resort.

- (2) The Executive Director must -

- (a) in writing notify the parent of the decision of the Executive Director to expel the learner from the State school or hostel; and

- (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 Executive Director in terms of section 23(10)(c); and

- (ii) the reasons of the Executive Director.

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

- (a) the finding of the school board or the decision of the Executive Director to expel the learner from the State school or hostel; or

- (b) both the finding of the school board and the decision of the Executive Director 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 Executive Director, or both; or

- (b) dismiss the appeal and confirm the finding of the school board and the decision of the Executive Director.

Academic and progress reports of learner

[The heading of section 25 in the ARRANGEMENT OF SECTIONS is
“Academic and progress school reports of learner”.]

25. (1) The principal of a State school must ensure that the parent of each learner at the State school is provided with regular reports as prescribed on the academic progress, general behaviour and conduct of the learner.

(2) A person may not withhold a report or statement of results to be issued under subsection (1) in respect of a learner because of the non-payment of any fee or other payment supposedly due to the school.

Basic Education Act 3 of 2020

- (3) A person who contravenes subsection (2) -
 - (a) commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment; and
 - (b) in the case of a staff member, commits an act of misconduct for which disciplinary action may be taken against him or her in accordance with the Public Service Act.

Freedom of religion at State schools

26. (1) A learner at a State school or hostel has, subject to Article 21 of the Namibian Constitution, the right to practise any religion which is not against public order and to manifest such practice without fear or intimidation from anybody at the school or hostel.

(2) The religious practise referred to in subsection (1) must not be injurious to the physical or mental health of the learner or his or her full development.

[The noun “practice” is misspelt in the *Government Gazette*, as reproduced above.]

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

(4) A learner or staff member at a State school or hostel may attend religious observance as long as the attendance does not interfere with the normal school programme or any period as may be prescribed.

Prefects and learners’ representative council

27. (1) Every State school offering primary education must elect prefects in accordance with the prescribed requirements which must determine their composition and functions.

(2) Every State school offering secondary education must establish a body of learners to be known as the learners’ representative council in accordance with the prescribed requirements which must determine the composition and functions of such a council.

(3) The Minister, in the prescribed manner may exempt a resource school from complying with subsection (1) or (2), if it is not practically possible for prefects to be elected or a learners’ representative council to be established at the school.

Administrative directives relating to learners at State schools

- 28.** (1) The Minister may issue directives, not inconsistent with this Act, relating to -
 - (a) the admission and education of learners;
 - (b) the conduct of learners, teachers and other staff members;
 - (c) the obligations of parents; or
 - (d) any other matter which the Minister considers necessary to give effect to the provisions of this Part.

(2) A person to whom or an institution to which a directive is addressed is bound and must comply with the directive and failure to do so, may result in such person being charged with misconduct if such person is a staff member.

PART 3 LIFELONG LEARNING AND ADULT EDUCATION

Establishment of National Lifelong Learning and Adult Education Council

29. (1) There is established a council to be known as the National Lifelong Learning and Adult Education Council.

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

- (a) to advise and assist the Minister on matters relating to lifelong learning and adult education;
- (b) to formulate and review any policy on matters relating to lifelong learning and adult education;
- (c) to advise and assist the Namibia Qualifications Authority established in terms of Namibian Qualifications Authority Act, 1996 (Act No. 29 of 1996), and the Minister responsible for education on the registration and accreditation of private adult learning institutions;

[There should be a comma after the phrase “and the Minister responsible for education” to offset that phrase properly.]

- (d) to promote research on lifelong learning and adult education; and
- (e) to exercise and perform such powers and functions conferred or imposed under this Act.

(3) The Council consists of not less than 20 and not more than 30 members appointed by the Minister, and for the purpose of appointment, the Minister must select two staff members and one person each from each category of persons nominated under subsection (4).

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

- (a) institutions offering of lifelong learning and adult education;

[The word “of” is superfluous.]

- (b) public enterprises;
- (c) non-governmental organisations or civil society organisations working in the field of lifelong learning and adult education;
- (d) the national organisations for persons with disabilities;
- (e) the Namibia Qualifications Authority established by section 2 of the Namibia Qualifications Authority Act;

Basic Education Act 3 of 2020

- (f) each regional education forum;
- (g) recognised or registered trade unions;
- (h) unions of teachers;
- (i) recognised or registered youth organisations; and
- (j) any other bodies or organisations working in the area of lifelong learning and adult education.

(5) The Minister must appoint two of the members from a list of four names elected by the members from among themselves to be the chairperson and the deputy chairperson of the Council, respectively.

(6) A member of the 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 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 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 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 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.

[There should be a comma after the phrase “or for any other reason” to offset that phrase properly.]

(9) If a member of the 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 subsections (3) and (4).

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

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

(12) The members of the Council who are not staff members may be paid such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(13) The Executive Director must designate staff members of the Ministry to render administrative and secretarial services to the Council.

(14) The Minister may prescribe any other functions to the Council as he or she may consider necessary.

(15) The Council may establish any committee -

- (a) to advise the Council on any matter in relation to its functions; or
- (b) to perform, subject to the directions of the Council, any function of the Council which the Council may assign to the committee in writing.

(16) A committee established under subsection (15) must consist of at least three or more members, and not more than two other persons not being members, whom the Council considers suitable to appoint.

(17) The Council may at any time dissolve or reconstitute a committee.

(18) The Council is not divested of a function assigned to a committee.

Lifelong learning

30. (1) The Minister must, in accordance with section 4, develop a national policy on lifelong learning that ensures that all persons have the opportunity to acquire quality basic education including early childhood development as a foundation for lifelong learning and active participation in society.

(2) The policy referred to in subsection (1) must include principles of -

- (a) requiring educational institutions to take into account the four pillars of learning namely, learning to know, learning to live together, learning to do and learning to be;
- (b) provision of basic education and technical vocational education and training to equip all persons including persons with disabilities with the new skills required in a knowledge-based economy;
- (c) bringing lifelong learning to all persons, where possible, in their own communities and supported through information communication technology-based facilities wherever appropriate to build an inclusive society which offers equal opportunities for access;
- (d) guaranteeing universal and continuing access to learning for gaining and renewing the skills needed for sustained participation in a knowledge-based society;
- (e) availability and accessibility of continuous professional development programmes;
- (f) growing need for recognition of the formalisation of non-formal learning, as well as the non-formalisation of formal learning curricula;
- (g) community ownership of non-formal learning centres;

- (h) development of effective teaching and learning methods and contexts for the continuum of lifelong and life wide learning; and
- (i) the continuum of lifelong learning requiring the different levels and sectors of education and training systems, including non-formal domains, to work in close collaboration with each other.

Adult education policy and programmes

31. (1) In the national policy on lifelong learning referred to in section 30(1), the Minister must include a policy framework on the role of adult education focusing on the needs of the adult learners, including -

- (a) government priorities;
- (b) identifying the priority areas for public investment in adult education;
- (c) identifying priority groups, including persons with disabilities;
- (d) elaborating upon the roles of various providers in the field and the support they require;
- (e) provision for a learner-centred framework -
 - (i) incorporating infrastructural elements such as guidance and counselling, quality assurance and the training of trainers;
 - (ii) ensuring a coherent range of pathways for adults between education and training; and
 - (iii) setting out a comprehensive structural framework at national and regional level for the support and development of adult education; and
- (f) setting out adult education as an integral element of a continuum lifelong learning.

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

- (a) minimum requirements for admission of adults;
- (b) the entitlement of adults to free or State-aided tuition;
- (c) the measures for the control, monitoring and evaluation of adults study groups;

[The word “adults” should be “adult” to be grammatically correct.]

- (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 granting of State aid to private and public sector bodies providing basic education to adults, including the reporting on the implementation of programmes; and

- (g) the fees payable by persons enrolled for adult education or literacy programmes in respect of any examinations or the issuing of certificates.

CHAPTER 3 SCHOOLS

PART 1 SCHOOLS IN GENERAL

School environment

32. (1) The Minister must take all reasonable measures to ensure that basic necessities such as shelter, water, food, light, ventilation, sanitary facilities and access to emergency medical care are provided for in all schools in Namibia.

- (2) The Minister must -
 - (a) take all reasonable steps to ensure that learners at schools are not exposed to biological, physical or chemical factors that may constitute a threat for the well-being of the learners; and

[The preposition “for” should be “to”: “a threat to...”.]

- (b) put safety mechanisms in place to prevent injury or harm.
- (3) For purposes of subsection (2), the Minister may prescribe measures relating to the -
 - (a) protection from biological threats such as moulds, unsafe or insufficient water, unsafe food, vector-borne diseases, venomous animals, rodents, bats, hazardous insects and other dangerous animals;
 - (b) protection from physical threats such as traffic and transport, violence and crime, injuries, extreme heat and cold or radiation; or
 - (c) protection from chemical threats such as air pollution, water pollution, pesticides, hazardous waste, hazardous materials and finishes, asbestos, paint and cleaning agents.

(4) To address safety concerns at schools, the Minister, in developing the national policy framework on basic education under section 4, must include a national safe schools framework to provide guidance in ensuring that schools, educational facilities and their surroundings are learner-friendly, physically safe and protected from outside influences.

- (5) The national safe schools framework must -
 - (a) incorporate existing laws and good practices; and
 - (b) provide an agreed national approach to help schools and their communities address issues of unsafe conditions and practices,
 - (c) including bullying, harassment, violence, and child abuse and neglect.

School health services

Basic Education Act 3 of 2020

33. (1) The Minister, after consultation with the Minister responsible for health, and in accordance with section 4, must develop an appropriate school health policy that incorporates the programme known as the Integrated School Health Programme as part of the comprehensive primary health policy that must -

- (a) focus on achievement of health and educational outcomes;
- (b) be implemented within a learner's rights approach meaning, that learners may not be passive recipients, but must be empowered actors in their own development;
- (c) ensure full coverage of all learners starting in the most disadvantaged schools;
- (d) ensure that appropriate assessment, treatment, care and support services including psycho-social services are available and accessible to all learners who are identified as requiring them;
- (e) be informed by local priorities;
- (f) take into account quality and equitable distribution of resources; and
- (g) be implemented and co-ordinated in partnership between the Ministries responsible for health, infrastructure development and other relevant ministries and all other relevant stakeholders.

(2) The school health programme must promote good nutrition among learners and support the school feeding programme at both primary and secondary level with particular attention to the nutritional needs of learners with disabilities, learners with special needs, orphans and those from socio-economically disadvantaged and vulnerable communities.

Minimum standards for schools and hostels

34. (1) The Ministry and other relevant ministries must take all reasonable measures to ensure that all schools in Namibia have access to running water, sanitation and electricity.

(2) The school board, hostel committee or governing body of every school in Namibia must open and maintain a school or hostel register of the infrastructure needs which register must be updated annually as part of the education monitoring and information system.

(3) The Minister, in accordance with section 5, must establish norms and standards for school infrastructure for schools and hostels which must be complied with by all schools.

(4) The norms and standards established under subsection (3) may specify national minimum standards for hostels and such minimum standards must -

- (a) contain arrangements to safeguard and promote the welfare of learners for whom accommodation is provided by hostels;
- (b) provide that the hostels are inspected against the set standards in order to determine whether there is satisfactory compliance with the legal obligation to safeguard and promote the welfare of hostel learners;
- (c) provide that in carrying out an inspection, the role of the quality assurance officer is to determine the extent to which the hostels promotes and safeguards the welfare of all boarders, including its compliance with structures and systems;

[The plural term “hostels” should be the singular term “hostel” to be grammatically correct.]

