

**SAMOA**  
**EDUCATION ACT 2009**

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Arrangement of Provisions

**PART I**  
**PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act to bind State

**PART II**  
**ATTENDANCE AT SCHOOL**

**Division 1**  
**Enrolment and attendance requirements**

4. Enrolment
5. Exemption from enrolment
6. Attendance
7. Exemption from attendance without application
8. Application for exemption from attendance
9. Certificate of exemption
10. Withdrawal from school

**Division 2**  
**Monitoring and ensuring enrolment and attendance of compulsory school-aged children**

11. Schools to keep rolls
12. Schools to keep attendance registers
13. Principal's responsibility when a compulsory school-aged child is withdrawn from a school
14. Principal's responsibility when a compulsory school-aged child fails to attend school regularly
15. Attendance Officers
16. Attendance officers' powers and responsibilities
17. Removal of attendance officers
18. Additional responsibilities of Sui o le Nuu for enrolment and school attendance

**Division 3**  
**Children with special needs**

19. Establishing the suitability of education

**Division 4**  
**Employment of compulsory school-aged children**

- 20. Employment of compulsory school-aged child
- 21. Carers not to permit employment of compulsory school-aged child

**PART III**  
**STUDENT AND STAFF WELFARE IN SCHOOLS AND EARLY CHILDHOOD**  
**EDUCATION CENTRES**

- 22. Behaviour management
- 23. Discipline
- 24. Intoxication of teachers
- 25. Behaviour of members of the public
- 26. Exclusion of students with diseases or infestations

**PART IV**  
**REGISTRATION OF MISSION SCHOOLS AND PRIVATE SCHOOLS**

- 27. Requirement for registration
- 28. Approved organisation for mission schools and private schools
- 29. Cancelling approval
- 30. Application for registration
- 31. Criteria for registering a school
- 32. Probationary registration
- 33. Register of private schools and mission schools
- 34. Returns by proprietors of registered schools
- 35. Restriction or cancellation of registration by the Minister
- 36. Restriction or cancellation of registration by an approved organisation for mission schools and private schools

**PART V**  
**VILLAGE SCHOOLS**

- 37. Reservation of the right to establish a registered school
- 38. Establishment of village schools
- 39. Responsibility for management of a village school
- 40. Power to set and collect school fees
- 41. Payments to school committee members
- 42. Provision of staff for village schools
- 43. Responsibility for management of staff
- 44. Closure of village schools

**PART VI**  
**MINISTRY SCHOOLS**

45. Establishment of Ministry schools
46. Responsibility for management of a Ministry school
47. Capacity to set and collect fees
48. Provision of staff for Ministry schools
49. Responsibility for management of staff
50. Amalgamation and closure of Ministry schools

#### **PART VII**

### **GOOD ORDER AND MANAGEMENT OF MINISTRY AND VILLAGE SCHOOLS**

51. School calendar
52. Maximum and minimum number of students
53. Waiver of school fees
54. Temporary closure of school
55. School records and reports
56. School discipline policy
57. Suspension and expulsion

#### **PART VIII**

### **CURRICULUM AND CERTIFICATES OF STUDY**

58. Minimum curriculum
59. Delivery of curriculum in schools and early childhood education centres
60. Chief Executive Officer's powers and functions

#### **PART IX**

### **STUDENTS WITH SPECIAL NEEDS**

61. Chief Executive Officer to establish guidelines

#### **PART X**

### **TEACHING STANDARDS**

62. Minister's power to specify an accreditation system for teachers
63. Certification of Teachers
64. Regulations to register teachers

#### **PART XI**

### **REGISTRATION OF EARLY CHILDHOOD EDUCATION CENTRES**

65. Requirement for registration
66. Approved organisation for early childhood education centres
67. Cancelling approval
68. Criteria for registering an early childhood education centre

- 69. Approved organisation's power to withdraw registration
- 70. Right of appeal to the Minister
- 71. Minister's power to cancel registration

**PART XII**  
**INSPECTION OF SCHOOLS AND EARLY CHILDHOOD EDUCATION CENTRES**

- 72. Inspection of schools and early childhood education centres
- 73. Powers and responsibilities of inspectors

**PART XIII**  
**MISCELLANEOUS**

- 74. Regulations
- 75. Repeals
- 76. Savings and transitional provisions

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**2009, No. 9**

**AN ACT to regulate and make provision for school education and early childhood education in Samoa and to repeal the Education Ordinance 1959.**

*[26th June 2009]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I**  
**PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Education Act 2009.

(2) This Act shall commence on a date nominated by the Minister, save for sections 27 and 65 which shall commence 12 months later.

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

"approved fee" means a fee approved by the Minister by way of notice issued to that effect;

"approved organisation" means an organisation approved by the Minister under sections 28 and 66;

"attendance officer" means any person deemed to be or appointed to be an attendance officer under section 15;

"carer" means a parent, guardian or other person having the care or control of a child;

"Chief Executive Officer" means the Chief Executive Officer of the Ministry;

"compulsory school-aged child" means a child who is between five (5) years of age and 14 years of age who has not completed the work of Year 8 of school;

"corporal punishment" means the application of physical force in order to punish or correct the recipient, but does not include the application of force only to prevent personal injury to, or damage to or the destruction of property of, any person (including the recipient);

"curriculum" means courses taught in schools including content, support materials and other learning resources in accordance with course accreditation;

"discipline policy" means a policy that outlines the expected standard of behaviour of students at school or whilst engaged in any activity connected with the school and outlines sanctions that will be applied for failure to meet the expected standard of behaviour, and includes any code of discipline;

"Government" means the Government of the Independent State of Samoa;

"inspector" means a person or class of persons authorised by the Minister to carry out inspections of schools and early childhood education centres under section 72;

"management authority" of a school means the person or organisation responsible for the management of the school;

"Minister" means the Minister responsible for the Ministry from time to time;

"Ministry" means the Ministry responsible for Education;

"Ministry school" means a school that is directly managed by the Ministry;

"mission school" means a school operated by a church or religious organisation;

"post-secondary education" means education of people:

