

PROVINCIAL NOTICE 639 of 1998

GAZETTE NO 5313

The following Provincial Notices are published for general information.

REGULATIONS RELATING TO THE REGISTRATION OF AND SUBSIDIES TO INDEPENDENT SCHOOLS (INCLUDING INDEPENDENT PRE-PRIMARY SCHOOLS)

The Member of the Provincial Cabinet responsible for Education in the Province of the Western Cape has in terms of sections 37 and 63 of the Western Cape Provincial School Education Act, 1997 (Act No. 12 of 1997), and with the concurrence of the financial head, promulgated the regulations set out in the Schedule.

SCHEDULE

(A) REGULATIONS RELATING TO THE REGISTRATION OF AND SUBSIDIES TO INDEPENDENT SCHOOLS (EXCLUDING INDEPENDENT PRE-PRIMARY SCHOOLS)

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 otherwise indicates-

"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 independant school by the proprietor are set out;

"curriculum" means the curriculum referred to in regulation 2(2)(h)(ii) and (iii), which must be followed at an independant school;

"education" means education as defined in section I of the Act;

"education department" means the Western Cape Education Department;

"educator" means an educator as referred to in section 1 of the Act;

"financial head" means the person appointed by the Premier in terms of section 42 of the Constitution of the Western Cape, 1997 (No. 1 of 1998), as Member of the Provincial Cabinet responsible for the administration of the financial affairs of the Province of the Western Cape;

"grade" means a grade as defined in section 1 of the Act;

"Head of Department" means the Head of Department as defined in section I of the Act;

"independant school" means an independant school which enrolls learners in one or more grades from grade one to grade twelve;

"learner" means a learner as defined in section I of the Act;

"learner with special education needs" means a learner with special education needs as defined in section I of the Act;

"Member of the Provincial Cabinet" means the Member of the Provincial Cabinet responsible for education in the Province of the Western Cape;

"parent" means a parent as defined in section I of the Act;

"point of exit" means a point of exit as determined from time to time

by the South African Certification Council in terms of the South African

Certification Council Act, 1986 (Act 85 of 1986);

"Premier" means the Premier as defined in section I of the Act;

"principal" means a principal as defined in section I of the Act;

"proprietor" 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 section I of the Act;

"school-going age" means the age for compulsory school attendance and older, as determined by the Minister of Education. in terms of sections 3(1), 3(2) and 5(4) of the South African Schools Act. 1996 (Act X4 of 1996). during which a learner follows officially recognised school programmes from grade one to grade twelve;

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

"the Act" means the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997).

2. REQUIREMENTS AND CONDITIONS FOR REGISTRATION

(1) An independent school shall comply with the following requirements to be registered

in terms of section 28 of the Act:

- (a) The applicant for registration shall satisfy the Head of Department that it can reasonably be expected that the average number of learners of school-going age who will be enrolled at the independent school in question during the first 12 months following the date on which such application was received by the Head of Department will not be less than 20.
- (b) At the head of such an independent school there shall be a principal, who shall be responsible for the organisation and supervision of, the conduct at, and the control of, the independent school.
- (c) The school buildings and grounds shall offer the space, design and facilities that are sufficient in the opinion of the Head of Department.
- (d) The Head of Department must be satisfied that the independent school will make a contribution to the provision of education in a specific area or for a specific purpose especially concerning the nature of the education it offers.

(2) The registration of an independent school shall be subject to the following conditions:

- (a) A learner shall not be admitted to grade 1 in such an independent school, unless he or she complies with the requirements for school-going age.
- (b) The provisions relating to compulsory school attendance applicable

to learners attending public schools shall apply also to learners attending an independent school.

- (c) The admission of a learner with special education needs to an independent school must be reported to the Head of Department.
- (d) The Head of Department shall determine the maximum number of learners who may be admitted to such an independent school on the basis of the school buildings and grounds referred to in subregulation (1)(c).
- (e) Teaching shall not be offered in such an independent school unless the proprietor is in possession of a registration certificate for the independent school concerned.
- (f) The appointment of any educator at such an independent school shall be done by the proprietor, who shall notify the Head of Department of the appointment and state the qualifications and experience of the educator concerned.
- (g) The proprietor of such an independent school shall-
 - (i) keep an enrolment register and an attendance register the learners attending the independent school;
 - (ii) keep a register of the educators employed at independent school in which their names, registrar numbers, qualifications and remuneration are recorded,
 - (iii) permit the Head of Department or an official authorised by him or her to inspect the registers at any time;

- (iv) furnish the Head of Department with any information contained in the registers that he or she may require;
- (v) keep such other records as the Head of Department may from time to time require in general or in any particular case; and
- (vi) keep the registers and records referred to in subparagraphs (i), (ii) and (v) in such a way as may from time to time be determined or required by the Head of Department.

