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GOVERNMENT GAZETTE

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No. 13313

STATE PRESIDENT'S OFFICE

No. 1348. 19 June 1991

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 88 of 1991: Education Affairs Amendment Act (House of Assembly), 1991

KANTOOR VAN DIE STAATSPRESIDENT

No. 1348. 19 Junie 1991

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 88 van 1991: Wysigingswet op Onderwysaangeleenthede (Volksraad), 1991

GENERAL EXPLANATORY NOTE:

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

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

ACT

To amend the Education Affairs Act (House of Assembly), 1988, so as to define or further define certain expressions; to change the designation of "Director of Education" to "Executive Director of Education"; to provide for the establishment of combined schools providing education on primary as well as secondary levels; to make further provision in connection with the continuation of certain councils; to provide that a public school may be declared to be a state-aided school and to regulate the consequences of such declaration; to make further provision in connection with specialized education; to provide for the conditions of service of persons appointed at state-aided schools under repealed laws; to make further provision in connection with the conditions of service of persons employed at state-aided schools; to regulate the transfer of persons employed at public schools to state-aided schools; to extend the power to delegate to include persons employed by the Department under other laws; to empower the Minister to make regulations regarding medical, psychological and dental inspection of pupils and persons employed at schools and hostels and for the health inspections of schools and hostels and the grounds thereof; and to alter the official designation of a Minister; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 5 June 1991.)

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 70 of 1988

1. Section 1 of the Education Affairs Act (House of Assembly), 1988 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "centre" of the following definition:

"combined school" means a public school providing education on levels falling under a primary school as well as levels falling under a secondary school;"

(b) by the substitution for the definition of "parent" of the following definition:

"parent" in relation to a child, means [also a] the parent of such child or the person in whose custody the child has been lawfully placed;"
and

(c) by the substitution for the definition of "state-aided school" of the following definition:

"state-aided school" means an education institution declared [or

ALGEMENE VERDUIDELIKENDE NOTA:

- [** **]** Woorde in vet druk tussen vierkantige hake dui skrap-
pings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordenings aan.

WET

Tot wysiging van die Wet op Onderwysaangeleentheid (Volksraad), 1988, ten einde sekere uitdrukkings te omskryf of nader te omskryf; die benaming "Direkteur van Onderwys" na "Uitvoerende Direkteur van Onderwys" te verander; voorsiening te maak vir die instelling van gekombineerde skole wat onderwys op primêre sowel as sekondêre vlakke verskaf; verdere voorsiening te maak in verband met die voortbestaan van sekere rade; voorsiening te maak dat 'n openbare skool tot 'n staatsondersteunde skool verklaar kan word en die gevolg van so 'n verklaring te reël; verdere voorsiening in verband met buitengewone onderwys te maak; voorsiening te maak vir die diensvoorwaardes van persone ingevolge herroepe wette by staatsondersteunde skole aangestel; verdere voorsiening te maak in verband met die diensvoorwaardes van persone in diens by staatsondersteunde skole; die oorpasing van persone in diens by openbare skole na staatsondersteunde skole te reël; die delegeringsbevoegdheid uit te brei ook na persone wat kragtens ander wette in diens van die Departement is; aan die Minister die bevoegdheid te verleen om regulasies te maak aangaande mediese, sielkundige en tandheelkundige inspeksie van leerlinge en persone in diens by skole en koshuise en vir die gesondheidsinspeksies van skole en koshuise en die terreine daarvan; en die ampsbenaming van 'n Minister te verander; en om voorsiening te maak vir aangeleentheid wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 5 Junie 1991.)

DAAR WORD BEPAAL deur die Staatspresident en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 70 van 1988

1. Artikel 1 van die Wet op Onderwysaangeleentheid (Volksraad), 1988
5 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur na die omskrywing van "departementele inrigting" die volgende omskrywing in te voeg:
" 'gekombineerde skool' 'n openbare skool wat onderwys verskaf op vlakke wat onder 'n primêre skool ressorteer sowel as vlakke wat onder 'n sekondêre skool ressorteer';";
- 10 (b) deur die omskrywing van "ouer" deur die volgende omskrywing te vervang:
" 'ouer', met betrekking tot 'n kind, [ook 'n] die ouer van sodanige kind of die persoon in wie se bewaring die kind wettig geplaas is;";
- 15 (c) deur die omskrywing van "staatsondersteunde skool" deur die volgende omskrywing te vervang:
" 'staatsondersteunde skool' 'n onderwysinrigting wat kragtens artikel

deemed to be declared] to be a state-aided school for specialized education under section 29(1) or deemed to be so declared under section 29(4), as well as a public school declared to be a state-aided school under section 29(2A);”.

Substitution of section 4 of Act 70 of 1988

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2. The following section is hereby substituted for section 4 of the principal Act:

“Executive Directors of Education

4. (1) The Minister shall for each executive component designate an official in the public service as Executive Director of Education, who, in respect of the executive component for which he is designated, shall perform the functions assigned to him by this Act, the Minister or the Head of Education. 15

(2) **[A]** An Executive Director of Education shall perform his functions under the control of the Head of Education.