- (d) provide that where terms such as adequate and suitable are used in the regulations, quality assurance officers make findings based on the adequacy or suitability for the specific needs of the boarders residing at the hostel, having regard to their ages, numbers and sex and any special requirements they may have;
- (e) provide that a quality assurance officer must take into account the admission policy;
- (f) provide that the Minister must refer to the standards in any action he or she may take against any hostel that fails to comply with its duty to safeguard or promote the welfare of boarding learners;
- (g) provide that the Minister and local authorities may also take the standards into account in any enforcement action taken in relation to a failure by a school to safeguard or promote the welfare of boarding learners;
- (h) specify that a learner has special requirements if the learner has any needs arising from physical, medical, sensory, learning, emotional or behavioural difficulties which require provision which is additional to, or different from, that generally required by learners of the same age in schools other than resource schools; and
- (i) provide for the need to include infrastructure that is disability friendly and gender sensitive or responsive.

(5) Minimum standards for hostels made under this section may not be construed as standardisation of the provision or construction of hostels but the standards are designed to be applicable to many different types of hostels and are intended to support schools in developing their own standards that meet the needs of individual learners.

- (6) Minimum standards for hostels made under this section may -
 - (a) be used by schools and staff in self-assessing their services;
 - (b) provide a basis for the induction and training of staff;
 - (c) be used by parents and learners as a guide to what they expect a school to do; and
 - (d) provide guidance on what is required when a school sets up boarding or residential accommodation at the school.

(7) The Minister, by written notice, may require a school or a hostel that is not complying with the norms and standards made under this section to so comply, failing which the Minister after consultation with the hostel committee or school board of the school may temporarily close the hostel until compliance is met.

Prohibition of certain items and powers of search and seizure

- 35. (1) For the purposes of this section -
 - (a) “prohibited item” means -
 - (i) any explosive material or device;
 - (ii) any firearm or gas weapon; or

Basic Education Act 3 of 2020

(iii) any article, object or instrument that may be used to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; and

(b) “illegal drug” means any unlawful substance that has a psychological or physiological effect that is possessed unlawfully, and the possession of which is prohibited under the laws of Namibia.

(2) 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 opinion of the Minister such material is contrary to the security, safety, well-being or best interest of learners.

(3) Unless authorised by the principal for legitimate educational purposes, a person may not -

- (a) bring a prohibited item or an illegal drug onto school or hostel premises; or
- (b) have a prohibited or an illegal item in his or her possession on school or hostel premises or during any school activity.

(4) Subject to subsection (5), the principal or his or her delegate may, at random, search any learner or group of learners, or the property of a learner or group of learners, for any prohibited item or illegal drug, if a fair and reasonable suspicion has been established -

- (a) that a prohibited item or an illegal drug may be found on school premises or during a school activity; or
- (b) that one or more learners on school or hostel premises or during a school activity are in possession of a prohibited item or an illegal drug.

(5) A search contemplated in subsection (4) may only be conducted after taking into account all relevant factors, including -

- (a) the best interest of the learner in question or of any other learner at the school or hostel;
- (b) the safety and health of the learners in question or of any other learner at the school or hostel;
- (c) reasonable evidence of illegal activity; and
- (d) all relevant evidence received.

(6) When conducting a search contemplated in subsection (4), the principal or his or her delegate, must do so in a manner that is reasonable and proportional to the suspected illegal activity.

(7) Where a search contemplated in subsection (4) entails a body search of the learner in question, such search may only -

- (a) be conducted by -
 - (i) the principal, if he or she is of the same sex as the learner; or

Basic Education Act 3 of 2020

- (ii) by the delegate of the principal, who must be of the same sex as the learner;
 - (b) be done in a private area, and not in view of another learner;
 - (c) be done if one adult witness of the same sex as the learner is present; and
 - (d) be done if it does not extend to a search of a body cavity of the learner.
- (8) Any prohibited item or illegal drug that has been found during the search must be seized and must -
 - (a) be clearly and correctly labelled with full particulars, including -
 - (i) the name of learner in whose possession it was found;

[The word “the” appears to have been omitted before the word “learner”.]
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of person who searched the learner;

[The word “the” appears to have been omitted before the word “person”.]
 - (v) the name of the witness;
 - (vi) the signature of the learner, the person who searched the learner and the witness; and
 - (vii) any other details that may be necessary to identify the item and incident;
 - (b) recorded in the school incident record book; and
 - (c) if it is or constitutes evidence of the commission of a criminal offence, be handed over to the police immediately to be disposed of it in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[The word “it” after the phrase “disposed of” is superfluous.]
- (9) If the police cannot collect the prohibited item or illegal drug from the school immediately, the principal or his or her delegate must -
 - (a) take the prohibited item to the nearest police station; and
 - (b) hand the prohibited item or drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act.
- (10) The police officer who receives the prohibited item or drug must issue an official receipt for it to the principal or to his or her delegate.
- (11) Subject to subsection (14), the principal, with the approval of the parents, may allow an appropriate professional to administer random urine or other non-invasive test to any group of

Basic Education Act 3 of 2020

learners that is on fair and reasonable grounds suspected of using illegal drugs, after taking into account all relevant factors contemplated in subsection (4).

(12) A learner contemplated in subsection (11) may only be subjected to a urine or other non-invasive test for illegal drugs if -

- (a) the test is conducted by a person of the same sex;
- (b) it is done in a private area, and not in view of another learner;
- (c) one adult witness of the same sex as the learner is present;
- (d) the sample is clearly and correctly labelled with full particulars as contemplated in subsection (8), with the necessary changes; and
- (e) a device contemplated in subsection (14) is used.

(13) The principal or his or her delegate must -

- (a) within one working day, if practicable, inform the parent that a random test or search and seizure was done in respect of his or her child; and
- (b) inform the learner and his or her parent of the result of the test immediately after it becomes available.

(14) The Minister, with the consent of the Minister responsible for health, must -

- (a) identify the devices with which the tests contemplated in subsection (11) are to be done and the procedure to be followed; and
- (b) publish the name of those devices, and any other relevant information about them, in the *Gazette*.

(15) A learner may be subjected to disciplinary proceedings if -

- (a) a prohibited item or drug is found in his or her possession; or
- (b) his or her sample tested positive for an illegal drug.

(16) Any disciplinary proceedings in respect of a learner is conducted in terms of the code of conduct contemplated in section 17(4).

[The verb “is” should be “are” to accord with the subject “proceedings”.]

(17) The school may report to the relevant authorities a learner in respect of whom -

- (a) a search contemplated in subsection (4) was conducted and a prohibited item or illegal drug was found; or
- (b) a test contemplated in subsection (11) was conducted, which proved to be positive.

Prohibition of political activities at schools

36. (1) Subject to section 37, a person may not conduct party-political activities at school premises.

Basic Education Act 3 of 2020

(2) The party-political activities contemplated in subsection (1), include, but are not limited to -

- (a) any campaigning;
- (b) the conducting of rallies;
- (c) the distribution of pamphlets and fliers; and
- (d) the hanging or putting up of posters, banners and wearing of political attire.

(3) A school may not allow the display of material of a party-political nature on its premises, unless such party-political material is related to the curriculum at the school.

Restriction of certain activities at schools

37. (1) A person, civil society organisation, faith based organisation, private company or any other body may not provide services at a school, or implement programmes at school without the prior approval of the regional director.

[The term “faith-based” should be written with a hyphen.]

(2) A person who seeks to obtain approval to conduct the activities mentioned in subsection (1) at a school must, in the prescribed manner, submit a request for such approval through the principal to the regional director or directly to the regional director.

- (3) The regional director may only grant approval if the regional director is satisfied that -
 - (a) the service of the person, organisation, company or body is in line with this Act and other relevant laws and in the best interest of the learners;
 - (b) the programme does not interfere with teaching time or learning time for the learners outside school hours;
 - (c) the programme presented is not considered propaganda for political or religious agendas; or
 - (d) the programme does not have a commercial or self-interest profit objective and does not exploit the learners.

(4) A person who is aggrieved by the decision of the regional director in subsection (1) may appeal against such decision to the Executive Director and the decision of the Executive Director is final.

PART 2
STATE SCHOOLS AND HOSTELS

Provision of State school and hostels

[The singular word “school” in the heading should be the plural word “schools” as in the ARRANGEMENT OF SECTIONS above.]

38. (1) The Minister must establish State schools and hostels for the education of learners out of funds appropriated for this purpose by Parliament.

Basic Education Act 3 of 2020

- (2) The establishment of State schools may include the provision of -
 - (a) hostels for the accommodation of learners and teachers;
 - (b) resource centres, school clinics and other facilities which may be necessary for the benefit of learners and teachers in attendance at State schools, which may or may not be part of a school.
- (3) A State school may be -
 - (a) a mainstream State school with -
 - (i) specialised units to cater for learners with special education needs; or
 - (ii) an established and maintained resource school; or
 - (b) a State school that provides education with a specialised focus on talent, including technical, sport, performing arts or creative arts.
- (4) The Minister must take all reasonable measures to ensure that the physical facilities at State schools are accessible to persons with disabilities.
- (5) The Minister may -
 - (a) classify schools in categories or quintiles;
 - (b) divide an established school into sections;
 - (c) after consultation with the school boards and the regional education forum concerned, combine two or more established schools into one school;
 - (d) name or rename any State school on the recommendation of the school board concerned; or
 - (e) at the request of any local authority, define the area to be served by a State school.

Principles governing State schools

- 39.** In providing State schools, the Minister is guided by the following principles -
 - (a) State schools must provide universal and compulsory education to all learners;
 - (b) a State school or person representing a State school may not, while admitting a learner, collect any fee or subject the learner or his or her parents to any screening procedures;
 - (c) the Namibian State school system is based on the principles of inclusivity, equity, universality and non-discrimination;
 - (d) State schools are universal and subject to sections 9 and 19; and
 - (e) State schools offer a broad and balanced secular education to all learners from pre-primary to secondary education and as may be determined by the Minister by providing access to a broad curriculum.

State schools on State property

40. (1) In this section, immovable property owned by the State includes immovable property held in trust by traditional authorities on behalf of traditional communities.

(2) A State school which occupies immovable property owned by the State has the right, for the duration of the existence of the school, to occupy and use the immovable property for the benefit of the school for educational purposes at, or in connection with, the school.

(3) The right referred to in subsection (2) may only be restricted by the Minister if the immovable property is not utilised by the school in the interests of education.

(4) The Minister may not act under subsection (3) unless he or she has -

- (a) informed the school board of the school of his or her intention so to act, and the reasons therefore;
- (b) granted the school board of the school a reasonable opportunity to make representations to him or her in relation to such action; and
- (c) duly considered any such representations received.

(5) The right contemplated in subsection (2) is enforceable against any successor in title to the owner of the immovable property in question.

(6) Immovable property owned by the State and occupied by a State school may not be alienated, unless an agreement contemplated in section 41 has been concluded between the Minister and the prospective owner of the immovable property.

(7) The Registrar may not execute, attest to or register a deed of transfer in respect of the immovable property referred to in subsection (1), unless the owner has provided the Registrar with proof of the agreement contemplated in section 41.

(8) The Deeds Registries Act does not apply to the right contemplated in subsection (2).

(9) On application by the owner of land and on production of the copy of the title deed, the Registrar must endorse on the title deed and in his or her records the fact that a State school has been established on the land in terms of this Act.

[The word “the” appears to have been omitted before the word “land”.]

State schools on private property

41. (1) A State school may be provided on private property only in terms of an agreement between the Minister and the owner of the private property.

