GUIDELINE ON THE RIGHTS AND RESPONSIBILITIES OF INDEPENDENT SCHOOLS IN SA

basic education

Department:
Basic Education
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF BASIC EDUCATION

Approved by Council of Education Ministers (CEM) and Heads of Education Committee (HEDCOM)

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1. Acronyms

ACE	Accelerated Christian Education
DBE	Department of Basic Education
EMIS	Educational Management and Information Services
NAISA	National Alliance of Independent Schools Associations
NCS	National Curriculum Statement
NNSSF	National Norms and Standards for School Funding
NQF	National Qualifications Framework
PAJA	Promotion of Administrative Justice Act 3 of 200
PED	Provincial Education Department
SASA	South African Schools Act of 1996
SAT	Scholastic Aptitude test
USAF	Universities South Africa

2. Introduction

2.1 This document was developed in 2010 as part of the Communications Protocol agreement between the **Department of Basic Education (DBE) and the National Alliance of Independent Schools Association (NAISA).** The document has now been revised to: -

2.1.1 ensure alignment with the latest policy and legislation developments, and

2.1.2 enhance understanding of how legislation supports the rights and responsibilities of independent schools in SA.

2.2 The review of the document has been done in consultation with the DBE, Provincial Education Departments (PEDS), NAISA and was endorsed by the HEDCOM Sub-Committee on Independent Schools.

2.3 The Constitution of South Africa and the South African Schools Act (SASA) allows for two types of schools: Public schools and independent schools. Independent schools include those subsidised by the State in accordance with the National Norms and Standards for School Funding (NNSSF) and those not subsidised.

2.4 Independent schools provide parents with added choice with regards to the schooling of their children and also provide a service to their learners that would otherwise have been borne by the State.

2.5 The following are some of the key defining characteristics of independent schools that make them different from public schools:

2.5.1 They follow their own distinctive missions (including particular ethos, faith or philosophy, values, religion);

2.5.2 They determine their own learner admission policies in line with the law;

2.5.3 They choose their own curricula and exit examinations that meet the prescribed outcomes of the National Curriculum Statement (NCS) and must be linked with the National Qualifications Framework (NQF) Act in terms of qualifications registered on the NQF;

2.5.4 They may determine their own promotion and retention policies in line with the Regulations Pertaining to the NCS Grades R-12; (the NCS Regulations), as long as they are not below the standards at comparable public schools.

2.5.5 Parents choose to send their children to independent schools.

2.5.6 They determine how they are governed, financed and staffed, within the boundaries of the law; and in line with good governance practice.

2.6 Independent schools must 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 to be able to determine and deliver programmes of academic excellence to learners.

3. Purpose

3.1 The purpose of the guideline is:

3.1.1 to clarify the distinct nature of independent schools within the South African education system;

3.1.2 to inform the independent schools' community about their rights and responsibilities;

3.1.3 to assist PED officials, particularly at district level, (on how) to deal appropriately with independent schools;

3.1.4 to ensure common understanding of legislative framework; and

3.1.5 to improve common understanding of the relationship between PEDs and Independent Schools to eliminate "grey" areas and avoid misinterpretation of concepts, provided applicable legislation is adhered to.

3.2 The guideline 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.

4. Scope

4.1 This document applies to all independent schools registered in terms of the South African Schools Act, 1996 (Act No. 84 of 1996), PEDs and the DBE.

5. Legislative Framework

5.1 This document is informed by and conforms to the following legislative instruments:

5.1.1 The Constitution of the Republic of South Africa, 1996 (the Constitution);

5.1.2 The National Education Policy Act, 1996 (Act No. 27 of 1996) (the NEPA).

5.1.3 The South African Schools Act, 1996 (Act No. 84 of 1996) (the SASA);

5.1.4 The National Norms and Standards for School Funding (the NNSSF);

5.1.5 The Regulations Pertaining to the National Curriculum Statement Grades R-12; (the NCS Regulations);

5.1.6 The General and Further Education and Training Quality Assurance Act No. 58 of 2001 as amended (the GENFETQA Act); and

5.1.7 The Promotion of Administrative Justice Act 3 of 2000 (PAJA).

6. Governance

6.1 Independent schools are established with a specific vision and mission and are registered as legal entities in accordance with the applicable legislation. They must operate in line with this legal registration.

