

GN 73 of 5 March 2013: Regulations relating to the Registration, Withdrawal of Registration and Subsidies to Independent Schools
(Provincial Gazette No. 2147)

I, Makgabo Reginah Mhaule, the Member of the Executive Council for Education in the Mpumalanga Province, after consultation with the relevant stakeholders and in terms of sections 46 (2), 47, 48 and 50 of the South African Schools Act, 1996 (Act No. 84 of 1996) hereby publish the Regulations relating to the Registration, Withdrawal of Registration and Subsidies to Independent Schools set out in the Schedule.

(Signed)

MAKGABO REGINAH MHAULE
MEC FOR EDUCATION, MPUMALANGA PROVINCE

Date: 2012/12/13

SCHEDULE

REGULATIONS RELATING TO THE REGISTRATION, WITHDRAWAL OF REGISTRATION AND SUBSIDIES TO INDEPENDENT SCHOOLS

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1. Definitions.-In these Regulations any word or expression to which a meaning has been assigned in the Act, bears the meaning assigned to it and, unless the context indicates otherwise-

"Department" means Mpumalanga Department of Education;

"constitution" means a document styled on a constitution, or having a corresponding or similar name, in which the aims, funding and management of, and other relevant matters relating to the control of an independent school by the owner are set out;

"educator" means an educator as defined in the Employment of Educators Act, 1998 (Act No. 76 of 1998);

"EMIS" means the Education Management Information System of the Mpumalanga Department of Education;

"Head of Department" means the Head of Mpumalanga Department of Education as defined in section 1 of the Act;

"independent school" means a school as defined in Chapter 5, of the South African Schools Act (Act No. 84 of 1996), and its amendments;

"inspection" means checking compliance with the Act, this notice and the criteria for registration on an ongoing and collaborative basis with a registered independent school;

"MEC" means the Member of the Executive Council of Mpumalanga Province who is responsible for education;

"National Curriculum Statements" means the National Curriculum Statements as published by the Minister of Basic Education;

"NQF" means the National Qualifications Framework;

"point of exit" means a point of exit as determined from time to time by Umalusi in terms of Act No. 58 of 2001, amended 2008;

(Editorial Note: Wording as per original *Provincial Gazette*.)

"principal" means an educator appointed or acting as the head of a school;

"owner" means the person who owns and maintains the independent school and who controls and manages the independent school, or his or her assignee(s) in whom the control and management of the independent school are vested;

"public school" means a public school as contemplated in the South African Schools Act;

"registered premises or site" means the place or places of business of the registered independent school, and includes each of its schools and the departments and faculties thereof (if any);

"SAQA" means the South African Qualifications Authority;

"SACE" means the South African Council for Educators;

"school-going age" means the age for compulsory school attendance and older, as determined by the South African Schools Act and its amendments;

"school safety" means safety measures as determined by the Minister of Basic Education in the Regulations Relating to Safety Measures at Independent Schools issued in terms of section 61 (a) of the South African Schools Act, 1996 (Act No. 84 of 1996);

"subsidy" in respect of an independent school, means financial assistance to such an independent school;

"special education needs" means a learner that has been identified according to the prescribed procedure as a learner who has a barrier to learning and requires special support;

"the Act" means the South African Schools Act (Act No. 84 of 1996), and amendments;

"Umalusi" refers to the Council for General and Further Education and Training Quality Assurance established in terms of Act No. 58 of 2001, amended Act No. 50 of 2008.

(Editorial Note: Wording as per original *Provincial Gazette*.)

2. Requirements and conditions for registration.-(1) An independent school shall comply with the following requirements and conditions to be registered-

Buildings and grounds

- (a) The buildings, grounds, equipment and proximity must comply with the 'Guidelines Relating to Planning for Public School Infrastructure'.
- (b) The applicant provides proof of tenure of the proposed school buildings and grounds for a minimum period of one year from the date of commencement of the first academic year of the independent school.
- (c) After the first year of operation proof of tenure of the existing school buildings and grounds for at least one academic year must be confirmed.
- (d) The necessary safety measures as defined by the "Regulations for safety measures at public schools" as prescribed in the South African Schools Act must be maintained at the independent school.
- (e) A letter of approval from the local authority stating that the premises have been zoned and are suitable for educational purposes and conform to health and safety requirements.

Curriculum

- (f) Education and training programmes of the school must commence (e) Education and training programmes of the school must commence within the first month of the academic year after registration of the school by the Department.