(3) A person who occupied the office of Director of Education of an executive component immediately prior to the **[fixed]** date of commencement of the Education Affairs Amendment Act (House of Assembly), 1991, shall from that date be deemed to have been designated as Executive Director of Education for that executive component in terms of this section.”. 20

Amendment of section 5 of Act 70 of 1988

3. Section 5 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (d) of subsection (1) of the following subparagraph:

“(i) to have pupils at schools medically, psychologically and dentally examined **[under the prescribed circumstances]**, and to have health inspections carried out in respect of schools and hostel buildings and the grounds thereof;”. 25

Amendment of section 12 of Act 70 of 1988

4. Section 12 of the principal Act is hereby amended—

(a) by the insertion after paragraph (c) of subsection (1) of the following paragraph: 30

“(cA) combined schools;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) (a) A provincial nursery school and pre-primary school or class; 35

(b) a primary school;

(c) a high school, secondary school, agricultural high school, commercial high school, technical high school and vocational school;

(d) a junior high school and a secondary school;

(e) a school for specialized education, special school or class, clinic school and training centre for mentally retarded children; 40

(f) an industrial school; or

(g) a reform school,

established, founded or classified in terms of a law repealed by this Act, or deemed to be established, founded or classified in terms of such a law, and which was controlled and managed by the Department immediately prior to the fixed date, shall with effect from that date be deemed to be— 45

(i) a pre-primary school;

(ii) a primary school;

(iii) a secondary school; 50

(iv) a combined school;

(v) a school for specialized education;

(vi) an industrial school; or

(vii) a reform school,

respectively, established under this section.”. 55

29(1) tot 'n staatsondersteunde skool vir buitengewone onderwys verklaar is of kragtens artikel 29(4) geag word aldus verklaar te wees, asook 'n openbare skool wat kragtens artikel 29(2A) tot 'n staatsondersteunde skool verklaar is;”.

5 Vervanging van artikel 4 van Wet 70 van 1988

2. Artikel 4 van die Hoofwet word hierby deur die volgende artikel vervang:

“Uitvoerende Direkteur van Onderwys

4. (1) Die Minister wys vir elke uitvoerende komponent 'n beampte in die staatsdiens aan as Uitvoerende Direkteur van Onderwys, wat ten opsigte van die uitvoerende komponent waarvoor hy aangewys is die werksaamhede verrig wat by hierdie Wet of deur die Minister of Onderwyshoof aan hom opgedra word.

(2) 'n Uitvoerende Direkteur van Onderwys verrig sy werksaamhede onder beheer van die Onderwyshoof.

(3) 'n Persoon wat onmiddellik voor die [vasgestelde] datum van inwerkingtreding van die Wysigingswet op Onderwysaangeleenthede (Volksraad), 1991, die amp van Direkteur van Onderwys van 'n uitvoerende komponent van die Departement beklee het, word vanaf daardie datum geag as Uitvoerende Direkteur van Onderwys vir daardie uitvoerende komponent ingevolge hierdie artikel aangewys te wees.”.

Wysiging van artikel 5 van Wet 70 van 1988

3. Artikel 5 van die Hoofwet word hierby gewysig deur subparagraaf (i) van paragraaf (d) van subartikel (1) deur die volgende subparagraaf te vervang:

25 “(i) om [onder die voorgeskrewe omstandighede] leerlinge by openbare skole medies, sielkundig of tandheelkundig te laat ondersoek, en gesondheidsinspeksies van skool- en koshuisgeboue en die terreine daarvan te laat uitvoer;”.

Wysiging van artikel 12 van Wet 70 van 1988

30 4. Artikel 12 van die Hoofwet word hierby gewysig—

(a) deur die volgende paragraaf na paragraaf (c) van subartikel (1) in te voeg:

“(cA) gekombineerde skole;”;

35 (b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) (a) 'n Provinsiale kleuterskool en preprimêre skool of klas;

(b) 'n laer skool en primêre skool;

(c) 'n hoër skool, sekondêre skool, hoër landbouskool, hoër handel-skool, tegniese hoër skool en beroepskool;

(d) 'n junior hoër skool en middelbare skool;

40 (e) 'n skool vir buitengewone onderwys, spesiale skool of klas, kliniekskool en opleidingsentrum vir geestelik vertraagde kinders;

(f) 'n nywerheidsskool; of

(g) 'n verbeteringskool,

45 ingestel, gestig of geklassifiseer ingevolge 'n wet wat by hierdie Wet herroep is, of geag ingevolge so 'n wet ingestel, gestig of geklassifiseer te wees, en wat onmiddellik voor die vasgestelde datum deur die Departement beheer en bestuur is, word vanaf daardie datum geag onderskeidelik—

(i) 'n preprimêre skool;

50 (ii) 'n primêre skool;

(iii) 'n sekondêre skool;

(iv) 'n gekombineerde skool;

(v) 'n skool vir buitengewone onderwys;

(vi) 'n nywerheidsskool; of

55 (vii) 'n verbeteringskool,

te wees wat kragtens hierdie artikel ingestel is.”.