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

- (a) the provision of education and the performance of the normal functions of a State school;
- (b) governance of the school, including the relationship between the school board of the school and the owner;

Basic Education Act 3 of 2020

- (c) access by all interested parties to the property on which the school stands;
- (d) security of occupation and use of the property by the school;
- (e) maintenance and improvement of the school buildings and the property on which the school stands and the supply of necessary services; and
- (f) protection of the rights of the owner in respect of the property occupied, affected or used by the school.

(3) The Deeds Registries Act does not apply to a real right, excluding ownership, acquired by the State, a State school or another party in terms of an agreement contemplated in this section.

(4) The right contemplated in subsection (3) is enforceable against any successor in title to the owner of the immovable property in question.

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

- (a) an application for such endorsement by the owner of the property, or the Minister or any other holder of a right contemplated in subsection (3), together with the title deed of the property; and
- (b) affidavits by the owner of the property and the Minister stating that an agreement contemplated in this section has been concluded.

(6) The Minister, after consultation with the Advisory Council, must prescribe the minimum requirements of an agreement contemplated in this section.

(7) The Registrar must cancel any endorsement made in accordance with subsection (5) if the owner of the property submits an affidavit from the Minister to the effect that such State school has been closed in terms of section 43.

(8) Fees or costs are not payable in respect of the endorsement contemplated in subsection (5).

Legal status of State schools

42. A State school is not a juristic person and does not have legal capacity to exercise or perform the powers or functions contemplated in this Act.

Closure of State schools and hostels

43. (1) The Minister, by notice in the *Gazette*, and after consultation with the relevant regional education forum, may close a State school or hostel or announce the change of 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 the interest of learners.

(3) The temporary closure of a State school, class or hostel referred to in subsection (2), may not -

- (a) exceed four months; and
- (b) continue after the ground on which it was based has ceased to exist.
- (4) The Minister may not act under subsection (1) or (2), unless the Minister has -
 - (a) informed the school board of his or her intention so to act and his or her reasons therefore;
 - (b) granted the school board a reasonable opportunity to make representations to him or her in relation to such action;
 - (c) conducted a public hearing on reasonable notice, to enable the community to make representations to him or her in relation to such action; and
 - (d) given due consideration to any such representations received.

(5) If a State school is closed in terms of subsection (1), all assets and liabilities of the school must, subject to the conditions of any donation, bequest or trust contemplated in section 69(5), devolve on the State, unless otherwise agreed between the Minister and the school board of the school.

Support for under-performing State schools

44. (1) A regional director must, annually, from the report contemplated in section 47(1)(a) and from other relevant reports, identify any State school that is under-performing in relation to any matter referred to in subsection (2)(a), (b) or (c).

(2) A regional director must issue a written notice to the school contemplated in subsection (1), if he or she is satisfied that -

- (a) the standard of performance of learners is below the prescribed standards and is likely to remain so;
- (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, teachers and other staff members is threatened, and must give full details of his or her findings as informed by reports contemplated in subsection (1).

(3) In the written notice contemplated in subsection (2), the regional director must inform the school that it must -

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

(4) A regional director must take all reasonable steps to assist a school identified in terms of subsection (1) in addressing the under-performance.

(5) Without limiting the nature and extent of the steps contemplated in subsection (4), a regional director may -

- (a) implement the staff rules for poor work performance set out in the Public Service Act; or
- (b) appoint persons in terms of section 54 to perform the functions or specified functions of the school board.

(6) The regional director may appoint an academic mentor to assist the functions and responsibilities of the principal of an underperforming school for a determined period of time.

(7) In order to assist the Minister in exercising or performing his or her powers or functions under this Act, the Executive Director must report to the Minister, within three months after the end of an academic year, on the action taken by regional directors with regard to underperforming State schools.

Norms and standards for infrastructure and capacity at State schools

45. (1) The Minister, after consultation with the Minister responsible for finance and all the regional education forums, may establish norms and standards in accordance with section 5 for -

- (a) accessible school infrastructure;
- (b) carrying 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) Subject to the availability of State resources, the norms and standards contemplated in subsection (1) must include -

- (a) in respect of school infrastructure, the availability of -
 - (i) classrooms;
 - (ii) electricity;
 - (iii) water;
 - (iv) sanitation;
 - (v) libraries;
 - (vi) laboratories for science, technology, mathematics and life sciences;
 - (vii) sport and recreational facilities;
 - (viii) digital technology; and
 - (ix) perimeter security;
- (b) in respect of the capacity of a school, the availability of -
 - (i) the number of teachers and the teacher-learner ratio;

- (ii) quality of performance of a school;
- (iii) curriculum and extra-curricular choices;
- (iv) class rooms and sizes; and

[The term “classrooms” should be written as one word, as in subparagraph (v).]

- (v) the utilisation of available classrooms of a school;
- (c) in respect of provision of learning and teaching support material, the availability of -
 - (i) stationery and supplies;
 - (ii) teaching and learning material, and equipment;
 - (iii) science, digital technology, mathematics and natural sciences apparatus;
 - (iv) specialised equipment and assistive technologies for learners with disabilities; and
 - (v) school furniture and other school equipment.

PART 3 MANAGEMENT OF STATE SCHOOLS

[The heading of PART 3 in the ARRANGEMENT OF SECTIONS is
“PROFESSIONAL MANAGEMENT OF STATE SCHOOLS”.]

Management of State schools

46. (1) Subject to this Act and any other applicable law, the principal and his or her management of a State school manage the school under the supervision of the regional director.

(2) A regional director, after consultation with the school board, may close a State school temporarily in the case of -

- (a) an emergency if he or she believes on reasonable grounds that the lives of learners, teachers and other staff members are endangered; or
- (b) a real danger of bodily injury to them or of damage to property.

(3) When the regional director decides to re-open, he or she must inform the school board and the principal of the date on which the school must re-open.

(4) The principal or a person designated by the regional director must inform the parents, teachers and other staff members of the date contemplated in subsection (3).

Powers and functions of principals at State schools

47. (1) The principal of a State school must prepare and submit to the regional director prescribed reports at the prescribed times in respect of -

- (a) the academic performance of the school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister; and

(b) the effective use of available resources.

(2) The principal of a State school must prepare an annual plan of action for the improvement of academic performance and the school development plan once every three years.

(3) The principal of a State school must -

(a) present the academic performance improvement plan to the regional director on a date determined by the regional director; and

(b) table the academic performance improvement plan at a school board meeting.

(4) A regional director may approve the academic performance improvement plan, or return it to the principal with such recommendations as may be necessary in the circumstances.

(5) If a regional director approves the academic performance improvement plan, the principal must, during such period as may be prescribed, report to the regional director and the school board on progress made in implementing that plan.

(6) A regional director may extend the date contemplated in subsection (5) on good cause shown.

(7) In managing a State school, the functions of the principal are to -

(a) ensure the well-being and safety of learners, teachers and other staff members;

(b) ensure the implementation of all the educational programmes and curriculum activities;

(c) manage of teachers and other staff members;

[The word “of” is superfluous.]

(d) ensure the efficient management and use of learning support material and other equipment;

(e) diligently perform the functions delegated to him or her by the regional director under this Act;

(f) ensure the safekeeping of all school records;

(g) ensure the proper implementation of policy and legislation;

(h) attend and participate in all meetings of the school board;

(i) report to the school board about the professional management of the school;

(j) assist the school board in handling disciplinary matters pertaining to learners;

(k) assist the regional director in handling disciplinary matters pertaining to teachers and other staff members;

(l) inform the school board about policy and legislation;

Basic Education Act 3 of 2020

- (m) provide accurate data to the regional director when requested to do so;
 - (n) assist the school board with the management of the school development fund including -
 - (i) the provision of information relating to any conditions imposed or directions issued by the Minister, the Executive Director or the regional director in respect of all financial matters of the school contemplated in Part 5; and
 - (ii) the giving of advice to the school board on the financial implications of decisions relating to the financial matters of the school;
 - (o) take all reasonable steps to prevent any financial maladministration or mismanagement by any staff member or any members of the school board;
 - (p) serve as member of the finance committee of the school board; and
- [The word “a” appears to have been omitted before the word “member”.]
- (q) report any maladministration or mismanagement of finance or other assets of the school to the school board and the regional director.

Quality assurance

- 48.** (1) The Minister must develop a policy on quality assurance in education.
- (2) The Minister must establish the services required for quality assurance in schools, home schools and other educational settings.
- (3) The Executive Director may designate, in the prescribed manner, a staff member of the Ministry as a quality assurance officer to carry out the monitoring and evaluation of all schools including home schools, classes, hostels, support centres and programmes.
- (4) The powers and functions of a quality assurance officer are to -
- (a) promote excellence in the management of teaching and the use of support services by schools and the procedures for consultation and co-operation within and between schools and civil society organisations;
 - (b) disseminate information relating to -
 - (i) the performance by the quality assurance division of the functions provided for in this section; and
 - (ii) successful educational initiatives which have been implemented by schools, and promote informed debate on those matters;
 - (c) evaluate the effectiveness of the teaching, development, promotion and use of teaching and learning support materials in State schools and to report to the Minister on those matters;
 - (d) advise the Minister on any matter relating to education policy and provision, including the curriculum taught in schools, assessment and teaching methods;

Basic Education Act 3 of 2020

- (e) perform such functions relating to the preparation and marking of the school examinations which are conducted in schools;
- (f) support, train, mentor, monitor progress, supervise, advise and report on management, administration and leadership to ensure quality of teaching and learning in schools and hostels;
- (g) monitor and evaluate the content and standards of examinations and to report thereon to the Minister; and

[The word “to” before “report” is superfluous.]

- (h) any other powers and functions as the Minister may prescribe.

(5) A quality assurance officer must visit State schools and centres for education on his or her initiative, and, following consultation with the school board, parents and teachers, as appropriate, must -

- (a) evaluate the organisation and operation of State schools and the quality and effectiveness and efficiency of the education provided in schools, including the quality of teaching and effectiveness of individual teachers;
- (b) evaluate the education standards in the schools;
- (c) assess the implementation and effectiveness and efficiency of any programme of education which have been devised in respect of individual learners who have a disability or special educational needs;

[The verb phrase “have been devised” should be “has been devised” to accord with the subject “programme”.]

- (d) assess the implementation of directives issued by the Minister; and
- (e) report to the Minister, or to the school board, parents and teachers, as appropriate, and as prescribed, on these matters or on any other matter relating to the activities of the schools and the needs of learners attending the schools.

(6) A quality assurance officer visiting a State school -

- (a) may conduct assessments of the educational needs of learners and advise the learners, their parents and the schools, as appropriate, in relation to the educational development of the learners;
- (b) must advise teachers and school boards in respect of the performance of their functions, and, in particular, assist teachers and school management in employing improved methods of teaching and management of classes and learning; and
- (c) must advise parents and school boards on school management and school performance.

(7) Without prejudice to the generality of this section, the functions of a quality assurance officer are, in collaboration with parents and the principal and teachers in State schools, to assist in the creation of a school environment which prevents or limits obstacles to learning which learners may experience.

PART 4 GOVERNANCE OF STATE SCHOOLS

Establishment of school boards

49. (1) There is established a school board for every State school.

(2) Subject to this Act, the governance of a State school is vested in its school board which exercises and performs such powers and functions conferred or imposed by or under this Act.

(3) A school board stands in a position of trust towards the school.