(Editorial Note: Wording as per original *Provincial Gazette*.)

- (g) The average duration of a school day and the number of school days per calendar year must correlate with average number of hours of public schooling per calendar year, and comply with the prescribed notional hours as stipulated in the National Curriculum Statement (NCS) and Curriculum and Assessment Policy Statements (CAPS) documents.
- (h) The curriculum for learners in the various school phases (including the curriculum for learners with special education needs) at such an independent school shall meet the required outcomes of the National Curriculum Statements declared as policy by the national Minister of Education, and that it must lead to a qualification, which is on the NQF, or is recognised by the SAQA.

Admission of learners

- (i) The provisions relating to age requirements for admission as stipulated in the Act shall apply.
- (j) The provisions relating to compulsory school attendance as stipulated by the Act which are applicable to learners attending public schools, shall also apply to learners attending an independent school.
- (k) The admission of a learner with special education needs to an independent school must be reported

to the Head of Department.

- (l) Foreign learners must provide a study permit prior to enrolment.

Enrolments

- (m) For an independent school to be registered, the average number of learners of school-going age must not be less than 20 during the first 12 months of operation. In the case of learners with special education needs, the number of learners must not be less than 10.
- (n) The Head of Department shall determine the maximum number of learners who may be admitted at an independent school provided that the school buildings and grounds comply with the 'Guidelines Relating to Planning for Public School Infrastructure'.

Learners and Recordkeeping

- (o) The school shall keep an admission register that records vital information about every learner.
- (p) The school shall keep a learner file that consists of the following-
 - (i) a certified copy of the learner's birth certificate or identification document;
 - (ii) promotion report from the learner's previous school;
 - (iii) immunisation certificate for foundation phase learners.
- (q) The school must keep a daily attendance register of learners, educators and non-educators.
- (r) The school must duly keep information required by the provincial EMIS procedures.
- (s) The school must permit the Head of Department or an official authorised by him or her to inspect the registers at any time.
- (t) The school must furnish the Head of Department with any scholastic information contained in the registers that he or she may require.
- (u) The school must keep such other records as the Head of Department may from time to time require in general or in any particular case.

Educators and Recordkeeping

- (v) The head of the independent school must be a principal, who must have a professional qualification recognised by SAQA, must be registered with SACE and must be responsible in a full time capacity for the organising, supervision and the control of the independent school.
 - (w) All educators employed must be registered with the SACE in terms of section 21 of the South African Council for Educators Act, 2000 (Act No. 31 of 2000).
 - (x) The school must keep a record of the registration of all employees with the South African Revenue Service and the Unemployment Insurance Fund.
 - (y) The school must keep an educator file for each educator employed at the independent school in which their names, certified copies of his/her identification no., registration with SACE, qualifications and a signed employment contract with his/her remuneration package are kept.
 - (z) In addition, non-South African Citizen must have the following documents in the educators' file-
 - (i) proof that the foreign qualifications are equivalent to the South African required qualifications as evaluated by SAQA;
 - (ii) a valid working permit;
 - (iii) registration with SACE.
 - (aa) The governing structure of an independent school must-
 - (i) keep records of funds received and spent by the independent school and of its assets, liabilities and financial transactions;
 - (ii) as soon as practicable, but not later than three months after the end of each financial year, draw up annual independent audited financial statements by a person registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005);
 - (iii) comply with the requirements of the Department regarding the submission of quarterly, midterm and annual reports and survey documents;
 - (iv) comply with departmental requirements concerning survey documents on the administration and management of schools as determined from time to time.
- (2) At least one year after registration, the independent school must apply for accreditation with Umalusi.
- (3) No education and training activities must take place in the school, unless the school is duly registered.

3. Procedures for registration of an independent school.-(1) An applicant for the registration of an independent school must apply to the Head of Department according to the prescribed form and procedure by 30 April of the year preceding the start of an academic year.

(2) The application must be accompanied by the following documentation-

- (a) a constitution which makes provision for corporate status, a language policy and an admission policy;
- (b) a floor plan indicating space measurements;
- (c) a site plan indicating recreational and other facilities;
- (d) a confirmation that the school grounds are securely fenced and access to the school grounds is controlled;
- (e) a letter of approval from the local authority stating that the premises have been zoned and are suitable for educational purposes and conform to health and safety requirements;
- (f) evidence that the school will be financially viable for at least 12 months after registration;
- (g) certified copies of the probable educators' qualifications and registration with SACE;
- (h) a comprehensive indication of the system of quality assurance for learning, development and assessment;
- (i) all such other documents as may be required by the Head of Department.

