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PART B

THE FREE PRIMARY EDUCATION ACT, 2010

(Act No. 1 of 2010)



I ASSENT

MSWATI III
King of Swaziland

22nd February, 2010

**AN ACT
ENTITLED**

AN ACT to provide for the implementation of the right to Free Primary Education at public schools, and for matters incidental thereto.

ENACTED by the King and Parliament of Swaziland.

ARRANGEMENT OF SECTIONS

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SCHEDULE

AN ACT ENTITLED

AN ACT to provide for the implementation of the right to free primary education at public schools and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Short title and date of commencement

1. This Act shall be cited as the Free Primary Education Act, 2010 and shall be deemed to have come into force on the 1st January, 2009.

Interpretation

2. In this Act, unless the context otherwise requires -

“Committee” means a School Committee established under section 13 of the Education Act, 1981;

“Chief” means the chief or his representative, or the authorized community leader;

“Constitution” means the Constitution of the Kingdom of Swaziland Act, 2005;

“exempt foreign pupil” means a pupil who is for the time being exempt under section 7;

“free education” means the education of a Swazi child at primary level at a public school without the parent of the child or the child having to pay tuition fees for that education;

“foreign pupil” at any time, means a person who is not then a domestic pupil;

“head teacher” means a head of a public primary school;

“Minister” means the Minister responsible for education;

“parent” in relation to any child, means any person who is acting in place of a parent or who has custody of the child and is liable to maintain the child;

"primary education" means formal education in which instruction is given from Grade 1 up to and including Grade 7;

"primary school" means a school or a department of a school which provides primary education;

"public school" means a school which is maintained with public funds to the extent of at least 51% of its needs;

"pupil" in relation to the primary school means a person enrolled and receiving instruction at the school;

"special education" means education or help from a special school or other like institution;

"Swazi child" means a child who is a citizen of Swaziland or who qualifies to be a citizen of Swaziland or whose education is wholly or mainly paid for by a citizen of Swaziland and is enrolled at a public primary school.

Right to free primary education

3. (1) Except as provided in this Act every Swazi child enrolled at a public primary school is entitled to free education at that public primary school beginning with grade 1 up to and including Grade 7.

(2) For the avoidance of doubt, a Swazi child enrolled at a public primary school shall not be dismissed or excluded from school on the ground only that the Government has not paid the fees due.

Enrolment of foreign pupils

4. (1) Subject to section 5(3), a foreign pupil shall be enrolled -

(a) at a public school with prior consent of the Committee; and

(b) in special education with the consent of the Committee administering the institution.

(2) Subject to this Act, once enrolled at a public primary school or in special education a foreign pupil has the same rights to remain enrolled and to instruction, at the school as a domestic pupil.

(3) A foreign pupil shall not be enrolled at a public school if the pupil's enrolment has the effect that a Swazi child or exempt pupil who is entitled to enrol there and has applied for enrolment is not able to be enrolled.

(4) Notwithstanding that Swazi children and exempt pupil may not be able to be enrolled, a foreign pupil may be enrolled at a public school, or in any subject, course, or programme at a public school, if the enrolment is in a vacant place -

(a) that the Committee established for foreign pupils; and

(b) whose continued availability is dependent on the fees payable by foreign pupils enrolled in it.

(5) As soon as is practicable after a foreign pupil is enrolled at a public school, the principal shall give the Committee written notice of -

(a) the pupil's name, age, and nationality; and

(b) the day on which the pupil began (or will begin) to receive instruction at the school.

Certain foreign pupils may enrol at public primary schools as of right

5. (1) The Minister may from time to time, by notice in the Gazette, declare foreign pupils of a specified kind or description to be entitled to enrol at public primary schools.

(2) The notice referred to in subsection (1), may be unconditional, or subject to conditions specified in it.

(3) Subject to -

(a) the conditions (if any) specified in the notice; and

(b) section 6,

a foreign pupil of a kind or description for the time being specified in the notice under subsection (1) has the same rights to enrolment and instruction at public schools as a domestic pupil.

Fees for foreign pupils

6. (1) The fees for a foreign pupil at a public primary school shall be determined by the Minister after consultation with the following -

(a) the head teacher and the Committee of that public primary school; and

(b) Cabinet.

(2) In determining the fees for a foreign pupil, the Minister shall have regard to the views of Committee on an appropriate fee structure.

(3) Where a foreign pupil has received instruction in a subject, course, or programme at a public school without paying the full amount required by subsection (1) in respect of the subject, course, or programme, the Minister may, in any Court of competent jurisdiction, recover the underpayment from the pupil (or, as the case requires, a parent of the pupil), as a debt due to the Minister.

Minister may exempt certain foreign pupils from payment of fees

7. The Minister may, by notice in the Gazette, exempt foreign pupils of a particular kind or description from the payment of all or a specified proportion, or amount of the amount required by section 6 to be paid and, that section shall have effect accordingly.

Responsibilities of the Government

8. (1) Subject to subsection (2), for the purposes of implementing the right to free primary education, the government shall pay to each public primary school the monies specified in the Schedule.

(2) The monies referred to in subsection (1), shall be paid by the Government to the school account duly notified by the principal, at the beginning of term one and term two after the principal has submitted to the Minister the number of pupils enrolled at the public primary school for that term and entitled to free primary education.

(3) Where a pupil fails a grade at least two times consecutively, the Government shall not be responsible for the fees for that pupil to repeat the grade again except in exceptional circumstances to be determined by the Committee.

(4) For the removal of doubt, any support staff employed by a public primary school are not public officers as defined under the Constitution.