Functions of school boards

50. (1) Subject to this Act, the functions of a school board are to -

- (a) promote the best interest of the school and strive to ensure its development through the provision of inclusive quality education for all learners at the school;
- (b) adopt a constitution which complies with the prescribed minimum requirements;
- (c) develop the vision and mission statement of the school;
- (d) adopt a code of conduct for learners at the school subject to section 22(2);
- (e) support the principal, teachers and other staff members of the school in the performance of their professional functions;
- (f) adhere to any actions taken by the Minister, the Executive Director or the regional director in terms of the Public Service Act, to address the inability of a principal or a teacher to carry out his or her functions effectively;
- (g) administer and control the school finances, property, infrastructure, including school hostels, but the exercise of this power may not in any manner interfere with or otherwise hamper the implementation of a decision made by the Minister, the Executive Director or the regional director in terms of any law or policy;
- (h) encourage parents, learners, teachers and other staff members at the school to render voluntary services to the school;
- (i) advise and assist the regional director with the recruitment of teachers and other staff members at the school, subject to the relevant public service and education related policies and legislation;
- (j) allow the reasonable use, under fair conditions determined by the Executive Director, of the facilities of the school for educational programmes not conducted by the school, at the request of the regional director;
- (k) make recommendations to the principal and regional director on disciplinary matters relating to teachers, other staff members and learners;
- (l) advise and assist the regional director on misconduct and disciplinary actions on teachers and other staff members at the school, subject to the relevant public service and education related policies and legislation;

[The preposition “on” should be “against”: “disciplinary actions against...”.]

- (m) ensure meaningful parental, community and learner participation in school governance and social accountability;
- (n) implement all other functions conferred on the school board by or under this Act;
- (o) investigate any complaint affecting the school and, if necessary, refer such complaint to the Executive Director; and
- (p) discharge other functions consistent with this Act as determined by the Executive Director by circulars issued to the regional director.

(2) The school board may, subject to any laws regulating the use of State property by private persons, 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 school board may determine, which may include the charging of a fee which accrues to the school.

(3) The school board may join a voluntary association representing school boards of State schools.

Allocated functions of school boards

51. (1) Subject to subsection (6), a school board may apply to the regional director in writing to be allocated one or more of the following functions -

- (a) to maintain and improve school infrastructure and grounds occupied by the school, including hostels, if applicable;
- (b) to determine the choice of subject options and extra-mural curriculum of the school;
- (c) in terms of any curriculum policy to purchase textbooks, educational materials or equipment for the school;
- (d) to pay for services to the school;
- (e) to allocate facilities for an adult basic education and training class or centre subject to any applicable law; or
- (f) any other functions consistent with this Act and any applicable law.

(2) The regional director may refuse an application contemplated in subsection (1) only if the school board concerned does not have the capacity to perform such functions effectively.

(3) The regional director may approve such application unconditionally or subject to conditions.

(4) The decision of the regional director on such application is conveyed in writing to the school board concerned, giving reasons.

(5) Any person aggrieved by a decision of the regional director in terms of this section may appeal to the Executive Director.

(6) The Minister, by notice in the *Gazette*, may determine that some school boards may exercise one or more functions without making an application contemplated in subsection (1), if -

- (a) he or she is satisfied that the school boards concerned have the capacity to perform such functions effectively; and
- (b) there is a reasonable and equitable basis for doing so.

Functions of chairperson of school boards

[The heading of section 52 in the ARRANGEMENT OF SECTIONS is
"Functions of chairperson of school board".]

52. (1) The chairperson of a school board represents the interests of his or her school at the circuit school board meetings.

(2) The chairperson of a school board must, subject to any guidelines issued by the Minister, among others, perform the following functions -

- (a) effectively lead the board and chair all board meetings;
- (b) manage the board in the discharge of its functions;
- (c) manage the frequency and agenda of board meetings;
- (d) act as a facilitator of relationships within the board;
- (e) ensure a comprehensive flow of relevant information to the board by implementing and overseeing efficient reporting systems;
- (f) ensure that the board is kept properly informed about the financial affairs of the school;
- (g) provide stakeholders with sufficient information to allow them to make informed decisions about school issues;
- (h) ensure that the management of the school is running effectively and act as the primary channel of communication between the board and the school principal;
- (i) ensure that there is no overlapping of powers or functions between the school board and the principal;
- (j) actively assist in supporting the principal at the school;
- (k) ensure that adequate committees are in place to assess the general standards of performance of both management and finances; and
- (l) respond promptly, effectively and comprehensively to concerns raised by other board members.

Failure by school board to perform functions

53. (1) If the regional director determines on reasonable grounds that a school board -

- (a) has ceased to perform functions imposed on it by or under this Act; or

- (b) has failed to perform one or more of such functions,

one regional director must appoint sufficient persons to perform all such functions which the school board has ceased or failed to perform, for a period not exceeding three calendar months subject to subsection (4).

(2) The regional director may extend, if appropriate, the period referred to in subsection (1) by further periods not exceeding three calendar months each, but the total period may not exceed 12 months.

(3) If a school board fails to perform any of its functions, the persons contemplated in subsection (1) must build the necessary capacity within the period of their appointment to ensure that the school board performs its functions effectively.

(4) If a school board has ceased to perform its functions, the Minister may dissolve the school board, with the concurrence of the regional director, if the Minister is satisfied that the school cannot function properly and ensure that a new school board is elected in terms of this Act.

Constitution of school board of State school

54. (1) The Minister must prescribe the number of school board members of a State school in accordance with the number of learners enrolled at a State school.

(2) Apart from the principal who is a member by virtue of his or her office, the elected members of the school board are elected from -

- (a) parents of learners at the school;
- (b) teachers at the school;
- (c) other staff members at the school who are not teachers;
- (d) learners in the seventh grade or higher grade at the school; and
- (e) any other person with the appropriate skills and expertise.

(3) A parent who is employed at the school may not represent parents on the school board in terms of subsection (2)(a).

(4) The prefects and learner's representative council must elect the learners referred to in subsection (2)(d).

(5) The school board of a State school which provides education to learners with other special needs must, where practically possible, co-opt a person with expertise regarding the special education needs of such learners.

(6) A school board may co-opt a member of the community to assist it in discharging its functions.

(7) The school board of a State school that is situated on private land may co-opt the owner of the property occupied by the school or the nominated representative of such owner.

- (8) Co-opted members do not have voting rights on the school board.

(9) The number of parents on the school board constitutes the majority of all the members of a school board who have voting rights.

(10) If the number of parents at any stage does not constitute the majority of all members with voting rights, the school board must temporarily appoint parents with voting rights.

(11) If a parent is appointed with voting rights as contemplated in subsection (10), the appointment ceases when the vacancy has been filled through a by-election which is held according to a procedure determined in terms of section 56(d) within 90 days after the vacancy has occurred.

(12) If a person elected as a member of a school board as contemplated in subsection (2) ceases to fall within the category referred to in that subsection in respect of which he or she was elected as a member, he or she ceases to be a member of the school board.

Constitution of school board of State school for learners with special education needs

55. (1) Apart from the principal who is a member by virtue of his or her office, the elected members of the school board of a State school for learners with special education needs consist of -

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

[The reference to the principal's *ex officio* membership is repeated, appearing both in the introductory text of subsection (1) and in paragraph (j). The principal is not an elected member of the school board, so paragraph (j) is in error.]

(2) The Minister must prescribe the number of members in each category referred to in subsection (1) and the manner of election or appointment of such members at every State school for learners with special education needs in each region.

Election of members of school boards

56. Subject to this Act and any applicable legislation, the Minister must prescribe -

- (a) the process for the nomination and election of members of the school board and persons who conduct the process;
- (b) the procedure for the disqualification or removal of a member of the school board or the dissolution of a school board;
- (c) the procedure for the filling of a vacancy on the school board;
- (d) a formula for the calculation of the number of members of the school board to be elected in each of the categories referred to in section 55(2), but such formula must provide reasonable representation for each category and must be capable of application to the different sizes and circumstances of State schools; and
- (e) any other matters necessary for the election, appointment or assumption of office of members of the school board.

Code of conduct for member of school boards

[The heading of section 57 in the ARRANGEMENT OF SECTIONS is
“Codes of conduct for members of school boards”.]

57. (1) The Minister must, by notice in the *Gazette*, determine a code of conduct for the members of the school board of a State school.

(2) The code of conduct is aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at State schools.

- (3) A member of a school board must comply with the code of conduct.
- (4) The code of conduct must contain provisions on -
 - (a) due process and diligence, safeguarding the interests of the members of the school board in disciplinary proceedings;
 - (b) membership of a school board member for breach of the code of conduct after due process; and
 - (c) the process of appeal to the Executive Director against a decision of a regional director regarding the suspension or termination of a school board member.

Enhancement of capacity of school boards

58. (1) Out of funds appropriated for this purpose by Parliament, the Executive Director must establish a programme to -

- (a) provide introductory training and development for newly elected school boards to enable them to efficiently perform their functions; and
- (b) provide continuing training and development to school boards to enhance school governance and promote the effective performance of their functions or to enable them to assume additional functions.

Basic Education Act 3 of 2020

(2) The Executive Director must ensure that principals and other staff members of the Ministry render all necessary assistance to school boards in the performance of their functions in terms of this Act.

(3) The norms and standards for school funding must include -

- (a) criteria for authorising a school board to perform the functions contemplated in subsection (4);
- (b) criteria relating to any financial implications that would be incurred or costs that would have to be paid by the Executive Director in relation to the performance of the functions contemplated in subsection (4); and
- (c) guidelines relating to the nature, content, extent and duration of the functions contemplated in subsection (4).

(4) The Executive Director may request a school board or other appropriate training authority to train members of a school board of a particular school or group of schools and to build the capacity contemplated in section 53(3).

(5) For the purposes of subsection (4), the Executive Director -

- (a) must ensure that appropriate training of the school board is conducted; and
- (b) must specify the nature, content, extent, duration and financial implications of the training as contemplated in paragraph (a).

Meetings and decisions of school boards

[The heading of section 59 in the ARRANGEMENT OF SECTIONS is “Meetings and decisions of school board”.]

59. (1) Subject to this Act, the school board of a State school must -

- (a) have a meeting of the school board at least once every school term;
- (b) have meetings of the school board with parents, learners, teachers and other staff members at the school at least once a term;
- (c) record and keep of minutes of school board meetings;
- (d) make available such minutes for inspection by the regional director; and
- (e) render a report, including a financial report, on its activities to parents, learners, teachers and other staff members and the regional director at the end of each term.

(2) A member of a school board must withdraw from a meeting of the school board for the duration of the discussion and decision-making on any issue in which the member has a direct or indirect financial or personal interest.

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

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

Basic Education Act 3 of 2020

(5) 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 exercise all the powers of the chairperson.

(6) 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.

(7) 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.

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

(9) 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.

Reimbursement of member of school board

60. (1) Prescribed expenses incurred by a member of a school board in the performance of his or her functions may be reimbursed by the school board as prescribed.

(2) A member of the school board -

- (a) is not to be remunerated in any way for the performance of his or her functions as member; and
- (b) is to be reimbursed for his or her travel and other prescribed expenses relating to school board meetings.

Office-bearers of school boards

61. (1) A school board must, from among its members, elect office-bearers, who must include at least a chairperson, a treasurer and a secretary.

(2) Only a parent member of a school board who is not employed at the State school may serve as the chairperson of the school board.

(3) In the case of a State school for learners with special education needs, any member of the school board elected from the categories of persons referred to in section 55(1)(a), (e), (f), (g) or (h) may serve as the chairperson of that school board.

Committees of school board

62. (1) A school board may -

Basic Education Act 3 of 2020

- (a) establish committees; and
- (b) appoint persons who are not members of the school board to such committees on grounds of expertise, but a member of the school board must chair each committee.

(2) A school board of a State school which provides education to learners with special education needs must establish a committee on special education needs.