(3) A separate application for each of the sites must be lodged with the Head of Department if a school wishes to operate on different sites.

(4) The Head of Department must in writing approve the application for registration of an independent school within 90 days of receipt of the application, provided that the school complies with all requirements for registration in regulation 2.

(5) The Head of Department must in writing give reasons for non-approval of the registration of an independent school within 90 days of receipt of the application.

(6) Where the Head of Department grants permission for the registration of an independent school, he or she must provide the applicant with the conditions of registration.

(7) A registration certificate is issued for one site only and is not transferable.

(8) A registration certificate issued by the Head of Department may not be applicable in another province. A certificate issued by another provincial department is not transferable and a new application for registration must be submitted.

(9) The owner of an independent school may appeal to the Member of the Executive Council within 30 days against the decision of the Head of Department not to register such independent school.

(10) Teaching may only be offered in an independent school once the owner is in possession of a registration certificate for that independent school.

(11) Any person who contravenes paragraph (10) is guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months. (South African Schools Act, 1996. Section 46 (4).)

4. Changes to conditions and circumstances.-(1) The owner or principal of a registered independent school must inform the Head of Department in writing within 30 days of any change in ownership or governance of the school.

(2) The owner or principal of a registered independent school must inform the Head of Department at least six months in advance and in writing, of any intention or decision to change premises. This notification must include a certificate of approval from the local authority that the new intended premises conform to the minimum requirements for an institution of education. Changes in premises should preferably take effect at the end of an academic year.

(3) The new intended premises must be subject to compliance visits by officials from the department and will be subject to approval by the Head of the Department.

(4) Changes in ownership and premises without notification to the Head of the Department may result in the cancellation of an existing registration.

(5) An independent school may not establish satellites. Each delivery site must be registered as a school and recorded on the EMIS.

(6) The owner or principal of a registered independent school must notify the Head of Department, parents, staff and learners at least six months in advance and in writing, of any intention or decision to terminate the

operation of the school, which termination should preferably take effect at the end of an academic year.

(7) Subject to any conditions contained in these Regulations, a new registration certificate must be issued when there is a change in the ownership and or premises of the independent school.

(8) Any changes to the approved curriculum that an independent school wishes to introduce, shall meet the outcomes of the National Curriculum Statements declared as policy by the Minister of Basic Education, and must be approved by the Head of Department.

Previously registered independent schools

(9) (a) A school that is registered as an independent school prior to the promulgation of these Regulations shall be deemed by the Head of the Department to be an independent school registered in terms of these Regulations.

(b) The school mentioned par. 8 (a) is subjected to par. 6 (1).

5. Permission for learners to register and sit for examinations.-(1) The Head of Department may allow learners at independent schools to register and write any examination conducted by or under supervision of the department after payment of examination fees determined by the Head of Department.

(2) The owner and/or principal of an independent school may apply to the Head of Department to register as an examination centre for the National Senior Certificate.

(3) The principal of an independent school and the candidates from an independent school registered to write the Senior Certificate examinations must comply with the Regulations pertaining to the Conduct, Administration and Management of Assessment for the National Senior Certificate, published by means of Government Notice No. R.872 in *Government Gazette* No. 31337 of 29 August 2008 and its amendments.

(4) The principal of an independent school must, ensure the Head of Department, that standards by and conditions under which such examinations will be conducted by the independent school concerned, equate to those required of a public school for the same examination.

(5) An independent school that applies for registration with the Independent Examinations Board or other examination bodies must ensure that the qualification is recognised by the SAQA. The other examination bodies must be accredited by Umalusi.

6. Monitoring of and access to independent schools.-(1) The Head of Department may order a monitoring to be held at any independent school in respect of the premises of the school, the standard of teaching provided, the way in which the independent school is managed or any other matter related thereto.

(2) The Head of Department or his/her assignee must notify the school in writing of such monitoring, the nature thereof and the date of the monitoring visit.

(3) Should a complaint be lodged against an independent school by parents and/or guardians and/or caregivers of the learners enrolled at the school, the Head of the Department may, in writing, request a written report regarding the complaint from the principal and owner of the school.

(4) The principal must within 30 days of receipt of the written request referred to in sub-clause (3) above, respond to the Head of Department in writing.

