



GAUTENG EDUCATION POLICY ACT

as amended by

General Notice 3284 of 2011 (PG 301 of 28 December 2011)

**SECTION A:
INTERPRETATION OF THE
ACT**

The Education Policy Act, 1998(Act 12 of 1998), as amended

The Education Policy Act has complemented the National Education Policy Act, to enhance the policy development processes in the Province. The Act was amended in 2011, through the Gauteng Education Laws Amendment Act 5 of 2011, mainly to align with National Legislation and is now known as “The Gauteng Education Policy Act.”

Overviews of the sections are as follows:

SECTION 1: DEFINITIONS

Section 1 covers the **Definitions** that are used in the legislation and requires schools to review their policies and align the policies to the definitions.

SECTION 2: OBJECTIVES OF THIS ACT

Section 2 provides for the **Objectives of the Act** and informs schools of what the policy intends to achieve.

SECTION 3: RESPONSIBILITY FOR DETERMINING AND IMPLEMENTING EDUCATION POLICY

Section 3 clarifies whose responsibility it is for **Determining and Implementing Education Policy** and makes schools aware that the MEC is responsible for determining education policy in the Province, which he/she will do subject to national and provincial legislation.

SECTION 4: SCOPE OF EDUCATION POLICY MAKING

Section 4 has been repealed by Gauteng Education Laws Amendment Act 5 of 2011.

SECTION 5: GUIDELINES FOR MAKING EDUCATION POLICY

Section 5 provides **Guidelines for Making Education Policy** and is useful for schools as it emphasises the democratic spirit that should be embraced in the process of policy making at all levels, which they should embrace in their development of policies.

SECTION 6 TO 9:

Sections 6 to 9 have been repealed by Gauteng Education Laws Amendment Act 5 of 2011.

SECTION 10: ESTABLISHMENT OF ADVISORY COUNCILS

Section 10 covers the **Establishment of Advisory Councils** and empowers the MEC to establish an advisory council if the need arises. Schools need to be aware that the MEC

can establish such councils to carry out tasks defined by the MEC which may include visits to the school to collect information or conduct research.

SECTION 11: FUNCTIONS OF ADVISORY COUNCILS.

Section 11 provides for the **Functions of Advisory Councils** and creates awareness to schools of the functions that an advisory council can perform.

SECTION 13:

Sections 13 to 16 have been repealed by Gauteng Education Laws Amendment Act 5 of 2011.

SECTION 17: MONITORING THE IMPLEMENTATION OF EDUCATION POLICY

Section 17 covers entails **Monitoring the implementation of education policy**. Schools need to be aware that the HoD is responsible for the monitoring of policy implementation at schools and the action that he/she can take if he/she is not satisfied. This section also provides for an appeal procedure if a school is not satisfied with the findings of the Head of Department.

SECTION 18: REGULATIONS

Section 18 enables the Member of the Executive Council to make **Regulations** that are necessary and makes it clear to schools that that the MEC may make any regulations that are necessary and they therefore need to comply with related processes.

SECTION 19: DELEGATIONS

Section 19 provides for **Delegations** made to other persons and the management of such delegations and informs schools that the MEC may delegate any person in the employ of the department or any council, committee or board in terms of this Act.

SECTION 20: REPEAL OF LAWS AND TRANSITIONAL ARRANGEMENTS

Section 20 covers the **Repeal of Laws and transitional arrangements** and requires schools to be aware of laws that are repealed and related transitional arrangements.

SECTION 21: SHORT TITLE AND COMMENCEMENT.

Section 21 provides for the **Short Title and Commencement**. Schools must be aware that this act is now called the Gauteng Education policy Act and should refer correctly to it.

**SECTION B:
THE AMENDED GAUTENG
EDUCATION POLICY ACT**

[Act 12 of 1998] GAUTENG EDUCATION POLICY ACT 12 OF 1998

[Title is amended by s56 of Act No.5 of 2011]

[ASSENTED TO 2 JANUARY 1999] [DATE OF COMMENCEMENT: 19 MARCH 1999]

(English text signed by the Premier)

As amended by the Gauteng Education Laws Amendment Act No. 5 of 2011

ACT

To provide for the determination of provincial education policy; to provide for the establishment of councils to assist in the process of making education policy; to provide for the co-ordination, monitoring and evaluation of education policy; and to provide for matters connected therewith.