Substitution of section 20 of Act 70 of 1988

5. The following section is hereby substituted for section 20 of the principal Act:

“Continuation of certain councils

- 20. (1) (a)** A regional council;
- (b) a regional committee and school board;
- (c) a management council, control board, special committee, school committee, council for a training centre and advisory council;
- (d) a board of management; or
- (e) a hostel committee,
- established, constituted or founded in terms of a law repealed by this Act and which existed immediately prior to the fixed date, shall from that date be deemed to be—
- (i) a regional council;
- (ii) a school board;
- (iii) a management council;
- (iv) a board of management; or
- (v) a hostel council,
- respectively, established and constituted under this Act, but the members of the council, committee or board concerned referred to in paragraphs (a) to (e), shall after the said date stay on as members of the council or board referred to in paragraphs (i) to (v), respectively, until their membership of such council, committee or board shall lapse or until their membership is terminated by the Minister.
- (2) All assets and liabilities of a council, committee or board referred to in paragraphs (a) to (e) of subsection (1) shall, as from the fixed date, vest in the corresponding council or board referred to in paragraphs (i) to (v) of that subsection.”

Amendment of section 29 of Act 70 of 1988

6. Section 29 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) In order to ensure the provision or the continued provision of specialized education at an educational institution other than a public school, the Minister may, by notice in the *Gazette*, declare such an institution to be a state-aided school for specialized education with effect from a date mentioned in the notice.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) No educational institution shall be declared to be a state-aided school under subsection (1), except with the concurrence of the owner of that institution and the Minister of the Budget **[and Works]**.”;
- (c) by the insertion after subsection (2) of the following subsection:
- “(2A) The Minister may, after a management council of a public school (excluding a pre-primary school, a school for specialized education, an industrial school and a reform school) has, on such conditions as the Minister may determine, conducted an opinion poll among the parents of the pupils of that public school, with due consideration of the factors determined by the Minister, by notice in the *Gazette* declare the public school concerned to be a state-aided school with effect from a date mentioned in the notice.”; and
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) An institution or part of an institution declared or deemed to have been declared to be a subsidized school or a state-aided training centre under any law repealed by this Act, and which existed immediately prior to the fixed date, shall with effect from that date be deemed to be declared a state-aided school for specialized education under **[this section]** subsection (1).”

Vervanging van artikel 20 van Wet 70 van 1988

5. Artikel 20 van die Hoofwet word hierby deur die volgende artikel vervang:

“Voortbestaan van sekere rade

- 5 **20. (1) (a)** 'n Streekraad;
 (b) 'n streekkomitee en skoolraad;
 (c) 'n bestuursraad, beheerraad, spesiale komitee, skoolkomitee,
 raad van 'n opleidingsentrum en adviesraad;
 (d) 'n raad van bestuur; of
 (e) 'n koshuiskomitee,
 10 ingestel, saamgestel of gestig ingevolge 'n wet wat by hierdie Wet
 herroep is en wat onmiddellik voor die vasgestelde datum bestaan het,
 word vanaf daardie datum geag onderskeidelik—
 (i) 'n streekraad;
 (ii) 'n skoolraad;
 15 (iii) 'n bestuursraad;
 (iv) 'n raad van bestuur; of
 (v) 'n koshuisraad,
 te wees wat kragtens hierdie Wet ingestel is, maar die lede van die
 betrokke raad of komitee in paragrawe (a) tot (e) bedoel, bly na
 20 genoemde datum aan as lede van die onderskeie rade in paragrawe
 (i) tot (v) bedoel, totdat hulle lidmaatskap van daardie raad of komitee
 sou verstryk of totdat die Minister hulle lidmaatskap beëindig.
 (2) Vanaf die vasgestelde datum berus alle bates en laste van 'n raad
 of komitee bedoel in paragrawe (a) tot (e) van subartikel (1) by die
 25 ooreenstemmende raad bedoel in paragrawe (i) tot (v) van daardie
 subartikel.”.

Wysiging van artikel 29 van Wet 70 van 1988

6. Artikel 29 van die Hoofwet word hierby gewysig—
 30 (a) deur subartikel (1) deur die volgende subartikel te vervang:
 “(1) Ten einde die verskaffing of voortgesette verskaffing van
 buitengewone onderwys by 'n ander onderwysinrigting as 'n openbare
 skool te verseker, kan die Minister by kennisgewing in die *Staatskoerant*
 so 'n inrigting tot 'n staatsondersteunde skool vir buitengewone
 onderwys verklaar met ingang van 'n datum in die kennisgewing
 35 vermeld.”;
 (b) deur subartikel (2) deur die volgende subartikel te vervang:
 “(2) Geen onderwysinrigting word kragtens subartikel (1) tot 'n
 staatsondersteunde skool vir buitengewone onderwys verklaar nie,
 behalwe met die instemming van die eienaar van daardie inrigting en
 40 die Minister van Begroting **[en Werke]**.”;
 (c) deur die volgende subartikel na subartikel (2) in te voeg:
 “(2A) Die Minister kan, nadat 'n bestuursraad van 'n openbare
 skool (uitgesonderd 'n preprimêre skool, 'n skool vir buitengewone
 onderwys, 'n nywerheidsskool en 'n verbeteringskool), op die voor-
 waardes wat hy bepaal, 'n meningspeiling onder die ouers van die
 leerlinge van daardie openbare skool gehou het, met inagneming van
 die faktore deur die Minister bepaal, by kennisgewing in die *Staatskoerant*
 die betrokke openbare skool tot 'n staatsondersteunde skool
 verklaar met ingang van 'n datum in die kennisgewing vermeld.”; en
 45 (d) deur subartikel (4) deur die volgende subartikel te vervang:
 “(4) 'n Inrigting of deel van 'n inrigting wat kragtens 'n wet wat by
 hierdie Wet herroep is, tot 'n ondersteunde skool of 'n staatsonder-
 steunde opleidingsentrum verklaar is of geag word verklaar te gewees
 het en wat onmiddellik voor die vasgestelde datum bestaan het, word
 vanaf daardie datum geag tot 'n staatsondersteunde skool vir buiten-
 gewone onderwys kragtens **[hierdie artikel]** subartikel (1) verklaar te
 50 wees.”.