(5) If the Head of Department is not satisfied with the written response referred to in sub-clause (4) above, he/she may within 30 days of receipt of such written response, inform the principal of the independent school in writing of his/her intention to conduct a departmental investigation. Departmental officials appointed by the Head of Department shall be granted access to the school premises and/or records at any reasonable time for the purposes of furthering such investigation.

7. Withdrawal of registration and closure of independent schools.-(1) (a) The Head of Department may, subject to the provisions of sub-regulation (1) (b) below, notify the owner of the intention to withdraw registration; of an independent school if he or she is convinced on reasonable grounds that such an independent school-

- (i) is not complying with all the registration requirements or conditions referred to in regulations 2, 4, 5, 6, 7, or that the independent school is being managed or maintained in a manner or under circumstances that could be harmful to the physical, intellectual or spiritual well-being of the learners attending such an independent school;
- (ii) fails to comply with the requirements of the South African Schools Act, the National Education Policy Act or regulations made in terms thereof or these Regulations.

(b) Before withdrawing the registration of an independent school in terms of regulation 7 (1) (a), the Head of Department must, in a written notice addressed to the owner notify the owner of the intention to withdraw registration; of the independent school-

- (i) notify the owner of the proposed withdrawal;
- (ii) furnish the reasons for the proposed withdrawal;
- (iii) set out the requirements or conditions with which the owner must, within a reasonable period determined by the Head of Department and specified in the notice, comply in order to prevent the proposed withdrawal;
- (iv) consider such representation and inform the owner within 30 days of his or her decision.

(c) If the owner fails to comply with the said requirements or conditions within the period specified by the Head of Department contemplated in sub-regulation (1) (b) (iii), the Head of Department may withdraw the registration of the independent school concerned with effect from a date determined by him or her.

(2) If the registration of an independent school is withdrawn, the owner may reapply for registration after taking the necessary steps to ensure that the relevant registration requirements or conditions are complied with, or that the circumstances referred to in sub-regulation (1) (a), are improved or eliminated, as the case may be.

(3) (a) If the registration of an independent school is withdrawn by the Head of Department in terms of sub-regulation (1), the Head of Department may order the owner concerned to close the independent school with effect from a date determined by the Head of Department.

(b) Any person ordered to close an independent school in terms of sub-regulation (1) (a), and who refuses or fails to comply with the provisions of the order, shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period of three months.

(4) The registration of any registered independent school, that is dormant for a period of one year, will be withdrawn.

8. Subsidies to independent schools.-(1) In terms of section 48 of the Act, an application for a subsidy may be made by an independent school which has-

- (a) been duly registered with the department;
- (b) been operational and self-supporting for a year or more;
- (c) been registered as a non-profit company, section 21, in terms of the Companies Act, 1973 (Act No. 61 of 1973), a Non-profit Company in terms of the Companies' Act, 2008 (Act No. 71 of 2008) or a Non-profit Organisation in terms of the Non-Profit Organisations Act (Act No. 71 of 1997);
- (d) A letter of approval, that is not older than 2 years, from the local authority stating that the premises have been zoned and are suitable for educational purposes and conform to health and safety requirements;
- (d) submitted proof that the subsidy will be utilised for the provision of education at the school;
(Editorial Note: Numbering as per original *Provincial Gazette*.)
- (e) given proof of sound management according to a management checklist determined by the Head of Department;
- (f) agreed to unannounced monitoring visits by officials authorised by the Head of Department;
- (g) not been established in direct competition with a nearby uncrowded public school of equivalent quality;
- (h) been established in an area where it adds value to the department and the community in terms of learners pass rate and alleviates overcrowding;
- (i) complied with all such other educational requirements as may be determined by the Minister of Basic Education.

(2) The subsidy referred to in sub-regulation 7 (1), shall be determined annually by the Head of Department in accordance with the relevant sections of the Act and relevant regulations of the National Norms and Standards for School Funding.