(a) who are beyond the age of compulsory school attendance; and

(b) who are not undergoing a course of secondary education in a school;

"post-secondary institution" means an institution that delivers post secondary education;

"private school" means a school, other than a village school or mission school, that is not directly managed by the Ministry;

"registered school" means a school listed in the register of private schools and mission schools established by the Chief Executive Officer under section 30 of this Act;

"Samoa" means the Independent State of Samoa;

"school" means an organisation for the provision of education from the first level of primary education for any of the years up to the final year of secondary education but does not include:

(a) an organisation providing educational or other activities to compulsory school aged students outside school hours; or

(b) an organisation providing vocational training or other activities for students who are 14 years of age or more or who have completed the work of year 8 of school;

"school committee" means the management authority for each village school;

"school day" means a weekday falling between the term dates set by the Minister, other than a prescribed public holiday;

"school hours" means the hours for which Ministry schools and village school must be open on any school day as determined by the Minister under section 51 of this Act;

"street trading" means selling or offering anything for sale in a public place but does not include occasionally selling things on behalf of a church or school or for a cultural or charitable purpose;

"Sui o le Nuu" means a person appointed as Pulenuu under section 14 of the Internal Affairs Act 1995;

"Village Fono" in relation to any village means the assembly of the Alii and Faipule of that village meeting in accordance with the custom and usage of such village and includes the plural;

"Village of Sui o le Nuu" means a village for which a specific Sui o le Nuu has responsibility;

"village school" includes village primary schools and district secondary schools and colleges.

**3. Act to bind State** - This Act binds the State.

## **PART II ATTENDANCE AT SCHOOL**

**Division 1**  
**Enrolment and attendance requirements**

**4. Enrolment-**(1) Subject to subsection (4) and section 5 a carer of a compulsory school-aged child must enrol the child as a student in a school appropriate to the child's educational needs.

(2) In any legal proceeding the carer bears the onus of proving that the child is enrolled at a school in accordance with this Act.

(3) If a child's 5th birthday falls prior to or on the 1st day of June in a given school year, the child must be enrolled to commence school at the start of that school year.

(4) If a child's 5th birthday falls after the 1st day of June in a given school year, the child must be enrolled to commence school at the start of the following school year.

(5) Subject to section 5, a child must remain enrolled at a school until the child completes the work of Year 8 of school or attains the age of 14 years, whichever occurs sooner.

(6) A child is enrolled as a student at a school following his or her acceptance by the Principal and upon the entering of the child's name on the school roll.

(7) An application for enrolment of a child as a student at a school must include any information the Chief Executive Officer may require relating to:

(a) the child's identity;

(b) the child's age;

(c) the identity of the person who is enrolling the child;

(d) the child's place of residence; and

(e) any other matter in respect of enrolment at any school.

(8) The Chief Executive Officer may specify a form of application for enrolment under this section to be used in Ministry schools and village schools.

(9) Any carer unable to afford to enrol their child in a village school or Ministry school because of financial constraints shall apply to waive the child's school fees pursuant to section 53.

(10) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding 50 penalty units.

**5. Exemption from enrolment-**(1) A carer of a compulsory school-aged child may apply to the Chief Executive Officer for exemption from the requirement to enrol the child as a student at a school.

(2) The Chief Executive Officer may, upon receipt of an application or at the Chief Executive Officer's own initiative, grant an exemption from the requirement to enrol a child at a school if satisfied that the exemption is in the best interests of the child's education.

(3) The Chief Executive Officer may:

(a) grant the exemption subject to any condition; and

(b) impose any further condition or vary or revoke any condition at any time.

**6. Attendance-**(1) A compulsory school-aged child must attend the school during the whole of each school day, except as otherwise provided by this Act.

(2) Any person being the carer of a compulsory school-aged child who fails to ensure that the child attends school in accordance with this Act commits an offence and shall be liable to a fine not exceeding 10 penalty units and one (1) penalty unit for each day that the offence continues.

(3) In any legal proceeding the carer bears the onus of proving that the child is attending school in accordance with this Act.

**7. Exemption from attendance without application-**(1) A compulsory school-aged child need not attend a school if:

(a) the child is suspended or temporarily excluded from that school;

(b) a certificate of exemption is in force in respect of the child;

(c) the principal of the school has ordered that the child not attend school because the child has an infestation or is suffering from a disease that may be infectious, contagious or harmful to the health of other persons at the school, subject to other laws;

(d) the child is prevented from attending for the following reasons –

(i) the child is sick;

(ii) the child is temporarily incapacitated, either physically or mentally; or

(iii) any other reasonable cause.

(2) A compulsory school-aged child who is enrolled at a school is not exempted from the requirement to attend the school by reason only of any special needs.



(3) The carer of a compulsory school-aged child who is prevented from attending school for the reasons set out in subsection (1)(d) must notify the school's principal within two (2) school days of the start of the non-attendance.

**8. Application for exemption from attendance-**(1) A carer of a compulsory school-aged child may apply to the Chief Executive Officer to exempt the child from full-time attendance in a school and permit the child to attend part-time or to be temporarily absent from school.

(2) The Chief Executive Officer may, upon receipt of an application or at the Chief Executive Officer's own initiative, exempt a child from full-time attendance and permit part-time attendance or temporary absence from school if satisfied that it is in the best interests of the child's education to do so.

(3) The Chief Executive Officer may grant the exemption subject to any condition and vary or revoke any condition at any time.

**9. Certificate of exemption-**(1) If the Chief Executive Officer exempts a compulsory school-aged child under sections 5 or 7, the Chief Executive Officer must issue a certificate of exemption.

(2) A certificate of exemption remains in force for the period referred to in the certificate unless the Chief Executive Officer revokes the certificate before the end of the period.

(3) The Chief Executive Officer may revoke an exemption if the Chief Executive Officer is satisfied that:

- (a) any condition of the exemption is contravened; or
- (b) it is appropriate in the circumstances to do so.

**10. Withdrawal from school-**(1) A carer of a compulsory school-aged child must notify the principal in writing of:

- (a) the withdrawal of the child from the school; and
- (b) the proposed education of the child after that withdrawal.

