

RIGHTS AND RESPONSIBILITIES OF INDEPENDENT SCHOOLS



DEPARTMENT OF BASIC EDUCATION

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1. Introduction

This document forms part of the Communications Protocol agreement signed between the Department of Basic Education (DBE) and the National Alliance of Independent School Associations (NAISA) in 2008. This document, like the Communication Protocol, applies to the Provincial Education Departments (PEDs) as well.

The purpose of the document is to clarify the distinct nature of independent schools within the South African education system and assist PEDs in general and district officials in particular to deal appropriately with them. The document is not meant to cover all aspects in which independent schools differ from public schools but only those areas that are normally the cause of uncertainty and potential conflict between district officials and independent schools.

This document covers the key defining characteristics of independent schools. These are aspects of independent schools that make them different from public schools; both in the way they are legally sanctioned and the way they operate. These characteristics include the following:

- They follow their own distinctive missions (including particular ethos, faith or philosophy values);
- They determine their own learner admission policies in line with the law;
- They choose their own curricula and exit examinations that meet the prescribed outcomes of the National Curriculum Statement;
- They may determine their own promotion and retention policies in line with applicable policies;
- They determine how they are governed, financed and staffed, within the boundaries of the law; and in line with good governance practice

Independent schools have to operate within the confines of the Constitution and all relevant National and Provincial legislation. However, critical to their independence is the freedom of a school to use its professional judgement to make decisions. These key characteristics ensure that schools have the freedom they require to be able to determine and deliver programmes of academic excellence to learners.

2. The right of independent schools to exist

The *Constitution of the Republic of South Africa*, Section 29(3), allows anyone to establish an independent school:

Everyone has the right to establish and maintain at their own expense, independent educational institutions that:

- a) *do not discriminate on the basis of race;*
- b) *are registered with the state;*

- c) *maintain standards that are not inferior to standards at comparable public educational institutions.*

Section 46,(3)(a) of the South African Schools Act, 1996 as amended; provides that:

the standards to be maintained by such school will not be inferior to the standards in comparable public schools

The *South African Schools Act (SASA)* identifies two kinds of schools in South Africa: public schools which are state owned and independent schools, which are owned by different kinds of legal entities.

Independent schools can also be sub-divided into two categories: subsidised Independent schools and non-subsidised schools.

3. Registration with the Provincial Education Department

An independent school may not operate unless it is registered with the education department of the province in which it is situated.

The Provincial Education Department (PED) must develop grounds for registration. In line with fair administrative justice, conditions for registration and deregistration of independent schools must be developed after consultation with independent schools.

Any independent school that is registered with the PED and fulfils the requirements stipulated in the Norms and Standards for School Funding, 2006, is eligible for a state subsidy.

4. Governance

Independent schools are established with a specific vision and mission, for a variety of reasons and are registered as legal entities. They must operate in line with their legal registration. The following are some examples:

- Section 21 Companies
- Closed Corporations
- Foundations
- Trusts

Legal entities as listed above may also have the following status: Public Benefit Organisations (PBO), Non Profit Organisations (NPO) and For Profit Organisations.

Independent schools need not follow the governance regulations designed for public schools. They do not need learner representatives or a majority of current parents on their governing body.

Independent schools may use a prefect system and are not obliged to have learner representative councils (LRC); although nothing precludes them from establishing such if they so wish.

5. Quality Assurance

Independent schools must meet the quality assurance requirements for their accreditation as determined by Umalusi in terms of the *General and Further Education and Training Quality Assurance Act, 2001* as amended.

6. Provincial Education Department

All schools are bound by the provincial grounds for registration, by the South African Schools Act (SASA), general law and by any legislation that protects the best interest of the child.

6.1 Requirements and Conditions for Registrations:

The PED's have the responsibility to monitor independent schools that are registered with them. The areas for registration should ideally be determined by the province's conditions for registration of an independent school and relevant legislation.

6.2 Monitoring of Independent Schools by the PED:

Schools that receive a subsidy have a greater accountability to a PED than non-subsidised independent schools. The areas for monitoring should ideally be specified in the management checklist which is drawn up by each province in accordance with the Amended National Norms and Standards for Funding (2008) as well as national guidelines and after consultation with representatives of independent schools. The PED has a right to make unannounced visits, and to audit various aspects of the school's records, largely in the area of financial management.