6.2 Independent schools are not obligated by the SASA to have school governing bodies. However, good practice dictates that independent schools should have a governance structure. Although the governance structure will determine its composition, it should be representative of the parent body. This structure, its election/selection procedures and functions should be reflected in the constitution of the school.

6.3 Good governance emphasizes independent oversight by those serving on the governance structure. It also includes the Duty of Loyalty which asks members to act in a way which avoids conflict of interest, and which promotes loyalty. In addition, they also undertake the Duty of Care which means that they must always act in good faith in the best interest of the school community.

7. Registration and de-registration of independent schools by the Provincial Education Department

7.1 An independent school may not operate unless it is registered with the relevant PED.

7.2 SASA (Section 46(4) provides for penalty against/for/of any person that operates an unregistered independent school (i.e. an independent school that is not registered by the Provincial Head of Department).

7.3 The registration and de-registration of independent schools within a province will be determined by the provisions of SASA (Section 47 (1) and (2), as well as provincial regulations governing independent schools. The implementation and amendments of provincial regulations will always comply with the principles of transparency, fair and just administration.

7.4 SASA (Section 47 (1) and (2)) provides that no withdrawal of the registration of an *independent school* is valid unless due process stipulated in the aforementioned clauses has been followed.

8. Subsidisation of Independent School

8.1 The Constitution (Section 29(4)) does not preclude state subsidies for independent schools.

8.2 The conditions for the granting of subsidies to independent schools are embedded in the NNSSF, and PEDs are obligated to operate according to the NNSSF.

8.3 The national norms apply uniformly to all provinces. However, a provincial MEC may vary them, so long as the intent and spirit is maintained. The HoD must consult with the national DBE on this matter.

8.4 Any independent school that is registered with the PED and fulfils the requirements stipulated in the NNSSF is eligible for a state subsidy.

8.5 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. (SASA Section 48 (3))

8.6 The *Head of Department* may not terminate or reduce a subsidy under subsection (3) of SASA unless due process stipulated in SASA (Section 48 (4) and (5)) has been followed.

9. Management and submission of school data

9.1 In terms of the National Education Policy Act, 1996 (Act No 27 of 1996) the Minister of Education must monitor and evaluate the standards of education provision, delivery, and

performance, through the use of statistics. The policy promotes the processes required to collect reliable statistics.

9.2 All schools must be registered with their provincial department of education and comply with the department's conditions for registration which can include reporting on a regular basis that can support monitoring.

9.3 All schools must provide data quarterly to the provincial departments in accordance with the nationally determined standards. Information can include but not limited to, basic details of institutions, curriculum offerings, educator details, basic learner details, learner performance details, building and infrastructure details. The data is to be submitted to the provincial education departments in a format which ensures that the data is accurately captured on the SA-SAMS format according to the PED management plan on data submissions.

9.4 The submitted data to provincial departments will be uploaded onto the Learner Unit Record Information and Tracking System (LURITS) as requested by the DBE. The system tracks the movement of each learner from school to school as well as inter-provincial movements of learners. Each learner is to eventually be assigned with a unique learner tracking number which remains with the learner throughout their schooling and that will be supplied with feedback files to SA-SAMS.

9.5 The DBE also requires data from provinces that will support reporting on the Medium-Term strategic Framework (MTSF) and Annual Performance Plan (APP) indicators as well as data required to produce national statistics. DBE also collects data that can be provided to SACE and other statutory bodies and the Departments of Health, Social Development and Home Affairs according to the Intergovernmental Protocol Agreements.

9.6 Independent schools must keep records of learners, staff, school, resources, and management, and in the case of subsidised schools, finances, as well as such data as determined by the DBE need to be comprehensive and authentic.

9.7 It remains the responsibility of the school to make sure that the data submitted is complete, accurate and received timeously by the province.

10. Admissions

10.1 The most significant limitation on an independent school's admissions policy is that no racial discrimination is allowed. Thus, no independent school's admission policy may discriminate on the ground of race.

10.2 The Constitution prohibits unfair discrimination. This is drawn from section 9 (4) of the Constitution 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.*

10.3 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 an independent school is accused of unfair discrimination, the onus is on the school to prove that it is not guilty of unfair discrimination.

11. Exclusions

11.1 Exclusions fall into the two broad areas:

11.1.1 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.

11.1.2 Exclusion on the grounds that the contract between the parents and the school has been breached, provided that applicable legislation has been adhered to and due process has been followed.