(2) Any person who fails to notify the principal in accordance with subsection (1) commits an offence and shall be liable to a fine not exceeding 10 penalty units.

**Division 2**  
**Monitoring and ensuring enrolment and**  
**attendance of compulsory school-aged children**

**11. Schools to keep rolls** - The principal of every school must ensure that a roll is kept containing the name and address of every student enrolled at the school and any other information that the Chief Executive Officer specifies by Notice in writing.

**12. Schools to keep attendance registers** – The principal of every school must ensure that an attendance register is kept which records for every school day the attendance or absence of every student enrolled at the school and any other information that the Chief Executive Officer specifies by Notice in writing.

**13. Principal's responsibility when a compulsory school-aged child is withdrawn from a school-**(1) If a carer withdraws a compulsory school-aged child from a school without satisfying the principal of the school that appropriate arrangements are being made for the child's future education, the principal must inform the appropriate person or persons.

(2) For the purpose of this section:

(a) the appropriate person in the case of a Ministry school is the Chief Executive Officer or the Chief Executive Officer's delegate;

(b) the appropriate persons in the case of a private school or mission school are:

(i) the person in charge of the approved organisation that approved the school for registration; and

(ii) the Chief Executive Officer or the Chief Executive Officer's delegate; and

(c) the appropriate persons in the case of a village school are:

(i) the School Committee;

(ii) the Sui o le Nuu; or

(iii) the Chief Executive Officer or the Chief Executive Officer's delegate.

(3) If a compulsory school-aged child transfers from one school to another, the principal of the transferring school must send a transfer note and the student progress card to the principal of the receiving school.

**14. Principal's responsibility when a compulsory school-aged child fails to attend school regularly-**(1) The principal of a school must inform in writing the carer of a compulsory school-aged child enrolled at the school:

(a) of any pattern of non-attendance by the child that contravenes this Act; and

(b) that he or she is in breach of this Act.

(2) If the carer subsequently takes effective steps to ensure that the child attends school regularly the principal may choose not to take any further action against the carer.

(3) If the carer satisfies the principal that there is an appropriate reason for the pattern of non-attendance, the principal must keep a record of the reasons given by the carer and must continue to monitor the child's attendance at school.

**15. Attendance officers-**(1) Sui o le Nuu, members of school committees and police officers of Samoa are deemed to be attendance officers.

(2) The Chief Executive Officer may appoint any person or class of persons to be attendance officers.

(3) The Commissioner of Police Service must arrange for members of the police service to exercise the powers and responsibilities of attendance officers set out in section 16.

(4) Neither the deeming of a person to be an attendance officer under subsection (1) nor the appointment of a person to be an attendance officer under subsection (3) constitutes the person as an employee or agent of the Government of Samoa.

(5) An attendance officer must not incur any debt or obligation on behalf of the Government of Samoa without the prior written consent of the Chief Executive Officer.

(6) It is an offence to impersonate an attendance officer.

(7) Any person who exercises or attempts to exercise the powers of an attendance officer without being officially appointed or deemed to be an attendance officer commits an offence and shall be liable to a fine not exceeding 50 penalty units.

**16. Attendance officers' powers and responsibilities-**(1) Subject to subsection (3), when exercising any power under this section an attendance officer must carry, and produce on request, evidence of the attendance officer's appointment.

(2) A certificate signed by the Chief Executive Officer showing that the person named has been appointed as an attendance officer is sufficient evidence of appointment.

(3) Subsection (1) does not apply to:

(a) members of the police service, who must instead produce evidence of their status as members of the police service; or

(b) Sui o le Nuu or members of school committees exercising powers in a village for which they have responsibility, who are not required to produce evidence of their status.

(4) An attendance officer:

(a) may detain any child who appears to be a compulsory school-aged child who is not at a school or attending a school-organised activity during school hours on a school day; and

(b) may question the child about –

(i) the child's age;

(ii) the child's name and address;

(iii) the school at which the child is enrolled; and

(iv) the reason for the child's absence from school.

(5) If the child fails to give the attendance officer a satisfactory reason for the child's absence from school, the attendance officer may take the child to:

(a) the child's place of residence; or

(b) the school at which the attendance officer believes the child is enrolled.

(6) An attendance officer must report any action the attendance officer takes under subsection (5) to the Chief Executive Officer or the Chief Executive Officer's delegate.

(7) Sui o le Nuu and members of school committees must inform the Village Council of any action they take under subsection (5) and work with the Village Council to ensure that the child attends school on a regular basis.

(8) Any person who obstructs or interferes with an attendance officer who is exercising the powers set out in this section commits an offence and shall be liable to a fine not exceeding 50 penalty units.

(9) It shall be a defence for any person charged under this section to prove that the attendance officer failed to produce upon request, evidence of the attendance officer's appointment.

**17. Removal of attendance officers-**(1) The Chief Executive Officer may revoke at will the appointment of any persons or class of persons appointed as attendance officers.

(2) If the Minister considers that a Sui o le Nuu or member of a school committee is not exercising the powers of an attendance officer reasonably or is abusing any such power, the Minister may request the Village Fono to direct the Sui o le Nuu or member of the school committee (as the case may be) not to act as an attendance officer.

(3) On receiving a request under subsection (2), the Village Fono must direct the Sui o le Nuu or member of the school committee not to act as an attendance officer.

(4) On receiving a direction under subsection (3), a Sui o le Nuu or member of a school committee ceases to hold any power as an attendance officer.

(5) If the Chief Executive Officer considers that a police officer is not exercising the powers of an attendance officer reasonably or is abusing any such power, the Chief Executive Officer may request the Commissioner of Police Service to direct the police officer not to act as an attendance officer.

(6) On receiving a request under subsection (5), the Commissioner of Police Service must direct the police officer not to act as an attendance officer.

(7) On receiving a direction under subsection (6), a police officer ceases to hold any power as an attendance officer.

**18. Additional responsibilities of Sui o le Nuu for enrolment and school attendance-**(1) In addition to exercising the powers of an attendance officer, a Sui o le Nuu must establish whether or not every compulsory school aged-child living in the village or villages of Sui o le Nuu is enrolled at a school.