The protection of the independent school lies within their administrative rights, according to Promotion of Administrative Justice Act 3 of 2000 ('PAJA').

7. Admissions

The most significant limitation on an independent school's admissions policy is that no racial discrimination is allowed. (This would also include admissions policies that may be judged to be a cover-up for racial exclusion).

The Constitution prohibits unfair discrimination. This is drawn from section 9 (3) and (4) of the Bill of Rights on Equality which states that neither the state nor any person may

unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Thus, there is a distinction between fair and unfair discrimination. In line with their distinctive mission, many schools do practise fair discrimination: e.g. a girls' only school does not admit boys; the Drakensberg Boys Choir School only admits boys with good singing voices and musical ability. Such distinctions between learners for admission are legitimate. (See Section 4 of the *Promotion of Equality and Prevention of Unfair Discrimination Act*, 4 of 2000.)

Unfair discrimination would result if distinctions between learners were being made by a school on grounds that were not fair: e.g. refusing to admit gay and lesbian learners, learners of certain religions into a secular school, or a pregnant girl. If a school is accused of unfair discrimination, the onus is on the school to prove that it is not guilty of unfair discrimination on any of the listed grounds above.

8. Exclusions

Exclusions fall into the two broad areas:

- Exclusion on grounds of contravention of the rules contained in the school's Code of Conduct and grievance procedure, drafted in line with relevant legislation and good practice.
- Exclusion on the grounds that the contract between the parents and the school has been broken, usually because the parents have failed to pay fees.

Independent schools may exclude a learner on the basis of any of the above grounds provided that fair procedure has been followed.

The best interest of the child should always be adhered to.

9. Curriculum and Assessment

Independent schools in South Africa must meet all learning outcomes and assessment standards prescribed in both the National Curriculum Statements for the General Education and Training (GET) and the Further Education and Training (FET) bands.

Independent schools are free to choose their own curriculum and examinations as long as they meet the standards prescribed by the National Curriculum Statement. In choosing curricula, independent schools may pursue a particular philosophy or methodology like Waldorf, Montessori, ACE, etc. The majority of independent schools

write public examinations while some choose the Independent Examinations Board examinations.

Independent schools, in addition, may also choose to write international examinations, such as the International Baccalaureate, the Cambridge examinations, O and A-levels from the United Kingdom or the Scholastic Aptitude test (SAT) from the United States, which do not fall under Umalusi's control, but are approved by Higher Education South Africa (HESA) for admission to tertiary institutions in South Africa.

10. Progression, Promotion and Retention

Decisions about promoting or retaining learners fall within the curriculum and assessment areas and are critical to a school's freedom to use its professional judgement to maintain a high quality of education.

Independent schools in South Africa must meet all learning outcomes and assessment standards prescribed in both the National Curriculum Statements for the General Education and Training (GET) and the Further Education and Training (FET) bands.

In the case of subsidised schools, the Norms and Standards for School Funding, 2008, limit the failure rate in specific phases of subsidised schools. This, therefore, means that the PED can monitor the number of retentions in subsidised schools.

In the case of non-subsidised schools, the school is free to exercise its professional judgement in making decisions on promotion and retention, in line with applicable policies.

Independent schools are required by the Constitution and SASA to maintain standards that are not inferior to standards at comparable public institutions / schools. They may exceed these standards by setting reasonably higher threshold than those prescribed in policy.

Good practice dictates that decisions taken about the promotion or retention of a learner should be based on good records of progress, or lack of progress, and evidence of considerable care being taken to ensure that the decisions are made in the best interests of the child.

There is always some transferring of learners between independent and public schools and this requires an understanding of minimum requirements for promotion in the public school system.

Independent schools' standards may exceed the minimum required by the state, and, therefore, a school's requirements may be more rigorous.

Schools must keep promotion and retention schedules, but they are not obliged to keep them in the particular way in which public schools are directed. The PED may ask to see

the schedules to establish that they exist, but schools should not be asked to enter into discussion about particular cases, as decisions about promotion and retention are the preserve of each independent school.

11. CONCLUSION

This document has articulated in a very simple manner the key areas where independent schools may make independent decisions within the confines of applicable policy. It is hoped that this will help independent schools pursue their distinctive missions while at the same time assisting PEDs fulfil their role of monitoring education in the province.

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