Insertion of section 31A in Act 70 of 1988

7. The following section is hereby inserted in the principal Act after section 31:

“Consequences of declaration of public school as state-aided school

- 31A.** (1) As from the date on which a public school is declared to be a state-aided school under section 29(2A)—
- (a) the ownership and control of movable and immovable property and all rights which immediately prior to that date vested in the State or the management council concerned and which relates to the school concerned, shall devolve upon the state-aided school concerned on such terms and conditions as the Minister with the concurrence of the Minister of the Budget may determine: Provided that the ownership of such property shall without payment of compensation by the State revert to the State if the property in the opinion of the Minister is not being utilized in the interest of education;
 - (b) the liabilities and obligations which immediately prior to that date vested in the State or the management council, shall devolve upon the state-aided school concerned;
 - (c) the administrative records and other documents relating to the public school concerned and which the Minister may determine shall be transferred to such state-aided school; and
 - (d) the management, control and executive power of the state-aided school concerned shall vest in its governing body constituted in accordance with the provisions of this Act.
- (2) Immovable property devolving upon the state-aided school or reverting to the State in terms of subsection (1)(a), shall be transferred to the state-aided school or the State, as the case may be, without payment of transfer duty, stamp duty or other moneys or costs, but subject to any term or condition contemplated in subsection (1)(a) and any existing right, encumbrance, duty or trust on or over that property.
- (3) The officer in charge of a deeds office or other office where the immovable property referred to in subsection (2) is registered, shall, on submission to him of the title deed concerned, make such endorsements on that title deed and such entries in his register as may be required to effect the transfer concerned.
- (4) The declaration of a public school as a state-aided school, shall not affect anything legally done by the State or the management council prior to the declaration.”.

Substitution of section 41 of Act 70 of 1988

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

“Age requirements in respect of specialized education

- 41.** Except with the approval of the Head of Education—
- (a) a child shall not be admitted to a school for specialized education or state-aided school for specialized education before he has reached the age of six years;
 - (b) a person shall not be admitted to a school for specialized education or state-aided school for specialized education after he has reached the age of 19 years; and
 - (c) a person shall not attend a school for specialized education or state-aided school for specialized education after the end of the year in which he has reached the age of 21 years.”.

Invoeging van artikel 31A in Wet 70 van 1988

7. Die volgende artikel word hierby in die Hoofwet na artikel 31 ingevoeg:

“Gevolge van verklaring van openbare skool tot staatsondersteunde skool

- 5 **31A.** (1) Vanaf die datum waarop 'n openbare skool kragtens
artikel 29(2A) tot 'n staatsondersteunde skool verklaar word—
- 10 (a) gaan die eiendomsreg en beheer van roerende en onroerende
goed en alle regte wat onmiddellik voor daardie datum by die
Staat of die betrokke bestuursraad berus het en wat op die
betrokke skool betrekking het, oor op die betrokke staats-
ondersteunde skool op die bedinge en voorwaardes wat die
Minister met die instemming van die Minister van Begroting
bepaal: Met dien verstande dat die eiendomsreg van sodanige
goed aan die Staat terugval sonder dat die Staat vergoeding
daarvoor betaal indien die goed na die oordeel van die
Minister nie in die belang van onderwys aangewend word nie;
- 15 (b) gaan die laste en verpligtinge wat onmiddellik voor daardie
datum by die Staat of die bestuursraad berus het, oor op die
betrokke staatsondersteunde skool;
- 20 (c) word die administratiewe aantekeninge en ander stukke wat
op die betrokke openbare skool betrekking het en wat die
Minister bepaal aan daardie staatsondersteunde skool oorge-
dra; en
- 25 (d) berus die bestuur, beheer en uitvoerende mag van die be-
trokke staatsondersteunde skool by sy bestuursliggaam wat
ooreenkomstig die bepalinge van hierdie Wet saamgestel is.
- (2) Onroerende goed wat ingevolge subartikel (1)(a) op die
staatsondersteunde skool oorgaan of aan die Staat terugval, word
aan die staatsondersteunde skool of die Staat, na gelang van die
geval, oorgedra sonder betaling van hereregte, seëlregte of enige
ander gelde of koste, maar onderworpe aan enige beding of voor-
waarde in subartikel (1)(a) bedoel en enige bestaande reg, beswa-
ring, verpligting of trust op of oor daardie goed.
- 30 (3) Die beampte in beheer van 'n aktekantoor of ander kantoor
waarin die onroerende goed bedoel in subartikel (2) geregistreer is,
moet, by voorlegging aan hom van die betrokke titelbewys, die
aantekeninge op daardie titelbewys en die inskrywings in sy registers
aanbring wat nodig is om die betrokke oordrag te bewerkstellig.
- 35 (4) Die verklaring van 'n openbare skool tot 'n staatsondersteunde
skool raak nie enigiets wat wettig deur die Staat of die bestuursraad
voor die verklaring gedoen is nie.”.
- 40