(2) If a Sui o le Nuu establishes that a compulsory school aged-child is not enrolled at a school, or a school principal informs a Sui o le Nuu that:

(a) a carer who resides in a village of Sui o le Nuu has withdrawn a compulsory school aged-child from the school without satisfying the principal that appropriate arrangements are being made for the future education of the child; or

(b) a compulsory school aged-child who resides in a village of Sui o le Nuu is not attending school on a regular basis, the Sui o le Nuu must inform the Village Council of this situation and work with the Village Council to ensure that the child is enrolled at a school in accordance with the provisions of this Act and attends school on a regular basis.

### **Division 3 Children with special needs**

**19. Establishing the suitability of education-**(1) The Chief Executive Officer may take any action the Chief Executive Officer considers appropriate to establish that a compulsory school-aged child with special needs is receiving appropriate education.

(2) If the Chief Executive Officer is not reasonably satisfied that a compulsory school-aged child with special needs is receiving appropriate education, the Chief Executive Officer may direct a carer to enrol the child at a school that in the Chief Executive Officer's opinion will provide appropriate education for the child.

(3) Any carer of a child affected by a direction made by the Chief Executive Officer in this section may appeal to the District Court for a review of the Chief Executive Officer's decision within 28 days of receiving such direction.

**Division 4**  
**Employment of compulsory school-aged children**

**20. Employment of compulsory school-aged child-**(1) Subject to subsection (3), it is an offence for a person to arrange for a compulsory school-aged child to engage in street trading or to carry out other work of any kind, whether for reward or not –

(a) at any time during school hours; or

(b) at any other time if the work would prevent or interfere with the child's attendance at school, active participation in school activities or the child's educational development.

(2) Any person who commits an offence under subsection (1) is liable to a fine not exceeding 100 penalty units in the case of a natural person, and in the case of a company or other entities, a fine not exceeding 500 penalty units.

(3) Subsection (1) does not apply if:

(a) the Chief Executive Officer has exempted the child from the obligation to be enrolled as a pupil at a school on a ground other than that the child is receiving a suitable education elsewhere than at school; or

(b) the Chief Executive Officer has exempted the child from the obligation to attend school each day during the whole of the school day.

(4) Any employment of a compulsory school-aged child is subject to:

(a) the provisions of the Labour and Employment Act 1972 and any conditions imposed by the Commissioner under the Labour and Employment Act 1972; and

(b) the Occupational Safety and Health Act 2002 and any policies or regulations made under that Act.

**21. Carers not to permit employment of compulsory school-aged child-**(1) The carer of a compulsory school-aged child must not permit the child to engage in street trading or to carry out other work contrary to section 20 of this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding 50 penalty units.

**PART III**  
**STUDENT AND STAFF WELFARE IN SCHOOLS**  
**AND EARLY CHILDHOOD EDUCATION CENTRES**

**22. Behaviour management** – The principal and management authority of every school and the director and management authority of every early childhood education centre shall foster:

- (a) a caring, productive and safe environment for learning;
- (b) an effective teaching and learning environment; and
- (c) mutual respect among all individuals at the school or early childhood education centre.

**23. Discipline**-(1) Every school and early childhood education centre must have a discipline policy.

(2) A discipline policy must not include or permit the use of:

- (a) corporal punishment;
- (b) any form of punishment that may cause harm to the recipient; or
- (c) any form of punishment that humiliates or is intended to humiliate the recipient.

(3) A teacher or staff member of a school must not administer corporal punishment to a school student at a school or during any activity organised by a school.

(4) A person employed at an early childhood education centre must not administer corporal punishment to any child at the early childhood education centre or during any activity organised by the early childhood education centre.

**24. Intoxication of teachers** – A teacher must not be:

- (a) drunk; or
- (b) affected by any drug to the extent that the teacher loses control or has significantly diminished control of his or her behaviour or faculties,

while on duty, including while attending any school-organised activity that involves the participation of students.

**25. Behaviour of members of the public**-(1) It is an offence for any person to:

- (a) wilfully disturb a school or any activity organised by a school; or
- (b) insult or abuse any student or teacher in the presence or hearing of the children who are on the school premises or who are participating in an activity organised by a school;

(2) It is an offence for any person to:

(a) wilfully disturb an early childhood education centre or any activity organised by the early childhood education centre; or

(b) to insult or abuse any child or person employed in an early childhood education centre in the presence or hearing of children who are on the early childhood education centre's premises or who are participating in any activity organised by the early childhood education centre.

(3) Any person who commits an offence under this section shall be liable to a fine not exceeding 50 penalty units.

**26. Exclusion of students with diseases or infestations** - A principal may require a student not to attend a school while the student has an infestation or is suffering from a disease which is, in the opinion of the Chief Executive Officer of the Ministry of Health, an infestation or disease which may likely be infectious, contagious or harmful to the health of other persons at the school.

#### **PART IV REGISTRATION OF MISSION SCHOOLS AND PRIVATE SCHOOLS**

**27. Requirement for registration**-(1) A person or organisation must not operate a private school or mission school unless the Chief Executive Officer has registered the school under this Part.

(2) The Chief Executive Officer will be deemed to have registered the school upon receiving notice that the Minister or an approved organisation has approved registration of the school.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding 50 penalty units.

**28. Approved organisation for mission schools and private schools**-(1) Subject to the provisions of this Act, the Minister may approve an organisation to be an approved organisation.

(2) An approved organisation shall be responsible for:

(a) assessing and registering schools; and

(b) for monitoring compliance with the terms of registration of schools it has registered; and

(c) restricting or cancelling registration of those schools.

(3) In determining whether to approve an organisation under this section the Minister must take into account the following matters:



- (a) the organisation's objectives;
- (b) the decision-making processes adopted by the organisation;
- (c) the policies the organisation will apply in setting standards for registered schools;
- (d) the organisation's capacity to effectively evaluate applications for registration;
- (e) the organisation's capacity to effectively monitor standards in registered centres; and
- (f) any other matter prescribed by regulations made under this Act.

