

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—

(i)

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

(ii)

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

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

(i)

is under the age contemplated in [paragraph \(a\)](#) if good cause is shown; and

(ii)

complies with the criteria contemplated in paragraph (c).

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

(i)

criteria<sup>2</sup> for the admission to an *independent school* at an age lower than the admission age of an underage *learner* who complies with the criteria;

(ii)

age requirements for different *grades* at an *independent school*.

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

(i)

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

(ii)

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

[[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;

- (e) notice is taken of the differences between urban and rural environments; and
- (f) the physical, psychological and mental development of the child are taken into account.

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(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;	
(e)	notice is taken of the differences between urban and rural environments; and	
(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*.