Term of office of members and office-bearers of school boards

63. (1) The term of office of -

- (a) a member of a school board, other than a learner, is three years;
- (b) a member of a school board who is a learner is 12 months; and
- (c) an office-bearer of a school board is three years.

(2) A member or an office-bearer of a school board may be re-elected or co-opted after the expiry of his or her term of office.

Vacation of office and filling of casual vacancies

64. (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 consecutive 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 a prefect or as a member by the learners' representative council by whom the learner was nominated; or

[The order of the words "a as" before "member" should be reversed: "as a member".]

- (ii) ceases to be a learner at the school;
- (f) being a co-opted member, is removed 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 54(2)(a) and unless the school board otherwise decides, a parent member of a school board does not vacate office on the reason only that the child of the parent member of a school board has ceased to be a learner at the school.

Basic Education Act 3 of 2020

(3) A school board may, after consultation with the 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 prescribed manner.

Status of learners on school board of State schools

[The heading of section 65 in the ARRANGEMENT OF SECTIONS is
“Status of learners on school boards of State schools”.]

65. A member of a school board who is a learner -

- (a) may not contract on behalf of a State school;
- (b) may not vote on resolutions of a school board which impose liabilities on third parties or on the school;
- (c) is not personally liable for any consequence that arose from his or her participation as a member of the school board;
- (d) may not be involved in the recruitment and discipline of staff members at a school; and
- (e) may be involved in a disciplinary matter related to another learner, with due guidance and consideration of sensitive matters.

**PART 5
FUNDING OF STATE SCHOOLS**

Funding of State schools by State

66. (1) The Minister must, out of money appropriated by Parliament for that purpose, fund State schools on an equitable basis in order to -

- (a) ensure the proper exercise of the rights of children to education; and
- (b) the redress of past inequalities in the provision of education.

[The phrase “the redress of” should be “redress” to fit the introductory phrase.
Alternatively, perhaps a word such as “ensure” is missing from the beginning of paragraph (b).]

(2) The Minister must, on an annual basis, provide sufficient information to State schools regarding the funding referred to in subsection (1) to enable State schools to prepare their budgets for the next financial year.

Payment of fees at State schools, hostel fees and hostel development fund

Basic Education Act 3 of 2020

67. (1) The payment of compulsory tuition and examination fees and any other related fees in respect of the education of a learner at any State school is prohibited.

(2) Subject to subsection (3), a boarder at any State hostel or any other hostel under the control of the State must pay -

- (a) hostel fees; and
- (b) a contribution to the hostel development fund established for the hostel,

as may be prescribed.

(3) A parent who cannot afford to pay hostel fees may, in the prescribed manner, apply to the Minister for exemption from payment of hostel fees and the school board may recommend to the Minister -

- (a) the granting of the exemption; or
- (b) the refusal of the exemption and give reasons.
- (4) A person may not -
 - (a) deprive a learner of his or her right to participate in all aspects of the programme of a State school; or
 - (b) victimise a learner in any manner, including -
 - (i) suspension from classes;
 - (ii) verbal or non-verbal abuse;
 - (iii) denial of -
 - (aa) access to cultural, sporting or social activities of the school;
 - (bb) access to the school feeding programme; or
 - (cc) a school report or transfer certificate,

because of the non-payment of voluntary parental contribution by his or her parent.

Norms and standards for school funding

68. (1) The Minister must, in accordance with section 5, and after consultation with the Advisory Council and the Minister responsible for finance, determine national quintiles for State schools and norms and standards for school funding.

- (2) The norms and standards contemplated in subsection (1) may include -
 - (a) criteria for the establishment of the school development fund as provided for in section 69;
 - (b) criteria relating to financial planning, costing and allocation of funds to State schools to avoid incurring ineligible costs by the regional office;

Basic Education Act 3 of 2020

- (c) setting a criteria for the distribution of State funding to all State schools in a fair and equitable manner;

[The word “a” before the plural word “criteria” should be omitted.]

- (d) provision for a system in terms of which learners at all State schools can be placed into quintiles, referred to as national quintiles for learners, according to financial means;
- (e) provision for a system in terms of which all State schools can be placed into quintiles referred to as national quintiles for State schools, according to the distribution of learners in the national quintiles for learners; and
- (f) determination of the procedure in terms of which the Executive Director must apply the criteria contemplated in this Act.

School development fund and assets of State schools

69. (1) Subject to section 127(2), the school board of a State school must establish a school development fund and administer it as prescribed.

(2) A school development fund consists of -

- (a) money appropriated by Parliament for the benefit of the school development fund;
- (b) money raised by or on the authority of the school board in accordance with section 70;
- (c) voluntary contributions made to the State school by any person and such contributions may include fund-raising campaigns or official school related activities approved by the principal and the school board;
- (d) money received from donations, bequests or any other source; and
- (e) money derived from any other lawful source including interest on any investment made by the State school under subsection (4).

(3) The school board of a State school must open and maintain one banking account at -

- (a) any banking institution registered in terms of the laws governing banking institutions; or
- (b) the Post Office Savings Bank established in terms of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992),

but may, with the approval of the Executive Director, invest surplus money in another account.

(4) Money, goods or services donated or bequeathed to or received in trust by a State school is applied in accordance with the conditions of such donation, bequest or trust.

[The verb “is” should be “are”.]

(5) The school board of a State school must take all reasonable measures within its means to supplement the resources supplied by the State in order to improve the quality of education provided by the school to all learners at the school.

Basic Education Act 3 of 2020

(6) Despite subsection (5), a school board may not enter into any loan or overdraft agreement so as to supplement the school development fund.

(7) If a person lends money or grants an overdraft to a State school, the State and the State school will not be bound by the contract of lending money or the overdraft agreement.

(8) The school development fund, all proceeds thereof and any other assets of the State school must be used only for -

- (a) educational purposes, at or in connection with the school;
- (b) educational purposes, at or in connection with another State school, by agreement with such other State school and with the consent of the regional director;
- (c) the performance of the functions of the school board; or
- (d) another educational purpose such as specialised education services, sports, arts and culture, agreed to in writing between the school board and the regional director from time to time.

(9) Money from the school development fund may not be paid into a trust or be used to establish a trust.

(10) If a trust was established with money from a school development fund or if such money was paid into a trust prior to the coming into operation of this Act, such trust or payment becomes invalid after the commencement of this Act and the money must be paid back into the school development fund.

(11) A school board or any other person may not -

- (a) collect any money or contributions from parents to circumvent or manipulate the payment of voluntary parental contribution; and
- (b) use such money or contributions to establish a fund or trust,

and if such money or contributions of parents were paid into a trust prior to the coming into operation of this Act, the trust must pay such money or contributions into the school development fund.

(12) A school board may, with the approval of the regional director -

- (a) lease, burden, convert or alter immovable school property to provide for school activities or to supplement the school fund of that school; and
- (b) allow any person to conduct approved business on school property to supplement the school development fund.

(13) For purposes of subsection (5), the Executive Director may -

- (a) determine by circular the manner and procedure for fundraising at State schools; and
- (b) prohibit the use of learners to solicit funds from the public.

Basic Education Act 3 of 2020

(14) Fundraising activities may only take place as prescribed, and under the supervision of the school board.

(15) For the purposes of subsection (12), “school property” means immovable property owned by the State, including -

- (a) property contemplated in section 40; and
- (b) any immovable property bought by a school from the school development funds or donations to the school.

Prohibition of unauthorised remuneration, financial benefits or benefits in kind

**[The heading of section 70 in the ARRANGEMENT OF SECTIONS is
“Prohibition of unauthorised remuneration, of financial benefits or benefits in kind”.]**

70. (1) Subject to subsection (2), a school board may not pay or give to a staff member employed in terms of section 5(1) the Public Service Act -

[The word “of” appears to have been omitted before the phrase “the Public Service Act”.]

- (a) remuneration;
- (b) financial benefit; or
- (c) benefit in kind,

for services rendered to the school board without authorisation of the Commission.

(2) A school board may apply to the Commission for approval to pay a staff member any payment contemplated in subsection (1).

(3) An application under subsection (2) is lodged in writing to the Executive Director and must state -

- (a) full details of the nature and extent of the service and payment; and
- (b) the process and resources that are used to compensate or remunerate the staff member.

(4) A school board must make the application contemplated in subsection (2) at least three months prior to the finalisation of the budget of the school.

(5) Despite subsection (1), a school board may pay travel and subsistence expenses relating to official school activities, but such expenses must be equivalent to what would have been payable to a staff member in similar circumstances under the Public Service Act.

(6) In considering the application contemplated in subsection (2), the Commission must take into account -

- (a) the implications for the Ministry 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 staff member;

Basic Education Act 3 of 2020

- (c) whether the service concerned in the application has already been paid for by the Ministry; and
- (d) whether the additional remuneration, financial benefits or benefits in kind support the core activities and functions of the school.

(7) The payment contemplated in subsection (1) must be reflected in the budget of the school, as presented to the general meeting of parents as contemplated in section 71(2).

(8) If a school board pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to a staff member without prior approval of the Commission, the amount of money paid or benefit given must be recovered by the Executive Director, from the personal funds of the members of the school board who took that decision, excluding from a member of the school board who is a learner, and pay it over to the school development fund of that State school.

Annual budget of State schools

71. (1) A school board of a State school must prepare a budget each year according to norms and standards determined by the Minister pursuant to section 68, which shows the estimated income and expenditure of the school for the next financial year.

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

(3) The notice contemplated in subsection (2) must also inform the parents that the budget is available for inspection at the school at least 14 days prior to the meeting.

Financial records and statements of State schools

72. The school board of a State school must -

- (a) keep records of funds received and spent, the assets of the school, liabilities and financial transactions; and
- (b) as soon as practicable, within three calendar months after the end of each financial year, draw up annual financial statements in accordance with the prescribed standards.

Audit or examination of financial records and statements

73. (1) The regional director must appoint an auditor to examine and report on the records and financial statements referred to in section 72.

(2) A person who has a financial interest in the affairs of the State school may not be appointed as an auditor under this section.

(3) If the Minister considers it necessary, he or she may request the Auditor-General to undertake an audit of the records and financial statements of a State school.

(4) The school board must submit to the regional director an audited copy of the annual financial statement within six calendar months after the end of the financial year.

(5) At the request of an interested person, the school board and the regional director must make the records referred to in section 72, and the audited financial statements referred to in this section, available for inspection.

Financial year of State schools

74. The financial year of a State school commences on the first day of January and ends on the last day of December of each year.

PART 6 PRIVATE SCHOOLS AND HOSTELS

Establishment of private schools

75. (1) A person has the right to establish and maintain a private school at the expense of such person.

(2) A person may not provide basic education at a private school unless the school is registered in terms of section 76.

(3) 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 organisation, and the name of the school must be clearly indicated in the register of private schools and on the school premises.

[There should be a comma before the phrase beginning with “who may”.]

(4) A person may not open and operate a satellite school that is linked to a registered private school.

(5) A person who contravenes subsection (2) or (4) commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 2 years, or to both such fine and such imprisonment.

(6) The Minister may, by written notice to the owner or operator of a school that is established or operated in contravention of subsection (2) or (4), order that the school be closed failing which the Minister may institute legal proceedings to have the school closed.