**29. Cancelling approval-**(1) Where the Minister believes on reasonable grounds that an approved organisation is not properly exercising its power to assess and monitor schools under this Act, the Minister may withdraw the organisation's approval.

(2) Before the Minister withdraws an organisation's approval under this section, the Minister must give the organisation a reasonable opportunity to be heard.

(3) Subject to subsection (4), any school which has been registered under an approved organisation whose approval is cancelled under this provision shall continue to be registered for a period of six (6) months or from the earlier expiry date of its registration, whichever occurs sooner.

(4) Notwithstanding subsection (3), any school affected by the cancellation of an approved organisation under this section shall continue to operate where such school's registration is approved by another approved organisation or the Minister.

**30. Application for registration-**(1) A person or organisation intending to operate a private school or mission school must apply to the Minister or an approved organisation for approval of the school's registration.

(2) An application must:

- (a) be in writing in a form approved by the Minister; and
- (b) be accompanied by the approved fee.

**31. Criteria for registering a school-**(1) The Minister and any approved organisation must take into account the following matters in determining whether or not to register a school:

- (a) the standard of general education to be provided including the delivery of curriculum in accordance with Part VIII of this Act;

(b) the provision of pastoral care and a discipline policy in accordance with section 23 of this Act;

(c) the provision of an adequate building or buildings and appropriate facilities and equipment for staff and students;

(d) the provision of an appropriate outdoor play area;

(e) the employment of sufficient, appropriately qualified and experienced staff;

(f) the number of students to be enrolled;

(g) an adequate management system, including sound financial management and employment practices; and

(h) any other matters prescribed by regulations.

(2) The Minister may provide for categories of registration including but not limited to:

(a) providing for education at the school of a specified kind; or

(b) providing for education of children with special needs.

(3) The Minister and any approved organisation may place any reasonable restriction upon the basis on which a school is registered, including but not limited to:

(a) placing a limit on the period of registration;

(b) restricting student enrolments to specified age groups;

(c) restricting student enrolments to specified years of schooling.

**32. Probationary registration-**(1) The Minister and any approved organisation may approve the registration of a school on a probationary basis for up to one (1) year, on the basis that the school comply with any conditions that the Minister or approved organisation may reasonably require before becoming fully registered.

(2) If a school is registered on a probationary basis, the proprietor of the school must inform the carers of all students enrolled at the school of any conditions required of the school for full registration.

**33. Register of private schools and mission schools-**(1) The Chief Executive Officer must keep and maintain a register of all schools that have been registered under the provisions of this Act.

(2) An approved organisation must provide the Chief Executive Officer with such details of each new school registered by the approved organisation as the Chief Executive Officer requires to maintain the register within seven (7) days of registering the school.

**34. Returns by proprietors of registered schools-**(1) The proprietor or principal of every registered school must provide the Minister or the approved organisation that approved the school's registration with a return in the form approved by the Minister on or before 31 March in each year.

(2) A proprietor or principal of a registered school must not wilfully make any false entry in a return under this section.

(3) Subsection (1) does not prevent an approved organisation from seeking any additional information.

(4) An approved organisation must provide the Chief Executive Officer with:

(a) copies of the returns provided to it; or

(b) the information contained in the returns in a format agreed to between the Chief Executive Officer and the approved organisation.

(5) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

**35. Restriction or cancellation of registration by the Minister-**(1) If the Minister believes on reasonable grounds that any registered school does not comply with:

(a) the conditions of its registration; or

(b) the provisions of this Act; or

(c) any Regulations or Ministerial Orders made under this Act,

the Minister may –

(i) place any reasonable restriction on the operation of the school for such time as the Minister considers necessary; or

(ii) cause the school to be removed from the register kept under the provisions of this Act.

(2) The Minister must give the school's management authority a reasonable opportunity to be heard before exercising the powers set out in subsection (1).

**36. Restriction or cancellation of registration by an approved organisation for mission schools and private schools-**(1) If the person in charge of an approved organisation for mission schools or private schools believes on reasonable grounds that a school which the approved organisation approved for registration does not comply with:

- (a) the conditions of its registration;
- (b) the provisions of this Act; or
- (c) any Regulations or Ministerial Orders made under this Act,

the approved organisation may –

- (i) place any reasonable restriction on the operation of the school for such time as the Director of the approved organisation considers necessary; or
- (ii) request the Chief Executive Officer to remove the school from the register kept under the provisions of this Act.

(2) The approved organisation must give the school's management authority a reasonable opportunity to be heard before exercising the powers set out in subsection (1).

(3) The Chief Executive Officer must remove a school from the register kept under the provisions of this Act if requested to do so by an approved organisation under subsection (2) unless the Chief Executive Officer receives notice from the school that it is seeking approval of its registration directly by the Minister.

## **PART V VILLAGE SCHOOLS**

**37. Reservation of the right to establish a registered school -** Nothing in this Part shall prevent members of a village community from establishing and running a registered school subject to Part IV.

**38. Establishment of village schools-**(1) Cabinet may approve the establishment of any village school.

(2) If a Village Fono or two (2) or more Village Fono wish to establish a new village school, they must apply to the Minister to seek Cabinet's approval for the establishment of the school.

(3) An application must be in writing in a form approved by the Minister.

(4) Regulations may be made under this section prescribing any requirements for establishing a village school.

**39. Responsibility for management of a village school-**(1) If Cabinet approves the establishment of a village school, the Village Fono or two (2) or more Village Fono must establish a school committee as the management authority for the proposed village school.

(2) Subject to section 43 of this Act, a school committee must manage a village school in accordance with the provisions of this Act and any agreement between the school committee and the Ministry.

(3) A school committee must manage a village school in a way that:

- (a) ensures effective, efficient and appropriate management of public resources;
- (b) provides appropriate school buildings, facilities and equipment that are properly maintained;
- (c) promotes a safe, supportive and productive learning environment; and
- (d) supports and monitors the academic progress of all students at the school.

**40. Power to set and collect school fees-**(1) A school committee may charge reasonable school fees to the carers of students attending the school, to meet the cost of performing the school committee's obligations under this Act.