Vervanging van artikel 41 van Wet 70 van 1988

8. Artikel 41 van die Hoofwet word hierby deur die volgende artikel vervang:

“Ouderdomsvereistes ten opsigte van buitengewone onderwys

- 45 **41.** Behalwe met die goedkeuring van die Onderwyshoof—
- (a) word 'n kind nie tot 'n skool vir buitengewone onderwys of
staatsondersteunde skool vir buitengewone onderwys toegelaat
nie voordat hy die leeftyd van ses jaar bereik het;
- 50 (b) word 'n persoon nie tot 'n skool vir buitengewone onderwys of
staatsondersteunde skool vir buitengewone onderwys toegelaat
nie nadat hy die leeftyd van 19 jaar bereik het; en
- (c) mag 'n persoon nie 'n skool vir buitengewone onderwys of
staatsondersteunde skool vir buitengewone onderwys bywoon nie
na die einde van die jaar waarin hy die leeftyd van 21 jaar bereik
het.”.
- 55

Amendment of section 42 of Act 70 of 1988

9. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of section 49, the Head of Education may, at the request of the parent of a child, approve that the child be admitted to a school for specialized education or a state-aided school for specialized education.”. 5

Amendment of section 43 of Act 70 of 1988

10. Section 43 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The Head of Education may cause a child who is subject to compulsory school attendance but is not attending a school for specialized education, state-aided school for specialized education or private school for specialized education, and whom he suspects to be a handicapped child, to be examined in order to determine whether he is a handicapped child.”. 15

Amendment of section 45 of Act 70 of 1988

11. Section 45 of the principal Act is hereby amended—

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

“the Head of Education may after consultation with the parent designate a school for specialized education or state-aided school for specialized education to which the child shall be sent.”; and 20

(b) by the substitution for subsection (2) of the following subsection:

“(2) If the Head of Education has designated a school for specialized education or state-aided school for specialized education under subsection (1) and the parent concerned fails to send the child to that school within the period determined by the Head of Education, the Head of Education may cause the child to be taken to the school concerned.”. 25

Amendment of section 46 of Act 70 of 1988

12. Section 46 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) If the Head of Education finds that a child referred to him under subsection (1) is a handicapped child, the Head of Education may approve that the child be admitted to a school for specialized education or state-aided school for specialized education for the periods during which specialized education is provided thereat.”. 35

Substitution of section 47 of Act 70 of 1988

13. The following section is hereby substituted for section 47 of the principal Act:

“**Transfer of handicapped children**” 40

47. The Head of Education may, after consultation with the parent of a child attending a school for specialized education or state-aided school for specialized education, transfer that child to another school for specialized education or state-aided school for specialized education.”. 45

Amendment of section 48 of Act 70 of 1988

14. Section 48 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a), of the following words:

“The Head of Education may exempt a child from the attendance of a

Wysiging van artikel 42 van Wet 70 van 1988

9. Artikel 42 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 5 “(1) Behoudens die bepalings van artikel 49 kan die Onderwyshoof op versoek van die ouer van ’n kind goedkeur dat die kind tot ’n skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys toegelaat word.”.

Wysiging van artikel 43 van Wet 70 van 1988

10. Artikel 43 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 15 “(1) Die Onderwyshoof kan ’n kind wat aan skoolplig onderworpe is maar nie ’n skool vir buitengewone onderwys, staatsondersteunde skool vir buitengewone onderwys of private skool vir buitengewone onderwys by- woon nie en wat na hy vermoed ’n gestremde kind is, laat ondersoek ten einde vas te stel of hy ’n gestremde kind is.”.

Wysiging van artikel 45 van Wet 70 van 1988

11. Artikel 45 van die Hoofwet word hierby gewysig—

- 20 (a) deur die woorde wat op paragraaf (b) van subartikel (1) volg deur die volgende woorde te vervang:

 “kan die Onderwyshoof na oorleg met die ouer ’n skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys aanwys waarheen die kind gestuur moet word.”;

- 25 (b) deur subartikel (2) deur die volgende subartikel te vervang:

 “(2) Indien die Onderwyshoof ’n skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys kragtens sub- artikel (1) aangewys het en die betrokke ouer versuim om die kind na daardie skool te stuur binne die tydperk wat die Onderwyshoof bepaal, kan die Onderwyshoof die kind na die betrokke skool laat neem.”.

Wysiging van artikel 46 van Wet 70 van 1988

12. Artikel 46 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- 35 “(2) Indien die Onderwyshoof bevind dat ’n kind wat kragtens subartikel (1) na hom verwys is ’n gestremde kind is, kan die Onderwyshoof goedkeur dat die kind in ’n skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys opgeneem word vir die tydperke waarin buitengewone onderwys aldaar verskaf word.”.