Registration of private schools

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

(2) The Minister must register a private school within the prescribed 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, meet the requirements of this Act and are suitable and adequate in accordance with the prescribed minimum requirements having regard to the total number, ages and gender of the learners who are to attend the school;

(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;

Basic Education Act 3 of 2020

- (ii) the school will offer inclusive education curriculum and practices to all learners which includes early childhood development, pre-primary to secondary education;
- (iii) the teachers to be employed at the school are sufficiently qualified for the purpose of efficient provision of quality basic education;
- (iv) the school will provide a standard of education not inferior to the standard maintained in comparable State schools;
- (v) the school will not impose restrictions of whatever nature with respect to the admission of learners based on race, ethnic origin, religion, colour or creed; and
- (vi) the school will not impose restrictions of whatever nature with respect to the recruitment of staff based on race, ethnic origin or colour or creed; and
- (c) the Minister is satisfied that the owner of the school undertakes -
 - (i) to take all reasonable measures to ensure that the physical facilities at private schools are accessible to people with disabilities; and
 - (ii) to comply with any conditions subject to which the Minister may impose upon registration of the school.

Register of private schools

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

Transfer of ownership of private school

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

De-registration of private school

79. (1) The Minister may, subject to subsection (2), deregister a private school registered in terms of section 76, if -

- (a) any of the circumstances arises on which the Minister would have refused such registration under section 76;
- (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 80, and remains closed after a period of six months of such closure.

Basic Education Act 3 of 2020

(2) The Minister must, in writing, notify the owner of the private school of the intention of the Minister 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), the Minister must, in writing, notify the owner of the school of the decision to deregister the school.

Non-compliance with requirements by private school

80. (1) If, following an inspection conducted at a private school under section 91, 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 managed in a way which is prejudicial to the welfare of the learners, teachers and teachers 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 a period, not exceeding six calendar months, as may be specified in the notice.

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

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

(4) A private school which has been closed under subsection (2) and remains closed for a period exceeding six calendar months may be deregistered under section 79, and the owner of the school is required to apply for re-registration under section 76 before being allowed to re-open the school.

Takeover of management and control of private school

81. 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 79 or closed under section 80, and the owner of the school has agreed to the request of the Minister for the takeover.

Declaration of private school as State school

82. (1) The Minister may, with the concurrence of the Minister responsible for finance, enter into an agreement with the owner of a private school in terms which such private school is declared to be a State school.

[The word “of” has been omitted between “in terms” and “which”.]

(2) The Minister must, by notice in the *Gazette*, announce the declaration and the change of status of the school contemplated in subsection (1).

Aid to private schools and hostels

83. (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 in accordance with section 49 or a school development fund in accordance with section 68;
- (b) to alter the power of the school in respect of recruitment, transfer or dismissal of teachers referred to in section 85;
- (c) to regulate the admission of learners to the school in accordance with section 19;
- (d) to draft and adopt a code of conduct for learners in accordance with section 22;
- (e) to establish school prefects and a learners representative council in accordance with section 27; or
- (f) to offer any course of study instituted under section 88.

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

(3) A registered private school that wishes to receive aid in terms of this section must during each year, on or before the prescribed date, apply to the Executive Director in the prescribed form and manner for the aid.

(4) The Executive Director may grant or refuse an application referred to in subsection (3), but aid may not be granted to a private school -

- (a) which does not comply with the prescribed conditions for receiving such aid; or
- (b) that is operated for profit unless the Minister has consented to the grant of such aid.

(5) If a condition subject to which aid was granted to a private school has not been complied with, the Executive Director may, subject to subsection (6), reduce or terminate the aid.

(6) The Executive Director may not under subsection (5) reduce or terminate any aid granted to a private school, unless the Executive Director has given the owner of the private school concerned a reasonable opportunity to make written representations giving reasons why the aid may not be reduced or terminated.

(7) 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.

(8) The Minister must, in accordance with section 4, determine the norms and standards for the granting of aid to private schools.

Approval of curricula, medium of instruction and examinations at private schools

84. (1) Subject to section 76, the Minister may, on application, approve a curriculum, a language as medium of instruction, or an examining body for a private school, if such curriculum, medium of instructions or examining body differs from that applicable to State schools.

[The word “instructions” should be “instruction”.]

(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.

Powers of private school in relation to staff members

85. Subject to the Labour Act, 2007 (Act No. 11 of 2007), the power to recruit, transfer or dismiss teachers to or from posts on the establishment of a private school except teachers referred to in section 83(7)(c) -

(a) vests in the owner or governing body of the school; and

(b) is subject to any restrictions determined in the conditions of registration or conditions of aid.

Admission age of learners to private schools

86. (1) The admission age of a learner to a private school to -

(a) pre-primary is age five turning six in the year of admission; or

(b) grade one is age six turning seven in the year of admission.

(2) Subject to the availability of suitable school places and other educational resources, the Minister may admit or permit the admission of a learner to a private school who -

(a) is under the age contemplated in subsection (1), if good cause is shown; and

(b) complies with the criteria contemplated in subsection (4).

(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 his or her best interest; and

(b) the refusal to admit that learner would be severely detrimental to his or her development.

(4) The Minister may prescribe -

- (a) criteria for admission to a private school at an age lower than the admission age referred to in subsection (1); and
- (b) age requirements within a three year cohort for different grades at a private school.

Registration of learners for home schooling

[The heading of section 87 in the ARRANGEMENT OF SECTIONS is
"Registration of learner for home schooling".]

87. (1) A parent may apply to the Minister for the registration of a learner to receive education and instructions at a school conducted at home and known as home schooling.

[The word "instructions" should be "instruction".]

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

- (a) a situation relating to health or disability exists that prevents the learner from attending or fully benefiting from the regular school attendance;

[The word "the" before "regular school attendance" is superfluous.]

- (b) the registration is in the best interest of the learner; or
- (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 the withdrawal; and
- (b) has granted the parent a reasonable opportunity to make representations in relation to the withdrawal.

PART 7 EDUCATIONAL CURRICULA AND QUALIFICATIONS

Institution of courses of study

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

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

(2) The courses instituted under subsection (1) must comply with the minimum requirements and standards determined by the Board under section 106.

(3) The Minister must determine the nature and duration of, and the conditions for admission to, any course instituted under subsection (1).

Examinations, certificates and diplomas

89. (1) The Minister may cause -

- (a) examinations and other forms of assessment to be conducted in respect of courses instituted under section 88; 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) A person may not issue certificates or diplomas regarding any course of study in education or training provided for in this Act, except in accordance with this Act.

Exemption from attending or conducting courses of study

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

- (a) a learner from attending any course instituted under section 88(1); or
- (b) a school from conducting any course instituted under section 88(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; or

- (c) the exemption is in the best interest of the learner or the school concerned.

PART 8 MONITORING AND EVALUATION OF SCHOOLS AND HOSTELS

Quality assurance

91. (1) In addition to section 48, all schools including home schools, classes, hostels, support centres and programmes are subject to regular monitoring and evaluation to ascertain whether the provisions of this Act are being complied with and to provide support, where needed, to achieve that compliance.

(2) The monitoring and evaluation of a private school, apart from compliance with this Act, are directed on matters as determined by the terms and conditions of registration of the school.

(3) A quality assurance officer may, on his or her own initiative visit a private school to inspect, monitor and evaluate compliance with the Act and the terms and conditions of registration of the school.

[There should be a comma after the phrase "on his or her own initiative" to offset that phrase properly.]

Health inspections and examinations

92. (1) The Minister, after consultation with the Minister responsible for health and after notification and consent of parents, may cause medical and dental examinations and inspections to be carried out in respect of learners and staff members at any school or hostel.

(2) The Minister, after consultation with the Minister responsible for health, may 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 (2), the Minister, with the concurrence of the Minister responsible for health, may 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 premises, buildings and accessories referred to in subsection (2).
- (4) A learner or staff member referred to in subsection (1) or the parent of such learner -
 - (a) has the right to have examinations and inspections and measures referred to in subsections (1) and (3), respectively, carried out at the cost of such learner or parent or staff member by a private medical practitioner of the choice of such learner or parent or staff; and
 - (b) must provide proof of such examinations or inspections or measures within a period determined by the Minister.

Reporting on quality assurance, inspections and examinations

Basic Education Act 3 of 2020

93. (1) The person who carried out a quality assurance evaluation, an inspection or examination in terms of section 91 or 92(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 monitored, inspected or examined.

(2) Subject to section 91(1), a quality assurance officer must submit a report, in the prescribed manner, to the Executive Director through the regional director on all the schools in the circuit of such quality assurance officer.

CHAPTER 4
INSTITUTIONAL MATTERS AND DEVELOPMENT FUND

PART 1
NATIONAL ADVISORY COUNCIL ON EDUCATION

National Advisory Council on Education

94. (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 on the initiative of the Advisory Council 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 not less than 20 and not more than 30 members appointed by the Minister, and for the purposes of appointment, the Minister must select two staff members and two persons each from among 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 higher education;
- (b) public enterprises;
- (c) each regional education forum;
- (d) non-governmental organisations;
- (e) national employers' organisations;
- (f) recognised associations;
- (g) unions of teachers;
- (h) representative bodies of learners and students;

Basic Education Act 3 of 2020

- (i) representative bodies of churches;
- (j) private schools;
- (k) the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997); and
- (l) a national organisation for persons with disabilities.

(5) The Minister must appoint two of the members from a list of four names elected by the members from among themselves to be the chairperson and the deputy 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 consecutive meetings of the Advisory Council in a year, without the permission of the chairperson of the Advisory Council;
 - (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 a 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 its own rules and procedures governing meetings, but such rules and procedure may not be inconsistent with this Act.

(11) The expenses of the Advisory Council relating to its 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 are entitled to be paid such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(13) The Executive Director must designate staff members of the Ministry to render administrative and secretarial services to the Advisory Council.

(14) The Minister may prescribe any other functions of the Advisory Council as he or she may consider necessary.

Committees of Advisory Council

95. (1) The Advisory Council may establish any committee -

- (a) to advise the Advisory Council on any matter in relation to its functions; or
- (b) to perform, subject to the directions of the Advisory Council, any function of the Council which the Advisory Council may assign to the committee in writing.

(2) A committee established under subsection (1) may consist of three or more members, and not more than two other persons not being members, whom the Advisory Council considers suitable to appoint.

(3) The Advisory Council may at any time dissolve or reconstitute a committee.

(4) The Advisory Council is not divested of a function or assigned to a committee.

PART 2

REGIONAL EDUCATION FORUM AND REGIONAL EDUCATION DIRECTORATES

Regional education forum

96. (1) The Minister must establish for each region a forum to be known as the regional education forum.

(2) The functions of a regional education forum are -

- (a) to advise the regional council and local authority councils in that region on matters concerning education in the region, including local authority areas in that region;
- (b) to discuss, evaluate and advise the Minister on relevant legislation, education policies, education sector plans, the direction and developments in the education sector;
- (c) to facilitate and ensure the effective collaboration and coordination between the entities established under this Act, their agencies, and other public and private educational institutions;
- (d) to monitor and follow the implementation of educational policies and strategies adopted by the Government;
- (e) to initiate and facilitate educational development in the regions; and
- (f) to advise on any matter that may be prescribed.

(3) A regional education forum advises -

- (a) on any question referred to the regional education forum by the Minister, regional council, local authority council, school board or any interested person; or

Basic Education Act 3 of 2020

(b) on its own initiative as it may consider necessary.

(4) A regional education forum consists of not less than 13 and not more than 20 members, including the regional director of education, appointed by the Minister on ground of special knowledge, skill and expertise in educational matters as follows -

[The singular word “ground” should be the plural word “grounds”.]

(a) the regional director of education as an ex officio without voting powers;

[The word “member” appears to have been omitted after “an ex officio”.]