(2) The Minister may vary the school fees charged in subsection (1) if such fees are not reasonable.

**41. Payments to school committee members -** A school committee member must not receive any payment from funds held by the committee on behalf of the village school, unless the payment is for expenses that:

- (a) are reasonable;
- (b) were properly incurred by the school committee member in fulfilling his or her responsibilities as a school committee member; and
- (c) were incurred with the consent of the school committee.

**42. Provision of staff for village schools -** Subject to the provisions of the Public Service Act 2004:

- (a) the Ministry shall supply to a village school a principal and such staff as the Chief Executive Officer considers reasonably appropriate for the school's requirements; and
- (b) the Chief Executive Officer may from time to time vary the number of staff supplied to a village school, after taking into account the number of students enrolled or likely to be enrolled at the school and the type of school.

**43. Responsibility for management of staff-**(1) The principal and staff of village schools are employed subject to the direction of the Chief Executive Officer.

(2) The principal of a village school must:

- (a) allocate and supervise the work of each staff member;
- (b) encourage teachers to use appropriate teaching techniques; and
- (c) promptly report to the Chief Executive Officer in writing about insubordination or suspected misconduct by a staff member.

**44. Closure of village schools-**(1) Cabinet, upon the recommendation of the Minister, may direct the closure of a village school if:

- (a) there is an agreement to close the school between the Minister and the school committee of a village school, or, if a school committee does not exist, the Sui o le Nuu; or
- (b) if the closure of the school is in the public's best interest.

(2) Subject to Cabinet's approval and any regulations made under this section, the Minister may direct the Chief Executive Officer to close a village school, if the school committee fails to comply with:

- (a) the requirements of this Act;
- (b) any regulations or directions made under this Act; or
- (c) any agreement with the Ministry.

(3) Notwithstanding anything in this Act, the Chief Executive Officer may immediately withdraw the principal and staff from a village school if the Chief Executive Officer considers on reasonable grounds that the principal or members of staff of a village school are at risk of physical harm.

(4) If the circumstances which caused the Chief Executive Officer to consider that the principal or members of staff are at risk of physical harm are not remedied within a period of time the Minister considers to be reasonable under the circumstances, the Minister, after obtaining Cabinet's approval, may order the Chief Executive Officer to withdraw the principal and staff and to close the school within such a period as the Minister considers to be reasonable.

(5) Regulations may be made under this section prescribing any requirements for closing a village school.

(6) If a school is closed pursuant to this section, a carer of a compulsory school-aged child enrolled at that school must enrol the child at another school.

## **PART VI MINISTRY SCHOOLS**

**45. Establishment of Ministry schools** – The Minister may establish a Ministry school on the recommendation of the Chief Executive Officer.

**46. Responsibility for management of a Ministry school**-(1) The Chief Executive Officer is responsible for management of the school through the school principal.

(2) The Chief Executive Officer must ensure that a Ministry school is managed in a way that:

- (a) ensures effective, efficient and appropriate management of public resources;
- (b) provides such staff as the Chief Executive Officer considers reasonably appropriate for the school's requirements;
- (c) provides appropriate school buildings, facilities and equipment that are properly maintained;
- (d) promotes a safe, supportive and productive learning environment; and
- (e) supports and monitors the academic progress of all students at the school.

**47. Capacity to set and collect fees** - The Minister may charge reasonable school fees to the carers of students attending any Ministry school, as a contribution towards the cost of the provision of schooling.

**48. Provision of staff for Ministry schools** - Subject to the provisions of the Public Service Act 2004:

- (a) the Chief Executive Officer shall supply to a Ministry school a principal and such staff as the Chief Executive Officer considers reasonably appropriate for the school's requirements; and
- (b) the Chief Executive Officer may from time to time vary the number of staff supplied to a Ministry school after taking into account the number of students enrolled or likely to be enrolled at the school.

**49. Responsibility for management of staff**-(1) The principal and staff of Ministry schools are employed subject to the direction of the Chief Executive Officer.

(2) The principal of a Ministry school must:

- (a) allocate and supervise the work of each staff member;
- (b) encourage teachers to use appropriate teaching techniques; and
- (c) promptly report to the Chief Executive Officer, in writing, about insubordination or suspected misconduct by a staff member.

**50. Amalgamation and closure of Ministry schools-**(1) The Minister after obtaining Cabinet's approval may:

- (a) amalgamate Ministry schools; and
- (b) close any Ministry school either temporarily or permanently on the Chief Executive Officer's recommendation .

(2) Before the permanent closure of a Ministry school, the Chief Executive Officer must consult with the school committee, teachers and any association of parents and friends of that school.

(3) In any consultation under subsection (2), the Chief Executive Officer must make available a statement on the likely educational, economic and social impact of closing the school.

## **PART VII GOOD ORDER AND MANAGEMENT OF MINISTRY AND VILLAGE SCHOOLS**

**51. School calendar-**(1) The Minister must annually specify:

- (a) the days on which Ministry schools and village schools are to be open for attendance by students; and
- (b) the hours of attendance of students.

(2) All Ministry schools and village schools must be open for students to attend and must provide an education for students for all of the hours and days specified by the Minister.

**52. Maximum and minimum number of students** - The Chief Executive Officer may issue guidelines indicating:

- (a) the maximum and minimum number of students to be enrolled in any Ministry school or village school; and
- (b) the basis on which Ministry schools and village schools are to restrict the number of enrolments.



**53. Waiver of school fees-**(1) Any carer who cannot afford to enrol a compulsory school-aged child in a village school or Ministry school due to financial constraints may apply for the school fees of such child to be waived.

(2) The application for waiver of fees shall be made to:

- (a) the Chief Executive Officer in relation to a Ministry school; or
- (b) the Chairperson of the school committee established under section 39 in relation to a village school.

(3) The Chief Executive Officer or Chairperson under subsection (2) shall consider the application and decide whether to grant or reject the application for waiver of fees and the period of such waiver.