Vervanging van artikel 47 van Wet 70 van 1988

13. Artikel 47 van die Hoofwet word hierby deur die volgende artikel vervang:

- 40 **“Oorplasing van gestremde kinders**

45 47. Die Onderwyshoof kan, na oorleg met die ouer van ’n kind wat ’n skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys bywoon, daardie kind na ’n ander skool vir buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys oorplaas.”.

Wysiging van artikel 48 van Wet 70 van 1988

14. Artikel 48 van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

 “Die Onderwyshoof kan ’n kind van die bywoning van ’n skool vir

school for specialized education or state-aided school for specialized education if he is of the opinion that the child—”.

Amendment of section 96 of Act 70 of 1988

15. Section 96 of the principal Act is hereby amended by the substitution for the first proviso to paragraph (e) of subsection (1), of the following proviso:

“Provided that such permission shall be granted only if the Head of Education is of the opinion that the duties to be performed by the person concerned as a member of the institution, council or body concerned, will not interfere with the performance of his duties or work at the departmental institution or state-aided school:”.

Insertion of section 96A in Act 70 of 1988

16. The following section is hereby inserted in the principal Act after section 96:

“Conditions of service of persons appointed at state-aided schools under repealed laws

96A. (1) A person appointed in terms of any law repealed by this Act and who immediately prior to the fixed date was employed at a state-aided school, shall from that date be deemed to have been appointed in terms of this Act to a subsidized post at a state-aided school.

(2) (a) The conditions of service subject to which a person referred to in subsection (1) was serving immediately prior to the fixed date, shall not be affected to his detriment, and no such condition of service shall after that date be construed or applied in a way that is less favourable to the person concerned than the way in which it was construed or applied immediately prior to that date.

(b) Any disciplinary proceedings instituted or to be instituted against such person in terms of a law repealed by this Act in respect of misconduct which he allegedly committed prior to the fixed date, shall be disposed of or instituted, as the case may be, as if the repeal had not taken place.”.

Amendment of section 97 of Act 70 of 1988

17. Section 97 of the principal Act is hereby amended—

(a) by the deletion of the word “and” at the end of subparagraph (i) of paragraph (a) of subsection (2);

(b) by the addition to paragraph (a) of subsection (2) of the following subparagraph:

“(iii) the provisions of sections 71, 72 and 73 shall *mutatis mutandis* apply to any person referred to in subsection (1).”; and

(c) by the insertion after paragraph (a) of subsection (2) of the following paragraph:

“(aA) For the purposes of the sections referred to in paragraph

(a)(iii)—

(i) a reference in the said sections to a departmental institution or the Department shall be construed as a reference to a state-aided school;

(ii) a reference in the said sections to the Minister shall be construed as a reference to the governing body concerned; and

(iii) a reference in the said sections to the Head of Education shall be construed as a reference to the chairman of the governing body concerned.”.

Insertion of section 97A in Act 70 of 1988

18. The following section is hereby inserted in the principal Act after section 97:

buitengewone onderwys of staatsondersteunde skool vir buitengewone onderwys vrystel indien hy van oordeel is dat die kind—”.

Wysiging van artikel 96 van Wet 70 van 1988

- 15 15. Artikel 96 van die Hoofwet word hierby gewysig deur die eerste voorbehoudsbepaling by paragraaf (e) van subartikel (1) deur die volgende voorbehoudsbepaling te vervang:

10 “Met dien verstande dat sodanige toestemming slegs verleen word indien die Onderwyshoof van oordeel is dat die pligte wat deur die betrokke persoon as lid van die betrokke instelling, raad of liggaam verrig moet word, nie met die verrigting van sy pligte of werk by die departementele inrigting of staatsondersteunde skool sal inmeng nie.”.

Invoeging van artikel 96A in Wet 70 van 1988

16. Die volgende artikel word hierby in die Hoofwet na artikel 96 ingevoeg:

15 “Diensvoorwaardes van persone ingevolge herroep wette by staatsondersteunde skole aangestel

20 96A. (1) ’n Persoon aangestel ingevolge ’n wet wat by hierdie Wet herroep is en wat onmiddellik voor die vasgestelde datum in diens was by ’n staatsondersteunde skool, word vanaf daardie datum geag ingevolge hierdie Wet in ’n gesubsidieerde pos by ’n staatsondersteunde skool aangestel te wees.

25 (2) (a) Die diensvoorwaardes waaronder ’n persoon bedoel in subartikel (1) onmiddellik voor die vasgestelde datum diens gedoen het, word nie tot sy nadeel geraak nie, en geen sodanige diensvoorwaarde word na daardie datum uitgelê of toegepas op ’n wyse wat minder gunstig is vir die betrokke persoon as die wyse waarop dit onmiddellik voor daardie datum uitgelê of toegepas is nie.

30 (b) Enige tugstappe ingestel of wat ingestel word teen so ’n persoon ingevolge ’n wet wat by hierdie Wet herroep is, ten opsigte van wangedrag wat hy na bewering voor die vasgestelde datum gepleeg het, word afgehandel of ingestel, na gelang van die geval, asof die herroeping nie plaasgevind het nie.”.