[Arrangement of sections repealed by s43 of Act 5 of 2011]

1 Definitions

In this Act, unless the context otherwise indicates -

"district director" means the official contemplated in section 40 of the School Education Act, 1995 (Act 6 of 1995);

"education district" means the area designated as an education district by the Member of the Executive Council in terms of section 8 of the School Education Act, 1995 (Act 6 of 1995);

[definition of "education institution" is deleted by s44 (a) of Act 5 of 2011]

"education and training practitioner" means any person who provides education and training at an education institution, and includes an educator as defined in the Employment of Educators Act, 1998 (Act 76 of 1998);

"governing body" means any body or person responsible for the governance of an education institution;

"head of department" means the head of the department responsible for education in the province;

"learner" means any person receiving education or obliged to received education in terms of the Gauteng School Education Act, 1995 (Act 6 of 1995);

[definition of learner inserted by s44(c) of Act 5 of 2011]

"Member of the Executive Council" means the member of the executive council responsible for education in the province;

"parent" means—

- (a) the biological or adoptive parent or legal guardian of a learner;
 - (b) person legally entitled to custody of a learner; or
 - (c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) or (b) towards the learners education at school;
- [definition of parent inserted by s44 (d) of Act 5 of 2011]

"prescribed" means prescribed by regulation and **"prescribed"** [sic] has a corresponding meaning;

"principal" means an educator appointed or acting as the head of the education institution;

[definition of principal inserted by s44 (b) of Act 5 of 2011]

"provincial department" means the department responsible for education in the province;

"province" means the province of Gauteng;

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

[definition of school inserted by s44 (e) of Act 5 of 2011]

"stakeholder" means an organization or body with a direct and continuing interest in the education institution, programme, phase or sector in question;

[definition of stakeholder inserted by s44(e) of Act 5 of 2011]

"this Act" includes the regulations made under this Act.

2 Objectives of this Act

The objectives of this Act are to facilitate the development of education policy by -

- (a) designating responsibility for making and implementing education policy;
- (b) determining the areas in respect of which education policy may be made;
- (c) specifying the guidelines in respect of which education policy may be made;
- (d) providing for the establishment of appropriate bodies that will be responsible for or advising the Member of the Executive Council on the development of education policy;
- (e) specifying the procedures in respect of which education policy may be made;
- (f) creating an environment within which the public may have access to education policy; and

(g) ensuring that education policy is effectively monitored and evaluated.

3 Responsibility for determining and implementing education policy

[Heading amended by s45(a) of Act 5 of 2011]

(1) Subject to this Act or any other law, the Member of the Executive Council is responsible for determining education policy.

[Sub-s 1 amended by s45(a) of Act 5 of 2011]

(2) [Sub-s 2 repealed by s45(b) of Act 5 of 2011]

(3) Subject to this Act, any other law or applicable national or provincial education policy, the governing body may determine education policy for its school.

[Sub-s 3 amended by s45(b) of Act 5 of 2011]

(4) [Sub-s 4 repealed by s45(b) of Act 5 of 2011]

(5) [Sub-s 5 repealed by s45(b) of Act 5 of 2011]

(6) The principal of a school administered under the auspices of the provincial department must -

(a) co-ordinate the implementation of education policy in the school; and

(b) submit -

(i) quarterly or such other reports as may be reasonably requested by the School Governing Body; and

(ii) an annual report to the governing body

[Sub-s 6(a) and 6(b) amended by s45(c) of Act 5 of 2011]

[s4 is repealed by s46 of Act 5 of 2011]

5 Guidelines for making education policy

(1) All education policy made in terms of this Act must contribute to the development of an education system which -

(a) promotes democracy and human rights by -

(i) respecting the right to basic education;

(ii) ensuring equitable access to education opportunities and the redress of past inequalities in the provision of education;

- (iii) fostering the advancement of persons previously disadvantaged by unfair discrimination;
 - (iv) ensuring that the admission requirements at education institutions administered under the auspices of the provincial department do not include language competence testing;
 - (v) protecting persons against unfair discrimination within or by the provincial department or by an education institution;
 - (vi) fostering the freedoms of conscience, religion, thought, belief, opinion, expression and association within education institutions;
 - (vii) in relation to the rights referred to in subparagraph (vi), protecting the rights and duties of parents to provide direction to their children in the exercise of these rights in a manner consistent with the evolving capacity of their children;
 - (viii) encouraging freedom of association and the peaceful exercise, without the threat of violence, of the right to assemble, demonstrate and present petitions;
 - (ix) allowing all persons, including education institutions, access to information held by the provincial department in so far as such information is required for the exercise or protection of their rights; and
 - (x) facilitating the peaceful resolution of disputes amongst all stakeholders in the education sphere;
- (b) respects religious, cultural and language rights by -
- (i) promoting respect for the country's diverse communities and traditions;
 - (ii) encouraging participation of persons in the cultural life of their choice within an education institution;
 - (iii) promoting the status and use of official languages that have previously been neglected or discriminated against;
 - (iv) teaching learners in the language of their choice where reasonably practicable;
 - (v) recognising sign language as an official language of communication;
 - (vi) enabling learners to become competent in the languages of learning in their education institution;
 - (vii) allowing learners, where reasonably practicable, to use their