(4) An application for waiver of fees must contain the following:

- (a) the full name, village, occupation and contact details of the carer;
- (b) the source of income of the carer;
- (c) the total gross income earned by the carer;
- (d) the list of all expenses of the carer;
- (e) the efforts the carer had undertaken to obtain financial assistance from other sources, including close relatives;
- (f) letters from the Sui o le Nuu and Pastor of the carer confirming the financial status of the carer;
- (g) letter from the principal of the relevant school supporting the application; and
- (h) any other relevant matter required by the Chief Executive Officer.

(5) Any person who is not satisfied with any decision made under subsection (3) may appeal in writing to the Minister whose decision shall be final.

(6) Any person who provides information that is false in any application under this section shall be liable upon conviction to a term of imprisonment not exceeding six (6) months or to a fine not exceeding 20 penalty units, or both.

**54. Temporary closure of school-**(1) A Ministry school or village school is permitted to close, on the initiative of the principal or school committee, for any day or any hours on which it would otherwise be required under section 51 to be open, if:

(a) there is an emergency which involves a risk to the health or safety of students or staff;  
or

(b) the Chief Executive Officer otherwise approves.

(2) The Chief Executive Officer may immediately withdraw the principal and staff from a village school if the Chief Executive Officer considers on reasonable grounds that the principal or members of staff of a village school are at risk of physical harm.

(3) A Ministry school or village school must close for any day or any hours on which it would otherwise be required under section 51 to be open, if directed to do so by the Chief Executive Officer.

**55. School records and reports** - Every principal of a Ministry school or village school must comply with the Chief Executive Officer's written directions about:

(a) what school records must be kept;

(b) how school records must be kept;

(c) what reports the principal must give to the Chief Executive Officer; and

(d) when any reports must be given.

**56. School discipline policy**-(1) The principal of a Ministry school and the school committee of a village school must develop a discipline policy that complies with section 23 of this Act and is consistent with this Part of the Act and any guidelines issued by the Chief Executive Officer under this section.

(2) The principal of a Ministry school and the school committee of a village school must ensure that:

(a) the discipline policy is brought to the attention of the students, carers and staff of the Ministry school or village school; and

(b) any periods of detention, additional work or other sanctions that may be imposed on students as outlined in the discipline policy are reasonable.

(3) The Chief Executive Officer may issue guidelines or directions in respect of the management of discipline in village schools and Ministry schools.

**57. Suspension and expulsion**-(1) Subject to subsection (3), the principal of a school may temporarily suspend a student if the principal is satisfied that the student has behaved unacceptably.

(2) Subject to subsection (3), a principal may only expel a student in accordance with any directions given by the Chief Executive Officer.

(3) Before a principal suspends or expels a student, he or she must carry out the following:

(a) consult with the carer regarding the reasons for the proposed suspension or expulsion; and

(b) ensure all other appropriate means available to improve the student's behaviour have been exhausted; and

(c) duly consider the ability by the student to attend another school.

(4) The carer of a student or a student may apply in writing to the Chief Executive Officer for a review of any decision of suspension or expulsion.

(5) The Chief Executive Officer may revoke any decision of suspension or expulsion if he or she is satisfied that the student is willing to behave in an acceptable manner.

## **PART VIII CURRICULUM AND CERTIFICATES OF STUDY**

**58. Minimum curriculum-**(1) All schools and early childhood education centres must deliver the curriculum specified by the Minister to the standards specified by the Minister.

(2) If the Minister specifies any curriculum standards or any changes to curriculum standards, the Minister must advise all schools in writing.

(3) Schools and early childhood education centres may deliver curriculum in areas additional to those specified by the Minister if this does not prevent the school from providing the curriculum specified by the Minister to the standards specified by the Minister.

(4) Schools and early childhood education centres may modify the curriculum or implement individual education programs for students with special needs, subject to any policy or guidelines the Chief Executive Officer issues under section 61 of this Act.

**59. Delivery of curriculum in schools and early childhood education centres-**(1) The Chief Executive Officer may issue instructions or guidelines to all schools and early childhood education centres in respect of:

(a) the delivery of curriculum specified by the Minister; and/or

(b) the modification of curriculum for students with special needs.

(2) The Chief Executive Officer may issue instructions to Ministry schools and village schools in respect of any matter relating to teaching practice, homework, assessment and reporting procedures.

**60. Chief Executive Officer's powers and functions** - The Chief Executive Officer has the following powers and functions:

- (a) to develop policies, criteria and standards for curriculum and assessments for school students;
- (b) to develop and evaluate curriculum for courses normally undertaken in, or designed to be undertaken in the school Years one (1) to 13;
- (c) to provide guidelines for the modification of curriculum and for the development of individual learning programs for children with special needs;
- (d) to oversee the delivery of, and conduct assessments for any certificate available to a student in a school;
- (e) to give advice or make recommendations to the Minister about any educational policy or strategy relating to the development of curriculum that will prepare students for successful transition to employment, tertiary education, vocational education and training and further education;
- (f) to prepare and maintain records of student assessment and, on request, provide a copy of a student's record to the student or a person authorised by the student to receive it;
- (g) to report on student performance to the Minister; and
- (h) to issue certificates relating to any course undertaken by a school student in any year up to and including Year 13.

## **PART IX STUDENTS WITH SPECIAL NEEDS**

**61. Chief Executive Officer to establish guidelines** - The Chief Executive Officer must establish a policy or guidelines for schools and early childhood education centres in respect of:

- (a) the identification and assessment of students with special needs;
- (b) the modification of teaching programs for students with special needs;
- (c) the level of training in special education required of all teachers or any category of teacher; and

(d) any other matters relating to the provision of education for students with special needs that the Chief Executive Officer considers to be appropriate.

## **PART X TEACHING STANDARDS**

**62. Minister's power to specify an accreditation system for teachers** - The Minister may specify a system or systems of accreditation of teachers in schools and early childhood learning centres.

**63. Certification of Teachers** - The Chief Executive Officer may issue a Teacher's Certificate to any person whose qualifications, professional skills or experience meet the requirements of an accreditation system specified by the Minister.

