CHAPTER 5
INDEPENDENT SCHOOLS

45. Establishment of independent school.—Subject to this Act and any applicable provincial law, any person may, at his or her own cost, establish and maintain an independent school.

45A. Admission age to independent school.—(a) The admission age of a learner to an independent school to—

grade R is age four turning five by 30 June in the year of admission; (i)

grade 1 is age five turning six by 30 June in the year of admission. (ii)

(b) An independent school may admit a learner who—

is under the age contemplated in paragraph (a) if good cause is shown; and (i)

complies with the criteria contemplated in paragraph (c). (ii)

(c) The Minister may, by regulation, prescribe—

criteria2 for the admission to an independent school at an age lower than the admission age of an underage learner who complies with the criteria; (i)

age requirements for different grades at an independent school. (ii)

(d) For the purpose of paragraph (b) (i), good cause shown means that—

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 (i)

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

[S. 45A inserted by s. 8 of Act No. 50 of 2002 with effect from 1 January, 2004.]

Footnotes

2 It is acknowledged that criteria for admission of an underage learner are complex and take some considerable time to develop. The criteria must be reliable, effective and their proper implementation will require the training of evaluators. The criteria must be based on an educationally sound basis in order to ensure that—

(a) learners are admitted on an equitable basis;

(b) there is no unfair discrimination to learners;

(c) the admission is fair to the individual learner as well as other learners in the classroom;

(d) recognition is given to the diversity of language, culture and economic background;
notice is taken of the differences between urban and rural environments; and

the physical, psychological and mental development of the child are taken into account.

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(f) the physical, psychological and mental development of the child are taken into account.

46. Registration of independent school.—(1) No person may establish or maintain an independent school unless it is registered by the Head of Department.

(2) The Member of the Executive Council must, by notice in the Provincial Gazette, determine the grounds on which the registration of an independent school may be granted or withdrawn by the Head of Department.

(3) A Head of Department must register an independent school if he or she is satisfied that—

(a) the standards to be maintained by such school will not be inferior to the standards in comparable public schools;
(b) the admission policy of the school does not discriminate on the grounds of race; and
(c) the school complies with the grounds for registration contemplated in subsection (2).

(4) Any person who contravenes subsection (1) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

47. Withdrawal of registration of independent school.—(1) No withdrawal of the registration of an independent school is valid unless—

(a) the owner of such independent school has been furnished by the Head of Department with a notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
(b)
the owner of such independent school has been granted an opportunity to make written representations to the Head of Department as to why the registration of the independent school should not be withdrawn; and

(c) any such representations received have been duly considered.

(2) The owner of an independent school may appeal to the Member of the Executive Council against the withdrawal of the registration of such independent school.

48. Subsidies to registered independent schools.—(1) The Minister may, by notice in the Government Gazette, determine norms and minimum standards for the granting of subsidies to independent schools after consultation with the Council of Education Ministers and the Financial and Fiscal Commission and with the concurrence of the Minister of Finance.

(2) The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school.

(3) If a condition subject to which a subsidy was granted has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.

(4) The Head of Department may not terminate or reduce a subsidy under subsection (3) unless—

(a) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;

(b) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and

(c) any such representations received have been duly considered.

(5) The owner of an independent school may appeal to the Member of the Executive Council against the termination or reduction of a subsidy to such independent school.

49. Declaration of independent school as public school.—(1) The Member of the Executive Council may, with the concurrence of the Member of the Executive Council responsible for finance, enter into an agreement with the owner of an independent school in terms whereof such independent school is declared to be a public school.

(2) Notice of the change of status contemplated in subsection (1) must be published in the Provincial Gazette.

50. Duties of Member of Executive Council relating to independent schools.—(1) The Member of the Executive Council must, by notice in the Provincial Gazette, determine requirements for—

(a) the admission of learners of an independent school to examinations conducted by or under the supervision of the education department;

(b) the keeping of registers and other documents by an independent school;
(c) criteria of eligibility, conditions and manner of payment of any subsidy to an independent school; and

(d) any other matter relating to an independent school which must or may be prescribed in terms of this Act.

(2) Different requirements may be made under subsection (1) in respect of different independent schools.

(3) The Member of the Executive Council must allow the affected parties a reasonable period to comment on any requirement he or she intends to determine under subsection (1).

51. Registration of learner for education at home.—(1) A parent may apply to the Head of Department for the registration of a learner to receive education at the learner’s home.

(2) The Head of Department must register a learner as contemplated in subsection (1) if he or she is satisfied that—

(a) the registration is in the interests of the learner;

(b) the education likely to be received by the learner at home—

(i) will meet the minimum requirements of the curriculum at public schools; and

(ii) will be of a standard not inferior to the standard of education provided at public schools; and

(c) the parent will comply with any other reasonable conditions set by the Head of Department.

(3) The Head of Department may, subject to subsection (4), withdraw the registration referred to in subsection (1).

(4) The Head of Department may not withdraw the registration until he or she—

(a) has informed the parent of his or her intention so to act and the reasons therefor;

(b) has granted the parent an opportunity to make representations to him or her in relation to such action; and

(c) has duly considered any such representations received.

(5) A parent may appeal to the Member of the Executive Council against the withdrawal of a registration or a refusal to register a learner in terms of this Act.