language of choice where it differs from the language of learning in their education institution;

(viii) ensuring that, on completion of the ninth grade of learning, learners have acquired satisfactory levels of competence in at least two official languages; and
[Sub-s 5 (1) (b)(viii) is amended by s47 of Act 5 of 2011]

(ix) encouraging education and training practitioners to acquire the skills necessary for rendering education services in a multilingual environment;

(c) advances personal development by -

(i) promoting respect for teaching and learning in education institutions;

(ii) cultivating skills, disciplines and capacities necessary for the reconstruction and development of the country;

(iii) recognising the aptitudes, abilities, interests, prior knowledge and experience of learners;

(iv) providing opportunities for lifelong learning;

(v) encouraging independent and critical thought;

(vi) ensuring that persons with barriers to learning are not denied the opportunity to receive education to the maximum of their potential;

(vii) facilitating the maximum participation of learners in the learning process;

(viii) promoting gender equality and the advancement of the status of women;

(ix) combating sexual harassment at education institutions; and

(x) protecting persons from all forms of physical and mental violence at education institutions;

(d) enhances the quality of education provision by -

(i) ensuring that education and training is provided within a national qualifications framework;

(ii) promoting enquiry, research and the advancement of knowledge;

(iii) creating systems to improve standards of education and monitoring and evaluating their implementation; and

(iv) encouraging the cost-effective use of education resources and the

sustainable implementation of education services;

- (e) encourages public participation in the processes of formulating education policy, facilitate stakeholder representation in appropriate decision-making bodies and ensures democratic governance of education institutions administered under the auspices of the provincial department;
 - (f) eliminates wastage of resources, inefficiency, maladministration and corruption.
- (2) A condition or limitation contained in any education policy made in terms of this Act, must be reasonable and proportionate to the object pursued by that policy.

[s6 is repealed by s 48 of Act 5 of 2011]

[s7 is repealed by s48 of Act 5 of 2011]

[s8 is repealed by s48 of Act 5 of 2011]

[s9 is repealed by s48 of Act 5 of 2011]

10 Establishment of Advisory Councils

- (1) The Member of the Executive Council may establish Advisory Councils.
- (2) A member of an Advisory Council who is not in the full time employment of the State may be paid, out of funds appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may determine.

[s10 is amended by Section 48 of Act 5 of 2011]

11 Functions of Advisory Councils

[The heading is amended by s49(a) of Act 5 of 2011]

- (1) An Advisory Council may -
- (a) at the request of the Member of the Executive Council, investigate and consider matters relating to education that fall within its terms of reference and report on its findings to the member;
[Sub-s 1(a) is amended by s49 (a) of Act 5 of 2011]
 - (b) consider and make recommendations concerning all legislation that falls within its terms of reference; and
 - (c) perform any other function assigned or delegated to it in terms of this Act or any other law.

- (2) The head of department shall be responsible for the establishment of a secretariat for the Advisory Councils.
[Sub-s 2 is amended by s49 (a) of Act 5 of 2011]

12 Composition, sub-committees, procedures and administration of the Gauteng Education and Training Council, a District Education and Training Council and Specialist Advisory Councils

- (1) The Member of the Executive Council may issue regulations concerning -
- (a) the composition and management of the Gauteng Education and Training Council, a District Education and Training Council and a Specialist Advisory Council and the term of office of their members;
 - (b) the criteria for appointing members to these councils; and
 - (c) the procedures for the appointment and removal of these members, including the determination and filling of vacancies.
- (2) The Gauteng Education and Training Council, a District Education and Training Council or a Specialist Advisory Council may, with the concurrence of the Member of the Executive Council, establish one or more sub-committees to -
- (a) enquire into and report to the relevant council regarding any matter falling within the scope of that council's functions; and
 - (b) perform any other function delegated to it by that council, except that the council may not be completely divested of the function contemplated in section 7(a).
- (3) The councils referred to in subsection (2) may at any time dissolve or reconstitute a sub-committee established in terms of that subsection.
- (4) [Sub-s 4 is repealed by s51 of Act 5 of 2011]
- (5) The provincial department must provide the Gauteng Education and Training Council, the District Education and Training Councils and Specialist Advisory Councils with the administrative support necessary to enable them to perform their functions.