**64. Regulations to register teachers** - Regulations may be made under this section establishing a registration system for teachers and prohibiting any person who is not registered from teaching in any school or category of school.

## **PART XI REGISTRATION OF EARLY CHILDHOOD EDUCATION CENTRES**

**65. Requirement for registration**-(1) A person or organisation must not operate an early childhood education centre unless that centre has been registered by:

- (a) an approved organisation; or
- (b) where no approved organisation exists, by the Chief Executive Officer.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding 50 penalty units.

**66. Approved organisation for early childhood education centres**-(1) The Minister may approve an organisation to be an approved organisation for early childhood education centres.

(2) An approved organisation shall be responsible for:

- (a) assessing and registering early childhood education centres;
- (b) for monitoring compliance with the terms of registration of early childhood education centres it has registered; and
- (c) restricting or cancelling registration of those early childhood education centres.

(3) In determining whether to approve an organisation under this section the Minister must take into account the following matters:

- (a) the organisation's objectives;
- (b) the decision making processes adopted by the organisation;
- (c) the policies the organisation will apply in setting standards for early childhood education centres;
- (d) the organisation's capacity to effectively evaluate applications for registration;
- (e) the organisation's capacity to effectively monitor standards in registered centres; and
- (f) any other matter prescribed by regulations made under this Act.

**67. Cancelling approval-**(1) Where the Minister believes on reasonable grounds that an approved organisation is not properly exercising its power to register early childhood education centres under this Act, the Minister may withdraw the organisation's approval.

(2) Before the Minister withdraws an organisation's approval under this section, the Minister must give the organisation a reasonable opportunity to be heard.

**68. Criteria for registering an early childhood education centre** – An approved organisation, or the Minister if no approved organisation exists, must take into account the following matters in determining whether or not to register an early childhood education centre:

- (a) the provision of curriculum that meets national curriculum guidelines for early childhood education;
- (b) the provision of an adequate building and appropriate facilities and equipment for young children;
- (c) the provision of an appropriate outdoor play area;
- (d) the provision of adequate furniture, educational play equipment and materials;
- (e) the employment of sufficient appropriately qualified and experienced staff;
- (f) the number of children to be enrolled; and
- (g) an adequate management system.

**69. Approved organisation's power to withdraw registration** – If an approved organisation reasonably believes that an early childhood education centre is no longer meeting one or more of the criteria for registration under section 68 of this Act, the approved organisation may withdraw the early childhood education centre's registration subject to the following conditions:

(a) the approved organisation must give the person in charge of the early childhood education reasonable notice that its registration is to be withdrawn; and

(b) before the approved organisation withdraws the registration of an early childhood education centre, the approved organisation must give person in charge of the early childhood education centre an opportunity to be heard.

**70. Right of appeal to the Minister-**(1) The person in charge of an early childhood education centre may appeal to the Minister to direct an approved organisation not to withdraw the early childhood education centre's registration.

(2) If the Minister reasonably considers that there are insufficient grounds to withdraw the early childhood education centre's registration, the Minister may direct the approved organisation not to withdraw the registration.

**71. Minister's power to cancel registration** - If the Minister reasonably believes that an early childhood education centre is not complying with the criteria for registration under section 68, the Minister may cancel the early childhood education centre's registration subject to the following conditions:

(a) the Minister may give the person in charge of the early childhood education reasonable notice that its registration is to be withdrawn; and

(b) before the Minister withdraws the registration of an early childhood education centre, the Minister must give the person in charge of the early childhood education centre an opportunity to be heard.

## **PART XII INSPECTION OF SCHOOLS AND EARLY CHILDHOOD EDUCATION CENTRES**

**72. Inspection of schools and early childhood education centres-**(1) The Minister may arrange for the inspection of any school or early childhood education centre.

(2) The Minister may appoint any person or class of persons to be inspectors of schools and early childhood education centres, under such conditions as the Minister may determine.

(3) The Minister may restrict an inspector's powers to inspection of:

(a) schools only;

(b) a category of school;

(c) early childhood education centres; or

(d) a category of early childhood education centre.

(4) The Minister is to issue a certificate of authority to a person or class of persons appointed as inspectors, indicating any restriction placed upon their powers as inspectors.

(5) The Minister may revoke the appointment of any person or class of persons appointed as an inspector where they fail to comply with the conditions of their appointment.

**73. Powers and responsibilities of inspectors-**(1) An inspector may at any reasonable time:

(a) enter, search, inspect and photograph any premises of the school or early childhood education centre;

(b) inspect and take copies of any records or documents kept by the school or early childhood education centre; and

(c) require any person to give any assistance reasonably necessary to carry out the inspection.

(2) An inspector must produce evidence of the inspector's appointment as an inspector on request before exercising any power under this section.

(3) Subject to subsection (4), any person who hinders or obstructs an inspector lawfully carrying out an inspection commits an offence and shall be liable to a fine not exceeding 50 penalty units.

### **PART XIII MISCELLANEOUS**

**74. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make any regulations for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the power conferred under subsection (1), regulations may be made for the creation of offences and to prescribe fines of up to 100 penalty units for such offences concerning this Act.

**75. Repeals -** The Education Ordinance 1959 is repealed.

**76. Savings and transitional provisions-**(1) All references in law to the Department of Education must be read as referring to the Ministry unless the context requires otherwise.

(2) All references in law to the Minister of Education must be read as referring to the Minister responsible for the Ministry unless the context requires otherwise.

(3) All references in law to the Director of Education must be read as referring to the Chief Executive Officer of the Ministry unless the context requires otherwise.



(4) Every document and act of authority so far as they are subsisting or in force at the time of the repeal of the Education Ordinance 1959 must continue and have effect under the corresponding provisions of this Act until such time as they are altered or amended or cancelled, as the case may require, under the provisions of this Act.

(5) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of the Education Ordinance 1959 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act must be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(6) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Education Ordinance 1959, the Minister, by Notice, may make such provisions as the Minister deems necessary in order for all matters under or concerning the Education Ordinance 1959 to be properly and effectively determined or otherwise dealt with.

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**The Education Act 2009 is administered by the Ministry of Education, Sports and Culture.**