(b) one staff member of unions of teachers nominated by the unions of teachers;

(c) one staff member of the Ministry administering child welfare nominated by its Minister;

(d) one staff member of the Ministry administering health nominated by its Minister;

(e) two persons representing the regional council concerned nominated by that regional council;

(f) one person representing local authority councils in the region nominated by the local authorities in the region;

(g) two persons representing the school boards in the region nominated by the school boards in the region;

(h) one person representing the business community in the region nominated by the Namibia Chamber of Commerce and Industry;

(i) one person representing civil society in the region nominated by Namibian NGO Forum;

(j) one person representing the Namibia National Students Organisation in the region;

(k) two persons representing the learner’s representative councils and prefects in the region, one representing primary school learners and one representing secondary school learners nominated by the learner’s representative councils;

(l) one person representing the private schools in the region nominated by their governing bodies in the region;

(m) one person representing the faith-based organisations in the region nominated by the Council of Churches in Namibia;

(n) one person representing the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997 (Act No. 13 of 1997), nominated by that Council;

(o) one person representing the teaching service, nominated by the Teaching Service; and

Basic Education Act 3 of 2020

- (p) three persons representing persons with disabilities, nominated by the National Disability Council established by the National Disability Council Act, 2004 (Act No. 26 of 2004).

(5) Whenever the Minister wishes to appoint members of a regional education forum or to fill in a vacancy in the membership of a regional education forum, the Minister must publish a notice in the *Gazette* inviting the respective ministries, institutions, associations or organisations which are required to nominate persons in terms of subsection (4), to, within the period specified in the notice, nominate not less than two and not more than four persons for appointment.

[The word “in” after “to fill” is superfluous.]

(6) The Minister must appoint members of a regional education forum from the list of persons nominated under subsection (4).

(7) If a ministry, institution, association or organisation fails to make nominations within the period specified in subsection (5), the Minister must appoint as a member of the regional education forum, a person whom the Minister considers suitable to represent the relevant interest group in the regional education forum.

(8) The Minister must appoint one member of a regional education forum who is not a staff member to be the chairperson.

(9) A regional director must avail staff members of the regional education office to provide administrative and secretarial services to the regional education forum.

(10) Subject to subsection (13), a member of a regional education forum holds office for a term of three years and is eligible for re-appointment at the expiration of that term.

(11) A member of a regional education 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 regional education forum after giving the Minister 30 days written notice of his or her intention to resign;
- (c) has been absent for three consecutive meetings of a forum in a year without the permission of the chairperson of the regional education forum;
- (d) is withdrawn by the nominating body; or
- (e) is removed by the Minister under subsection (12).

(12) The Minister may remove a member of a forum, if such member -

- (a) 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 of a regional education forum.

(13) If the office of a member of a regional education forum becomes vacant by reason other than the expiry of the period of such office, the Minister may appoint a person in place of such member to hold office for the remainder of the period of office of the member he or she replaces.

(14) A regional education forum must meet at least three times a year, and the chairperson must at the written request of not less than six members of the regional education forum, convene a special meeting of the regional education forum to be held within five weeks of the receipt of the request.

(15) The -

- (a) Executive Director or his or her representative;
- (b) regional director or his or her representative; or
- (c) any -
 - (i) constituency councillor or his or her representative representing a constituency within the jurisdiction of the regional education forum; and
 - (ii) person invited by the chairperson,

may be present at any meeting of a regional education forum and take part in the proceedings but is not entitled to vote on any question.

(16) A regional education forum may make rules to regulate its own procedure at meetings not inconsistent with this Act.

(17) The activities of a regional education forum and any expenses incurred in performing the functions of a regional education forum is funded from money appropriated by Parliament and made available to the Ministry for that purpose.

[The verb “is” should be “are” to accord with the subject “activities... and expenses”.]

(18) Members of a regional education forum who are not in the full-time employment of the State are entitled to be paid such allowances, including travel and subsistence allowances as the Minister, with the concurrence of the Minister responsible for finance, determines.

(19) The Minister, after consultation with the Advisory Council, may prescribe -

- (a) the powers and duties of regional education forums regarding the manner of establishment of new schools;
- (b) the manner and form in which records and statistics must be kept by regional education forums and the manner in which returns must be rendered and recommendations made; and
- (c) the manner and form in which annual regional development plans must be drawn up and submitted.

Regional education office, circuit offices and resource centres

97. (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, establish a regional education office for each region, circuit offices and resource centres.

(2) The Executive Director must, for every regional education office, designate a staff member as regional director of education to administer, manage and control the regional

Basic Education Act 3 of 2020

education office, and perform such functions under the supervision and direction of the Executive Director.

(3) The functions of regional education offices, circuit offices and resource centres are the affairs relating to education 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 regional education forum.

(4) Without limiting the generality of the functions mentioned in subsection (3), a regional education office -

- (a) provides the lines of communication between schools and the office of the Executive Director;
- (b) supports the functioning of the Ministry by -
 - (i) providing an enabling environment for schools within a region to do their work in line with education laws and policies;
 - (ii) assisting principals and teachers to improve the quality of teaching and learning in their schools;
 - (iii) serving as an information centre for all schools in the region;
 - (iv) facilitating information communication technology connectivity in all schools within the region; and
 - (v) providing an enabling environment for the professional development of teachers and other staff members;
- (c) ensures accountability by -
 - (i) holding schools in the region to account for their performance; and
 - (ii) accounting to the Executive Director in terms of performance agreements that stipulate the roles and functions of staff members in line with relevant policies; and
- (d) disseminates public information, in terms of the Namibian Public Service Charter, by -
 - (i) informing and consulting with the public in an open and transparent manner; and
 - (ii) upholding service delivery principles in all dealings with the public.

PART 3

NATIONAL EXAMINATION, ASSESSMENT AND CERTIFICATION BOARD

Establishment of National Examination, Assessment and Certification Board

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

Constitution of Board

Basic Education Act 3 of 2020

99. (1) Subject to subsection (5), the Board consists of not less than 20 and not more than 30 members, including all regional directors and other members appointed by the Minister, as follows -

- (a) two persons appointed 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 No. 8 of 1992);
- (c) one person nominated by the Council of the Namibia University of Science and Technology as defined in section 1 of the Namibia University of Science and Technology Act, 2015 (Act No. 7 of 2015);
- (d) one person nominated by the National Training Authority established by the National Training Authority Act, 2008 (Act No. 1 of 2008);
- (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 No. 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 No. 29 of 1996);
- (g) one representative of unions of teachers nominated by the unions of teachers;
- (h) the Director, and another staff member of the Directorate: National Examinations and Assessment of the Ministry;
- (i) the Director, and another staff member of the Directorate: National Institute for Educational Development of the Ministry;
- (j) the Chief Executive Officer of the Namibia Qualifications Authority referred to in section 10(1)(a) of the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996);
- (k) the Director of the Programmes of Quality Assurance in the Ministry;
- (l) one person representing private institutions of higher learning nominated by private institutions of higher learning; and
- (m) one person representing persons with disabilities nominated by the National Disability Council established by the National Disability Council Act, 2004 (Act No. 26 of 2004).

(2) The Minister must, for the purposes of appointment of members of the Board in terms of subsection (1), by notice in the *Gazette* and in at least two newspapers circulating nationally in Namibia, invite the bodies referred to in subsection (1)(b) to (g) and (l) and (m) to nominate persons within a period specified in the notice.

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

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

[There should be a comma after the phrase “who must be staff members of the Ministry” to offset that phrase properly.]

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

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

Term of office of member of Board

100. Subject to section 104, 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.

[The cross-reference appears to have been intended to refer to section 101.]

Vacation of office and filling of casual vacancies

101. (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 his or her intention to resign;
- (c) has been absent for three consecutive meetings of the Board in a year without the permission of the chairperson of the Board;
- (d) is withdrawn from the Board 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) 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 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 99.

Secretariat to Board

102. (1) The Minister must establish within the Ministry, a component to act as the secretariat to the Board, consisting of -

Basic Education Act 3 of 2020

- (a) one staff member of the Ministry designated by the Executive Director as the secretary to the Board; and
- (b) other staff members of the Ministry as the Executive Director 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 or any other staff member may perform the functions of the secretariat.

Committees of Board

- 103.** (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 or assign to the committee.
- (2) A committee established under subsection (1) consists 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 or function which has been delegated by it to a committee and may, without prejudice of a right, amend or set aside any decision of a committee.

Meetings and decisions of Board

- 104.** (1) The first meeting of the Board must be held at a place and time determined by the chairperson of the Board.
- (2) Subject to subsection (4), any meeting of the Board must be held at a place and time as the Board may determine.
- (3) If the Board has determined the place and time of a meeting and such meeting cannot be held at that place or time, the secretary of the Board must, after consultation with the chairperson of the Board, determine the place and time of the next meeting of the Board.
- (4) The chairperson of the Board may at any time convene a special meeting of the Board.
- (5) The majority of the members of the Board constitutes a quorum for any meeting of the Board.

(6) The chairperson of the Board or, in the absence of the chairperson, the deputy chairperson, presides at all meetings of the Board.

(7) If both the chairperson and the deputy 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 exercise all the powers of the chairperson and perform all the functions.

(8) 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 his or her deliberative vote.

(9) The Board may make rules governing procedures at meetings of the Board not inconsistent with this Act.

(10) The expenses relating to the functions of the Board are defrayed from money appropriated for this purpose by Parliament.

Payment of allowances to non-staff members

105. Members of the Board who are in the full-time employment of the State are entitled to be paid such allowances, including travel and subsistence allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

Functions of Board

106. (1) The functions of the Board are -

- (a) to determine, by notice in the *Gazette*,
 - (i) minimum requirements and standards applicable courses of study, curriculums and syllabi;

[The word “to” appears to have been omitted after the word “applicable”.]

- (ii) minimum requirements and standards for the conduct of examinations;
 - (iii) minimum requirements and standards for assessments and promotions; and
 - (iv) the applicable rules and procedures for issuing of certificates and diplomas in respect of examinations;
- (b) to verify compliance with minimum standards for the establishment and registration of State and private schools, including tuition and examination centres; and
- (c) to exercise powers and perform functions as may be conferred or imposed on the Board by or under this Act.

(2) In the exercise of its powers and performance of its functions in terms of this Act, the Board must take into account -

- (a) the conformity with the values enshrined in the Constitution;
- (b) the holistic development of the learner;
- (c) the development of the knowledge, potentiality and talent of the learner;

Basic Education Act 3 of 2020

- (d) the development of the physical and mental abilities of the learner to the fullest extent;
- (e) learning through participation, discovery and exploration in a learner friendly and learner-centred learning environment;
- (f) the medium of instruction to be, as far as practicable, in the mother tongue of the learner;
- (g) the making of a learner free of fear, trauma and anxiety and helping the learner to express views freely;
- (h) the comprehensive and continuous evaluation of the knowledge of the learner and his or her ability to apply the same; and
- (i) the prohibition of a learner to pay for any examination or assessment in any State school providing primary or secondary education.

Rules by Board

107. The Board may make rules relating to the -

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

**PART 4
TEACHING SERVICE**

Establishment of Teaching Service

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

Constitution of Teaching Service

109. The Teaching Service consists of the persons employed in the public service, suitable and sufficient in number to provide basic education.

Object of Teaching Service

110. The object of the Teaching Service is -

Basic Education Act 3 of 2020

- (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 Namibia.

Code of conduct for Teaching Service

111. The Minister, with concurrence of 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.

Establishment of Teaching Service Committee

112. Despite section 6(4)(a) of the Public Service Commission Act, the Commission must, after 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 113.

Functions of Teaching Service Committee

113. The functions of the Teaching Service Committee are to -

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

Teachers and teaching at State schools

114. (1) In the recruitment, promotion, transfer and termination of teachers, a person may not directly or indirectly discriminate against another person on the basis of race, ethnic origin, colour, sex, religion, creed, disability, social or economic status.