11.2 An independent school may not act subject to paragraph 11(1) unless the school has –

11.2.1 given a written notice to the parent and the learner of the intention to terminate the provision of education to the learner and the reasons thereof.

11.2.2 granted the parent and the learner a reasonable opportunity to make representation; and

11.2.3 given due consideration to any such representation made by the parent and learner.

11.3 An independent school acting subject to paragraph 11(1) must-

11.3.1 inform the PED of the intention to terminate the provision of education to a learner and the reasons thereof.

11.3.2 show proof indicating compliance with paragraph 11.2.

11.3.3 provide transfer letter, report card if any or any relevant document that is necessary for placement in another school; and

11.3.4 make arrangements with the parent to settle the arrears.

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

12. Curriculum, Assessment and Examination

12.1 Independent schools that follow the NCS[1] must comply with the minimum outcomes and standards regarding the programme requirements of the subjects listed in sub-regulation (a), namely the overview of the relevant subject content, as contemplated in section 2 of the applicable Curriculum and Assessment Policy Statement, provided they have

[1] The Regulations Pertaining to the National Curriculum Statement (Grades R-12) (the NCS Regulations)

comparable content sequencing principles in place as listed in sections 2 and 3 of the said policy document (from Regulation's pertaining to the NCS, Section 5 b A).

12.2 The allocation of notional hours will meet the minimum requirements as per subject requirements in section 1 of the CAPS but may exceed these in terms of instructional time and other additional offerings.

12.3 Should an independent school's performance not meet the required performance targets as stipulated by the relevant authority, such a school must comply with all subject requirements as stipulated in sections 2 and 3 of the Curriculum and Assessment Policy Statements.

12.4 Independent schools are free to choose their own curriculum and examinations as long as they meet the standards prescribed by the NCS and the qualification is registered on the NQF and quality assured by Umalusi, (i.e., *Montessori, Accelerated Christian Education (A.C.E), and Waldorf Curricula*)

12.5 All independent schools offering, assessed and examined in terms of the National Curriculum Statement Grades R- 12 are bound by the Regulations Pertaining to the Conduct, Administration and Management of the National Senior Certificate (NSC) Examination.

12.6 Independent schools must ensure that the candidates that enrol at their institutions comply with the requirements for School-Based Assessment (SBA), the Practical Assessment Task and the Language oral, in terms of the frequency, components and moderation, in line with the requirements of the relevant registered qualification.

13. Progression, promotion, and retention

13.1 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. This freedom may not be used as a punitive measure to the learners.

13.2 Independent schools in South Africa, that follow the National Curriculum Statement, must meet all subject aims, concepts and skills prescribed in the Curriculum and Assessment Policy Statements (CAPS) for the General Education and Training (GET) and the Further Education and Training (FET) bands as well as all related policies.

13.3 In the case of subsidised schools, the 2008 amendments to the National Norms and Standards for School Funding, as well as the National Strategy for Learner Attainment, 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.

13.4 Decisions to repeat a grade will be discussed with the parents, guardian or custodian concerned. The school must provide sufficient proof to show all attempts made by the school to assist the learner concerned.

13.5 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 thresholds than those prescribed in policy.

13.6 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.

13.7 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.

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

13.9 Schools must keep promotion and retention schedules, but they are not obligated to keep them in the same way public schools are directed. The PED may ask to see the schedules to establish that they exist.

14. Quality Assurance

14.1 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.

15. Monitoring by the Provincial Education Department

15.1 The PEDs have the responsibility to monitor registered independent schools. Independent schools must allow visits by officials of the PED.

15.2 The areas for monitoring for purposes of subsidy should ideally be specified in the management checklist drawn up by each province in accordance with the Amended National Norms and Standards for School Funding. 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 audit requirements must be clearly articulated and the audit carried out by suitably qualified auditors. Schools must receive accurate reports timeously in order to correct findings. An appeal process in accordance with the Public Audit Act and the provisional bodies for the relevant members must be followed.

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

16. Conclusion

16.1 This document has articulated the key areas concerning the rights and responsibilities of independent schools where independent schools may make independent decisions within the confines of applicable policy or legislation. It is hoped that this will help achieve the afore-mentioned objectives. Independent schools pursue their distinctive missions while at the same time assisting PEDs to fulfil their role of monitoring education in the province.