[s13 is repealed by s52 of Act No.5 of 2011]

[s14 is repealed by s52 of Act 5 of 2011].

[s15 is repealed by s52 of Act 5 of 2011]

[s16 is repealed by s52 of Act.5 of 2011]

17 Monitoring the implementation of education policy

- (1) If the head of department becomes aware that an education institution which is administered under the auspices of the provincial department is not complying with a policy made in terms of this Act or in attempting to comply with the policy, it is failing to give adequate effect to the provisions of this Act-
 - (a) the head of department must send a written notice to the governing body of the education institution containing a request that it submit written representations to the head of department on the non-compliance or failure; and
 - (b) the governing body must act in accordance with this request within thirty days after the date of the request.
- (2) If upon considering the representations, the head of department is not satisfied with the reasons for the non-compliance or failure, the head of department must send a compliance notice to the governing body.
- (3) The compliance notice referred to in subsection (2) must -
 - (a) be in writing;
 - (b) specify the nature of the non-compliance or failure and the steps it is required to take; and
 - (c) inform the governing body that it has one month from the date of the compliance notice to take the required steps.
- (4) The period within which the required steps as contemplated in subsection (3)(b) must be taken may be extended by the head of department on good cause by the governing body.
- (5) If the governing body is dissatisfied by the head of department's decision to issue the compliance notice in terms of subsection (2) or specification of the steps to be taken as contemplated in subsection (3)(b), it may refer this decision to the Member of the Executive Council for consideration.
- (6) The referral referred to in subsection (5) must -
 - (a) be in writing;
 - (b) be made within thirty days after the date of the compliance notice;
 - (c) set out the grounds for the referral; and
 - (d) enclose copies of the documents contemplated in subsections (1), (2), (3) and (4).
- (7) Within sixty days after receipt of the referral, the Member of the Executive Council must consider the referral in a manner he or she considers

appropriate and send a written notice of his or her decision to the governing body and the head of department, stating the reasons for the decision.

- (8) If the Member of the Executive Council does not find in favour of the governing body, the decision made in terms of the subsection (7) must be taken within thirty days after the date of the Member of the Executive Council's decision.

18 Regulations

- (1) The Member of the Executive Council may make any regulation that is necessary or expedient in order to achieve the objects of this Act, including regulations regarding mechanisms and procedures for evaluating the implementation of education policy.
- (2) [Sub-s (2) is repealed by s53 of Act No.5 of 2011]
- (3) [Sub-s (3) is repealed by s53 of Act No.5 of 2011]

19 Delegation

- (1) Subject to the provisions of this Act or any other law, the Member of the Executive Council may assign or delegate any powers or functions conferred on him or her in terms of this Act, except those contemplated in sections 3(1), 8, 10, 12(1), 17(8) and 18(1) to -
[Sub-s (1) is amended by Section 53 of Act 5 of 2011]
 - (a) any person in the employ of the provincial administration; or
 - (b) any council, committee, sub-committee, board or body established in terms of this Act or any other law.
- (2) The head of department must keep a register in the prescribed manner of all assignments or delegations made in terms of this Act.
- (3) Within six months of coming into office, the Member of the Executive Council must review all assignments and delegations made in terms of this Act.

20 Repeal of laws and transitional arrangements

- (1) Sections 5, 18, 21, 32 to 46, and 88 of the School Education Act, 1995 (Act 6 of 1995), are hereby repealed.
- (2) Despite subsection (1) -
 - (a) a policy made or action taken in terms of the repealed provisions of the School Education Act, 1995 (Act 6 of 1995) will be regarded as having been done under the corresponding provision of this Act; and
 - (b) any regulation issued in terms of the repealed provisions of the School Education Act, 1995 (Act 6 of 1995) will be regarded as having been

made under the corresponding provision of this Act and continues to have force and effect unless amended or repealed in terms of this Act.

(3) [Sub-s (3) is repealed by s55 of Act 5 of 2011]

21 Short title and commencement

This Act is called the Gauteng Education Policy Act, 1998, and must come into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

[S21 is amended by s56 of Act No.5 of 2011]