(3) An independent school may direct its application for a subsidy to the Head of Department on the application form and according to procedures determined by the Head of Department for this purpose: provided that-

- (a) an application for a subsidy shall be submitted to the Head of Department annually on or before 31 March of the preceding year;
- (b) if an independent school to which a subsidy has been granted, at any time during the financial year no longer complies with all the registration requirements or conditions mentioned in regulations 2 and 6, the Head of Department or an official assigned by the Head of the Department must give the owner a written notice thereof, stating the requirement or condition that has not been complied with as well as the period within which the non-compliant condition or requirement must be corrected;

- (c) the Head of Department or an official assigned by him/her must notify the owner or principal of the independent school to satisfy the requirement or condition within a period determined by the Head of Department and stated in the notice;
- (d) if, after the expiry of the period contemplated in paragraph (c) above, the independent school still does not comply with the requirement or condition in question, the subsidy to the independent school may be terminated;
- (e) unless the Head of Department determines otherwise, a subsidy may be payable only in respect of those learners of school-going age who are following the approved curriculum in Grade 1 to Grade 12;
- (f) No subsidy must be paid to independent schools for learners who are 21 years or older on the first day of the year in respect of which a subsidy is paid.

(4) An independent school that has been considered for a subsidy referred to in regulation 7 (2), must-

- (a) in the opinion of the Head of Department, maintain satisfactory scholastic standards;
- (b) in the opinion of the Head of Department, meet the educational and cultural needs of a cultural or religious group which are not adequately met by public schools;
- (c) where there is sufficient proof of under-performance in the school, consent to participate in the department's diagnostic testing for Grades 3, 6 and 9 linked to ordinary public schools;
- (d) be compliant with a management checklist determined by the Head of Department;
- (e) submit bi-annually a certificate issued by the local authority confirming that the facilities of the independent school comply with health regulations;
- (f) submit a certified copy of its constitution and, where appropriate, the trust deed or memorandum of incorporation, according to which the school is managed;
- (g) submit annually by 30 June, an audited financial statement on the financial affairs of the independent school to the Head of Department;
- (h) utilise the services of a person appointed and registered as an auditor in terms of the Auditing Profession Act, 2005 (Act No. 26 of 2005) to audit the records and financial statements;
- (i) ensure that learners at the different points of exit comply with the requirements laid down in the General and Further Education and Training Quality Assurance (GENFETQA) Act (Act No. 58 of 2001), as amended and General and Further Education and Training Qualifications Framework; comply with all related regulations as stipulated by the Act and the Norms and Standards for School Funding and maintain good standing as a non-profit organisation;
- (j) the admission of a learner with special education needs to an independent school must be reported to the Head of Department.

(5) The Department must pay any subsidy granted to an independent school into the bank account opened in the name of the school as contemplated in the Banks Act, 1990 (Act No. 94 of 1990).

(6) The owner of the school or the governing body must forthwith inform the Head of Department immediately of its intentions to make any changes-

- (a) to the circumstances which may affect any subsidy granted for the benefit of the school as stipulated in regulation 4;
- (b) of ownership of the school.

(7) Any person who in connection with an application for a subsidy to an independent school wilfully furnishes false information or makes a statement which is false or misleading, shall not be considered for subsidy for 3 years.

(8) In addition to any matter specifically prescribed in these Regulations, funding to independent schools must comply with the Act and the National Norms and Standards for School Funding and its amendments.

9. Appeals to the Member of the Executive Committee.-(1) The owner of an independent school may within 30 days of receiving notice of such a decision appeal to the Member of the Executive Council in terms of section 47 of the Act against the withdrawal of the registration of such independent school.

(2) An appeal in terms of regulation 9 (1) must be in writing and must contain the reasons or the grounds of appeal and shall be submitted to the Member of the Executive Council within a period of 30 days of the receipt of the notice refusing the application or withdrawing registration.

(3) The Member of the Executive Council may, when considering an appeal contemplated in sub-regulation (1), request the appellant or the Head of Department to supply him or her with such further information as he or she may require.

(4) The Member of the Executive Council must-

- (a) when considering an appeal contemplated in sub-regulation (1), take into consideration the reasons of the Head of Department contemplated in regulation 7 as well as the grounds of the appeal; and
- (b) within a period of 60 days of receiving such an appeal, notify the appellant in writing of his or her decision and the reasons thereof.

(5) In the case of an appeal against a decision to withdraw the registration of an independent school, the school may continue to function until the Member of the Executive Council announces his/her decision.

10. Delegation of powers.-The Head of the Department has authority to delegate the powers bestowed on him or her in terms of this notice.

11. Commencement.-These Regulations shall come into operation upon publication in the *Provincial Gazette*.

12. Short title.-These Regulations shall be called Regulations relating to the Registration, Withdrawal of Registration and Subsidies to Independent Schools and will come into operation upon publication in the *Provincial Government Gazette*.