(5) For the purposes of this Act, "support staff" includes a secretary, a driver, a cook, a night watchman, a grounds man or any other non-teaching staff.

(6) The Minister may with the approval of Cabinet, amend the Schedule.

Duties of a parent and pupil

9. (1) Every parent shall inform the head teacher in writing of any medical or other condition peculiar to his child.

(a) on admission of the child at a public primary school; or

(b) as soon as the parent becomes aware of such medical or other condition.

(2) It is the duty of the parent of every child to whom this Act applies to cause the child to receive education by regular attendance at a public primary school.

(3) It is the duty of the parent of every child to whom this Act applies to ensure that the child observes the standards approved by the Committee or the head teacher as the case may be, with respect to attire.

(4) It is the duty of the parent of every child to whom this Act applies to ensure that the child has the means where necessary to get to and from a public primary school.

(5) Every pupil enrolled in a public primary school has the responsibility to -

(a) observe the code of conduct and other rules and policies of the school;

(b) attend classes regularly and punctually;

(c) participate in the educational programmes in which the pupil is enrolled;

- (d) be diligent in pursuing the prescribed curriculum; and
- (e) observe standards approved by the Committee or the head teacher as the case may be, with respect to -
 - (i) cleanliness and tidiness of the pupil;
 - (ii) attire;
 - (iii) courtesy; and
 - (iv) respect of the rights of other persons.

(6) Every pupil in a public primary school shall take good care of any school property placed at the pupil's disposal and where such property is to be returned, the property shall be returned in good condition on a day and time determined by the head teacher.

(7) If a pupil fails to comply with subsection (6), the Committee may claim the value of the property from the parents of the pupil.

(8) If the property of a public primary school is destroyed, damaged, lost, or converted by the intentional or negligent act of a pupil, the pupil and the pupil's parents are liable in respect of the act of the pupil.

(9) If the property of a public primary school is destroyed, damaged, lost, or converted by the intentional or negligent act of two or more pupils acting together, the pupils and their parents are jointly and severally liable in respect of the act of the pupils.

Offences

10. (1) A parent of a child to whom this Act applies, who neglects or refuses to cause the child to attend school, unless the child is excused under section 11, commits an offence and is liable on conviction to a fine not exceeding E1,000 or in default of which, to three months community services.

(2) Where a parent is convicted under subsection (1), the Chief shall, thereafter take over and ensure that the child in question attends school.

(3) A citizen of Swaziland who falsely misrepresents a foreign pupil to be a Swazi child commits an offence and is liable, on conviction to a fine not exceeding E5000 or to imprisonment for a period not exceeding six months or to both.

Valid excuses for non attendance

11. A pupil is excused from school attendance if -

- (a) the pupil is unable to attend because of illness, danger of infection, infirmity, sudden or serious illness of parent or other related cause;

- (b) the pupil is suffering from a physical or mental disability that in the opinion of a registered medical practitioner, make the pupil incapable of being educated by ordinary methods of instruction;
- (c) the pupil is granted permission by the head teacher to be temporarily absent for good and sufficient reasons;
- (d) the pupil has been suspended from the school and not given permission to enroll at another school;
- (e) for any other reason which in the opinion of the head teacher is a good and sufficient reason.

School fees top up

12. (1) A Committee of a public primary school intending to ask parents to top up school fees over and above the fees paid to the school by the Government shall submit a written request, with justification to the Minister for his approval before implementing such top up.

(2) The Committee shall only implement the top up referred to in subsection (1) after it receives the approval of the Minister, in writing.

Public Primary School Audit

13. (1) For the removal of doubt, public primary schools shall be audited in like manner as other government institutions by the office of the Auditor General.

(2) Where the Auditor General is unable to audit a public primary school in terms of subsection (1), he shall appoint a public or private auditor to conduct the audit on his behalf and the provisions of the Audit Act, 2005 shall apply during such audit.

Transitional provisions

14. (1) The Government shall progressively implement the right to free primary education at public primary schools beginning initially with grades one and two in the school year 2010 and subsequently grades three to seven so as to ensure the successful implementation of the right and to minimise disruptions to the roll-out process of the free education.

(2) The Government is indemnified from any liability resulting or arising from any failure to -

(a) commence to implement the right to free primary education at public primary schools during the school year 2009;

(b) to roll-out the free education for all Grades up to Grade 7 on commencement of this Act.

Regulations

15. The Minister may make regulations prescribing anything under this Act which is necessary or convenient to be prescribed for the better carrying out of the objects and purpose of this Act, or to give force and effect to its provisions.

SCHEDULE
(Under Section 8)

FEE STRUCTURE FOR FREE PRIMARY EDUCATION
(PER CHILD) (2009)

Expenditure elements	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Grade 6	Grade 7
School fees	80	80	80	80	80	80	80
School feeding	150	150	150	150	150	150	150
Wages: night watchman, cook, secretary etc	150	150	150	150	150	150	150
Services / utilities: Water, electricity, telephone	60	60	60	60	60	60	60
Maintenance	80	80	80	80	80	80	80
Bank charges	15	15	15	15	15	15	15
Examination fee	0	0	0	0	0	0	340
Home economics fees	0	0	0	0	30	70	70
Agriculture fee	0	0	0	0	30	40	40
Practical arts G3-G5	0	0	20	20	20	0	0

Sports fee	25	25	25	25	25	25	25
Total fees (at current prices-excludes building Fund)	E.560	E.560	E.580	E.580	E.640	E.670	E.1010