Wysiging van artikel 97 van Wet 70 van 1988

17. Artikel 97 van die Hoofwet word hierby gewysig—

35 (a) deur die woord “en” aan die einde van subparagraaf (i) van paragraaf (a) van subartikel (2) te skrap;

(b) deur by paragraaf (a) van subartikel (2) die volgende subparagraaf te voeg:

40 “(iii) is die bepalings van artikels 71, 72 en 73 *mutatis mutandis* van toepassing op ’n persoon in subartikel (1) bedoel.”; en

(c) deur na paragraaf (a) van subartikel (2) die volgende paragraaf in te voeg:

“(aA) By die toepassing van die artikels in paragraaf (a)(iii) bedoel—

45 (i) word ’n verwysing in genoemde artikels na ’n departementele inrigting of die Departement uitgelê as ’n verwysing na ’n staatsondersteunde skool;

(ii) word ’n verwysing in genoemde artikels na die Minister uitgelê as ’n verwysing na die betrokke bestuursliggaam; en

50 (iii) word ’n verwysing in genoemde artikels na die Onderwyshoof uitgelê as ’n verwysing na die voorsitter van die betrokke bestuursliggaam.”.

Invoeging van artikel 97A in Wet 70 van 1988

18. Die volgende artikel word hierby in die Hoofwet na artikel 97 ingevoeg:

“Transfer of persons employed at public schools to state-aided schools

97A. (1) A person who immediately prior to the date contemplated in section 29(2A) was employed at the public school concerned, shall with his consent be transferred to and appointed in the service of the state-aided school concerned with effect from that date.

(2) A person transferred and appointed under subsection (1), shall be appointed on the conditions of service applicable to persons in the service of state-aided schools: Provided that—

- (a) his salary shall not without his consent be reduced as a result of such transfer and appointment;
- (b) for the purposes of the said conditions of service, his service in the Department shall be deemed to be service at the state-aided school;
- (c) sick or vacation leave credit obtained by him as a result of his continuous service in the Department, shall be deemed, subject to the conditions determined by the Minister, to have been obtained by him as a result of his service at the state-aided school; and
- (d) any disciplinary proceedings instituted or to be instituted against him in respect of misconduct or unseemly behaviour which he allegedly committed prior to the said date, shall be disposed of or instituted, as the case may be, as if the public school had not been declared to be a state-aided school.”

Substitution of section 107 of Act 70 of 1988

19. The following section is hereby substituted for section 107 of the principal Act:

“Delegation of powers

107. (1) The Minister may, subject to such conditions as he may determine, delegate any of his powers under this Act, except the power to make regulations, and assign any of his duties in terms of this Act, to the Head of Education or a person employed by the Department whether under this Act or any other law.

(2) The Head of Education may, subject to such conditions as he may determine, delegate any of his powers under this Act or delegated to him in terms of subsection (1), or assign any of his duties in terms of this Act or assigned to him in terms of subsection (1), to a person employed by the Department whether under this Act or any other law.

(3) **[A]** An Executive Director of Education may delegate any of the powers delegated to him in terms of subsection (1) or (2), and assign any of the duties assigned to him in terms of subsection (1) or (2), to a person employed by the Department whether under this Act or any other law.

(4) A delegation under subsection (1), (2) or (3) shall not prevent the Minister, Head of Education or Executive Director of Education, as the case may be, from exercising such power or performing such duty, as the case may be, himself.”

Substitution of section 111 of Act 70 of 1988

20. The following section is hereby substituted for section 111 of the principal Act:

“Proclamations, notices and regulations in force on fixed date

111. All regulations **[made and all]**, proclamations, notices and

“Oorplasing van persone in diens by openbare skole na staatsondersteunde skole

97A. (1) 'n Persoon wat onmiddellik voor die datum in artikel 29(2A) beoog by die betrokke openbare skool in diens was, word met sy instemming vanaf daardie datum oorgeplaas na en aangestel in die diens van die betrokke staatsondersteunde skool.

(2) 'n Persoon wat ingevolge subartikel (1) oorgeplaas en aangestel word, word aangestel op die diensvoorwaardes wat op persone in die diens van staatsondersteunde skole van toepassing is: Met dien verstande dat—

- (a) sy salaris nie sonder sy toestemming, as gevolg van sodanige oorplasing en aanstelling verminder word nie;
- (b) by die toepassing van genoemde diensvoorwaardes, sy diens by die Departement geag word diens by die staatsondersteunde skool te wees;
- (c) siekte- en vakansieverlofkrediet deur hom verkry as gevolg van sy ononderbroke diens by die Departement, onderworpe aan die voorwaardes wat die Minister bepaal, geag word deur hom verkry te wees as gevolg van sy diens by die staatsondersteunde skool; en
- (d) enige tugstappe ingestel of wat ingestel word teen hom ten opsigte van wangedrag of onbehoorlike gedrag wat hy na bewering voor genoemde datum gepleeg het, afgehandel of ingestel word, na gelang van die geval, asof die openbare skool nie tot 'n staatsondersteunde skool verklaar is nie.”.