(2) A teacher employed at a State school may not use his or her position as a teacher to advance or to attempt to advance the interests of any commercial entity, political party or religious affiliation.

(3) A teacher employed at a State school must -

- (a) promote a culture of peace, care, support and tolerance at the school;
- (b) promote a culture of responsibility and accountability at the school;
- (c) promote the intellectual and personal development of learners;
- (d) promote a culture of learning and teaching;

Basic Education Act 3 of 2020

- (e) foster a culture of human rights amongst learners;
- (f) act in a just and impartial manner in his or her dealings with learners; and
- (g) take the appropriate measures to attain and maintain a high level of professionalism.
- (4) A teacher employed at a State school must -
 - (a) maintain regularity and punctuality in attending school;
 - (b) conduct and complete the curriculum in accordance with the official requirements;
 - (c) complete the entire curriculum within the specified time;
 - (d) assess the learning ability of each learner and accordingly supplement additional instructions, if any, as required;
 - (e) hold regular meetings with parents and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the learner; and
 - (f) perform such other duties set out in the code of conduct for the Teaching Service contemplated in section 111 or as may be prescribed.

(5) A teacher who contravenes or fails to comply with subsection (4) commits an act of misconduct and is liable to disciplinary action under the code of conduct for teachers as set out in the regulations to this Act and the Public Service Act.

(6) In order to maintain the learner-teacher ratio as determined by the Minister in the code of conduct for the Teaching Service or as prescribed, a teacher employed at a State school may not be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in their employment contract or participation in disaster relief functions.

(7) A regional director must ensure that vacancies of teachers in his or her region are filled promptly.

(8) Despite anything regarding remunerative work outside the public service contained in the Public Service Act, a teacher may not engage himself or herself in private tuition, private teaching activity or any other private income generation activities during school working hours.

(9) In order to ensure the effective implementation of the provisions of this section, the Minister may, in accordance with section 5, issue norms and standards for the number of teachers assigned to a State school in line with the provisions of this Act.

PART 5 EDUCATION DEVELOPMENT FUND

Establishment of Education Development Fund

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

Constitution of Fund

116. The Fund consists of -

- (a) moneys appropriated by Parliament for purposes of 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.

Object of Fund

117. (1) The object of the Fund is, through financing by way of grants and in a proper manner, to provide for the establishment, upliftment, upgrading and improvement of educational programmes and facilities to the benefit of marginalised populations and children in need who are at risk of dropping out of school, including children with disabilities.

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

Administration of Fund

118. (1) The Executive Director is -

- (a) the accounting officer of the Fund; and
- (b) 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).

(2) The Minister may, with the concurrence of the Minister responsible finance, make rules relating to the administration of the Fund.

Banking account

119. The Executive Director, subject to section 118, must open and maintain a banking or savings account in the name of the Fund with any banking institution registered under the laws governing banking institutions in Namibia or the Post Office Savings Bank referred to in the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992).

Financial year, bookkeeping and auditing of books of account

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

(2) The Executive Director 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 calendar 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 30 days, if the National Assembly is in session, or, if it is not in session, within 14 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 responsible for finance, may direct.

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

Exemption from payment of tax and other charges

121. The Fund is not liable for tax on income or transfer or stamp duty imposed by or under any law.

CHAPTER 5 GENERAL PROVISIONS

Expropriation of land

122. (1) If it is in the public interest to do so and subject to Article 16 of the Namibian Constitution, the Agricultural (Commercial) Land Reform Act, 1995 (Act No. 6 of 1995), the Expropriation Ordinance, 1978 (Ordinance No. 13 of 1978) and any other law on expropriation of privately owned property, expropriate land or a real right in or over land for any purpose relating to basic education in Namibia.

(2) The Minister by notice in the *Gazette* and in two newspapers circulating nationally in Namibia, must announce his or her intention to expropriate land or real right of subsection (1).

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

- (a) identify the land or any real right in or over the land;
- (b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and
- (c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Minister in that regard, and draw attention to the provisions of subsection (5).

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

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

(6) If the Minister and an owner of the land or real right fail to reach agreement regarding the payment of compensation -

- (a) either party may refer the matter to the Lands Tribunal referred to in section 63 the Agricultural (Commercial) Land Reform Act, 1995 for determination in terms of that Act; or

[The word “of” appears to have been omitted after the phrase “section 63”.]

- (b) parties may agree to refer the dispute to an arbitrator for arbitration.

(7) The arbitrator contemplated in subsection (6) determines -

Basic Education Act 3 of 2020

- (a) the time, venue and procedures which apply in the arbitration; and
- (b) the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.
- (8) The arbitrator may not make an award of costs.

(9) The arbitrator is paid, out of moneys appropriated for this purpose by Parliament, such fees and allowances as the Minister may determine, with the concurrence of the Minister responsible for finance.

(10) No transfer duty, stamp duty, other fees or costs are payable as a result of any transfer of land or a real right contemplated in subsection (1).

(11) Any claim to compensation arising from the expropriation contemplated in subsection (4) is determined as contemplated in Article 16(2) of the Namibian Constitution and this section.

General offences and penalties

123. (1) A person who -

- (a) discloses the health status of a learner without the required consent;
- (b) discloses any confidential information on any examination conducted, or any certificate or diploma issued in terms of section 89(1) in contravention of any rule made under section 107, or encourages another person to do so;
- (c) 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 89(1);
- (d) falsifies, counterfeits or causes to be falsified or counterfeited any certificate or diploma purporting to have been issued in terms of section 89(1);
- (e) presents or utters a false certificate or diploma purporting to have been issued in terms of section 89(1) knowing such certificate or diploma to be false;
- (f) alters or tampers with a certificate or diploma issued in terms of section 89(1);
- (g) issues a certificate or diploma for any course of study in education or training provided under this Act in contravention of section 89(2);
- (h) during the normal hours of school attendance employs, whether for remuneration or otherwise, or harbours a learner who is subject to compulsory school attendance;
- (i) refuses or fails -
 - (i) to furnish to any staff member appointed under section 9(6) to investigate the school attendance of any learner, any information relating to the investigation; or
 - (ii) to comply with the notice issued by the Executive Director under section 18(8);

Basic Education Act 3 of 2020

- (j) obstructs, hinders, handicaps or disturbs any staff member referred to in paragraph (i)(i) in the conduct of any investigation under section 9(6);
- (k) obstructs, hinders, handicaps or disturbs a quality assurance officer who carries out an inspection or investigation in terms of Part 8 of Chapter 3;
- (l) refuses or fails to allow a quality assurance officer referred to in Part 8 of Chapter 3 to enter any premises for inspection or investigation referred to in that section;
- (m) refuses or fails to answer properly any question during any inspection or investigation referred to in Part 8 of Chapter 3;
- (n) gives an answer to any question which is false or incorrect in any material respect, knowing it to be so false or incorrect during any inspection or investigation referred to in Part 8 of Chapter 3;
- (o) refuses or without reasonable excuse fails to produce any material, book or document, or to furnish any information in accordance with any directive during any inspection or investigation referred to in Part 8 of Chapter 3;
- (p) 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 35(2); or
- (q) refuses or fails to abide by the directive of the Ministry to cease operating as a private school,

commits an offence.

- (2) A person convicted of an offence -
 - (a) in terms of subsection (1)(a) to (f), is liable to a fine not exceeding N\$40 000 or a period not exceeding four years imprisonment, or to both such fine and such imprisonment; or
 - (b) in terms of subsection (1)(g) to (p), is liable to a fine not exceeding N\$20 000 or a period not exceeding two years imprisonment, or to both such fine and such imprisonment.

Delegation of powers and assignment of functions by Minister and Executive Director

- 124.** (1) The Minister may -
- (a) by notice in the *Gazette*, delegate any power conferred on the Minister by or under this Act, excluding the power to make regulations and to determine any appeal under this Act, to
 - (i) the Executive Director;
 - (ii) any staff member in the Ministry; or
 - (b) in writing assign any function imposed on the Minister by this Act to the Executive Director or any staff member in the Ministry.

Basic Education Act 3 of 2020

- (2) The Executive Director may -
 - (a) by notice in the *Gazette*, delegate any power conferred upon the Executive Director by this Act, excluding the power to determine any appeal under this Act, to a regional director or to any staff member in the Ministry; and
 - (b) in writing assign any duty or function imposed on the Executive Director by or under this Act to a regional director or to any staff member in the Ministry.
- (3) The Minister or Executive Director -
 - (a) is not divested of any power delegated or any function assigned under subsection (1) or (2);
 - (b) may -
 - (i) without prejudice of a right, vary or set aside any decision made under the power so delegated; or
 - (ii) perform any function so assigned; and
 - (c) at any time withdraw the delegation of any power or the assignment of any duty or function.

(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 Executive Director, regarding such variation or setting aside.

Regulations

- 125.** (1) The Minister may make regulations relating to -
- (a) the minimum standards for the health and safety of learners and staff of schools and hostels;
 - (b) the inspection of schools and hostels;
 - (c) the minimum standards for monitoring, evaluation and support to schools and hostels;
 - (d) the measures for the provision of quality education, including remedial and special education;
 - (e) the maximum fees and other charges payable in respect of learners at any State school;
 - (f) the management of the school development fund and the hostel development fund, including 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, including home schooling and support centres;

Basic Education Act 3 of 2020

- (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) the powers and functions 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) the minimum standards and conditions of facilities at State and private schools, including community hostels;
- (p) the particulars to be entered in the register of private schools;
- (q) the manner in which an application for registration may be made and the particulars, proof or evidence to be supplied by the applicant;
- (r) with respect to any application for registration, the procedure to be followed, the forms to be used and the fees to be paid;
- (s) the manner in which any aid is payable to a registered private school;
- (t) the issuance, variation and revocation of certificates of provisional registration and certificates of registration;
- (u) any other matter that the Minister may consider necessary or desirable to provide for the effective functioning of private schools;
- (v) the keeping of registers or other documents by a registered private school;
- (w) the submission of any particulars, information or documents by the principal of a registered private school at any time;
- (x) any other matter relating to registered private schools which must or may be prescribed;
- (y) any matter which in terms of this Act is required or permitted to be prescribed; and
- (z) generally, any matter, not inconsistent with the power of the Minister, in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.

Basic Education Act 3 of 2020

(2) Different regulations may be made in respect of different categories of registered private schools.

(3) A regulation made under this section may prescribe penalties not exceeding a fine of N\$6 000 or imprisonment not exceeding a period of 12 months, or both such fine and such imprisonment, for any contravention of, or failure to comply with, such regulation.

Repeal of laws

126. The Education Act, 2001(Act No. 16 of 2001) is repealed.

Savings and transitional provisions

127. (1) A school board for a State school established under the law repealed by section 126 and existing at the date of commencement of this Act is deemed to have been established under section 49 of this Act.

(2) A school development fund for a State school established under the law repealed by section 126 and existing at the date of commencement of this Act is deemed to have been established under section 69.

(3) The National Advisory Council on Education, the regional education forum, the National Examination, Assessment and Certification Board, the Teaching Service and the Education Development Fund established under the law repealed by section 126 are deemed to have been established under corresponding provisions of this Act.

(4) A State school, class, hostel, teachers' resource centre, school clinic, circuits, resource centres or other facility, established under the law repealed by section 126 and existing at the date of commencement of this Act, is deemed to have been established under this Act.

(5) A private school which has been registered in terms of the law repealed by section 126 must be re-registered in terms of section 76 within the period of 24 months from the date of commencement of this Act.

(6) 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.

Short title and commencement

128. (1) This Act is called the Basic Education Act, 2020, and comes into operation, subject to subsection (2), on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for the commencement of different provisions of this Act.