Vervanging van artikel 107 van Wet 70 van 1988

19. Artikel 107 van die Hoofwet word hierby deur die volgende artikel vervang:

“Delegering van bevoegdhede

107. (1) Die Minister kan, behoudens die voorwaardes wat hy bepaal, enige van sy bevoegdhede kragtens hierdie Wet, uitgesonderd die bevoegdheid om regulasies uit te vaardig, delegeer, en enige van sy pligte ingevolge hierdie Wet, opdra, aan die Onderwyshoof of 'n persoon in diens van die Departement hetsy kragtens hierdie Wet of 'n ander wet.

(2) Die Onderwyshoof kan, behoudens die voorwaardes wat hy bepaal, enige van sy bevoegdhede kragtens hierdie Wet of kragtens subartikel (1) aan hom gedelegeer, delegeer, en enige van sy pligte ingevolge hierdie Wet of aan hom opgedra ingevolge subartikel (1), opdra, aan 'n persoon in diens van die Departement hetsy kragtens hierdie Wet of 'n ander wet.

(3) 'n Uitvoerende Direkteur van Onderwys kan enige van die bevoegdhede kragtens subartikel (1) of (2) aan hom gedelegeer, delegeer, en enige pligte ingevolge subartikel (1) of (2) aan hom opgedra, opdra, aan 'n persoon in diens van die Departement hetsy kragtens hierdie Wet of 'n ander wet.

(4) 'n Delegering kragtens subartikel (1), (2) of (3) belet nie die Minister, Onderwyshoof of Uitvoerende Direkteur van Onderwys, na gelang van die geval, om die betrokke bevoegdheid of plig, na gelang van die geval, self uit te oefen of te verrig nie.”.

Vervanging van artikel 111 van Wet 70 van 1988

20. Artikel 111 van die Hoofwet word hierby deur die volgende artikel vervang:

“Proklamasies, kennisgewings en regulasies van krag op vasgestelde datum

111. Alle regulasies **[uitgevaardig en alle]**, proklamasies, kennis-

instructions made, promulgated or issued under any law repealed by this Act, and which are in force immediately prior to the fixed date, shall, notwithstanding such repeal, remain in force, except in so far as they are incompatible or in conflict with this Act, until they are repealed, withdrawn or amended by the Minister by regulation, notice or instruction, as the case may be, made or issued under this Act.”. 5

Amendment of section 112 of Act 70 of 1988

21. Section 112 of the principal Act is hereby amended by the insertion after paragraph (f) of subsection (1) of the following paragraph:

- “(fA) (i) the compulsory medical, psychological or dental examinations of pupils and persons employed at schools and hostels; 10
(ii) the health inspections of school and hostel buildings and grounds;
(iii) the right of admission to school and hostel buildings and grounds for the purposes of examinations and inspections referred to in subparagraphs (i) and (ii); and 15
(iv) the exclusion of any pupil or any person employed at a school or hostel from any school or hostel on medical grounds or on the grounds of his failure or refusal to subject himself to a compulsory medical examination.”.

Substitution of expression in Act 70 of 1988

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22. The principal Act is hereby amended by the substitution for the expression “Minister of the Budget and Works”, wherever it occurs, of the expression “Minister of the Budget”.

Short title and commencement

23. (1) This Act shall be called the Education Affairs Amendment Act (House of Assembly), 1991. 25

(2) The provisions of sections 6 and 17 shall be deemed to have come into operation on 1 April 1990.

gewings en voorskrifte uitgevaardig of uitgereik kragtens enige wet wat by hierdie Wet herroep word, en wat van krag is onmiddellik voor die vasgestelde datum, bly ondanks sodanige herroeping van krag, uitgesonderd vir sover hulle onbestaanbaar of in stryd met hierdie Wet is, totdat hulle deur die Minister by regulasie, kennisgewing of voorskrif, na gelang van die geval, uitgevaardig of uitgereik kragtens hierdie Wet herroep, ingetrek of gewysig word.”.

Wysiging van artikel 112 van Wet 70 van 1988

21. Artikel 112 van die Hoofwet word hierby gewysig deur na paragraaf (f) van subartikel (1) die volgende paragraaf in te voeg:

- “(fA) (i) die verpligte mediese, sielkundige of tandheelkundige ondersoeke van leerlinge en persone in diens by skole en koshuise;
- (ii) die gesondheidsinspeksies van skool- en koshuisgeboue en -terreine;
- (iii) die reg van toegang tot skool- en koshuisgeboue en -terreine vir die doeleindes van ondersoeke en inspeksies in subparagrafe (i) en (ii) bedoel; en
- (iv) die uitsluiting van enige leerling of ’n persoon in diens by ’n skool of koshuis uit enige skool of koshuis op mediese gronde of op grond van versuim of weiering om hom aan ’n verpligte mediese ondersoek te onderwerp.”.

Vervanging van uitdrukking in Wet 70 van 1988

22. Die Hoofwet word hierby gewysig deur die uitdrukking “Minister van Begroting en Werke”, waar dit ook al voorkom, deur die uitdrukking “Minister van Begroting” te vervang.

Kort titel en inwerkingtreding

23. (1) Hierdie Wet heet die Wysigingswet op Onderwysaangeleentheid (Volksraad), 1991.

(2) Die bepalings van artikels 6 en 17 word geag op 1 April 1990 in werking te getree het.