(h) The proprietor of such an independent school shall ensure that

- (i) the average duration of a school day and the minimum number of school days per calendar year are as approved, by the Head of Department;
- (ii) the curriculum for learners in the various school phases (including the curriculum for learners with special education needs) at such an independent school shall be in accordance with the curriculum approved by the Member of the Provincial Cabinet; and
- (iii) the curriculum that such an independent school wishes to offer, shall be in accordance with the curriculum which is declared as policy by the national Minister of Education and that it will lead to a qualification which is on the National Qualification Framework, or is recognised by the South African Qualification Authority as a South African qualification.

3. PERMISSION FOR LEARNERS TO SIT FOR EXAMINATIONS

The Head of Department may allow learners at independent schools to sit for any examination conducted by or under the supervision of the education department.

4. INSPECTION OF INDEPENDENT SCHOOLS

(1) The Head of Department may at any reasonable time order that an inspection be held at any independent school in respect of the premises, furniture and equipment of the independent school, the teaching provided, the way in which the independent school is managed, and any other matter which in the opinion of the Head of Department should be inspected.

(2) Whenever the proprietor or principal of an independent school requests in writing that an inspection be held, the Head of Department may cause such an inspection to be held and a report to be forwarded to the proprietor or principal.

5. SUBSIDIES TO INDEPENDENT SCHOOLS

(1) An independent school which has been registered for a year or more may apply for a subsidy in terms of section 31 of the Act.

(2) The subsidy referred to in subregulation (1), shall be determined annually by the Head of Department with the concurrence of the financial head.

(3) An independent school shall direct its application for a subsidy to the Head of Department on the application forms that will be made available by the Head of Department for this purpose Provided that-

- (a) an application for a subsidy shall be submitted annually on or before 31 March of the preceding year to the education department;

(b) if an independent school to which a subsidy has been granted no longer complies, at any time during the financial year, with all the registration requirements or conditions mentioned in regulation 2, the Head of Department shall give the proprietor written notice thereof, stating which requirement or condition has not been complied with and instructing the proprietor to satisfy this requirement or condition within a period determined by the Head of Department and stated in the notice;

(c) if, after the expiry of the period contemplated in paragraph (c), the independent school still does not comply with the requirement or condition in question, the subsidy to the independent school shall lapse; and

(d) a subsidy shall be payable only in respect of those learners of school-going age who are following the curriculum in grade one to grade twelve, unless the Head of Department determines otherwise in the case of learners with special education needs.

(4) Any person who in or 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 be guilty of an offence and upon conviction liable to a fine or imprisonment for a period of three months.

(5) An independent school may be considered for a subsidy referred to in subregulation (2), if the independent school-

(a) maintains, in the opinion of the Head of Department, satisfactory scholastic standards;

- (b) meets, in the opinion of the Head of Department, the educational and cultural needs of a cultural or religious group which are not adequately met by public schools;
- (c) determines the remuneration package of the educators attached to the independent school in such a manner that it is, in the opinion of the Head of Department, not more favourable than the packages of educators serving in posts of the same grade and category in the education department:
- (d) accommodates the learners in and on the school buildings and grounds in a manner which is in the opinion of the Head of Department satisfactory;
- (e) annually submits an audited financial report on the financial affairs of the independent school to the Head of Department:
- (f) pays any subsidy received from the education department into a bank or building society account as contemplated in the Banks Act, 1990 (Act 94 of 1990), which has been opened in the name of the independent school:
- (g) ensures that learners at the different points of exit comply with the requirements laid down by the South African Certification Council;
- (h) submits the constitution of the independent school which makes provision for corporate existence to the Head of Department; and
- (i) submits a certificate issued by the local authority that the independent school's facilities comply with health requirements.

6. WITHDRAWAL OF REGISTRATION AND CLOSURE OF INDEPENDENT SCHOOLS

(1) (a) The Head of Department may, subject to the provisions of paragraph (b), withdraw the registration of an independent school if he or she is on reasonable grounds convinced that such an independent school is not complying with all the registration requirements or conditions referred to in regulation 2, or that the independent school is being managed or maintained in a manner or under circumstances that could in his or her opinion be harmful to the physical, intellectual or spiritual well-being of the learners attending such an independent school.

(b) Before withdrawing the registration of an independent school in terms of paragraph (a), the Head of Department shall in a written notice addressed to the proprietor of the independent school

- (i) notify the proprietor of the proposed withdrawal;
- (ii) furnish the reasons for the proposed withdrawal; and
- (iii) set out the requirements or conditions with which the proprietor must, within a reasonable period determined by the Head of Department and specified in the notice, comply in order to prevent the proposed withdrawal.

(c) If the proprietor fails to comply with the said requirements or conditions within the period specified by the Head of Department contemplated in paragraph (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 proprietor 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 subregulation (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 subregulation (1), or an appeal to the Member of the Provincial Cabinet in terms of section 33 of the Act against the refusal of an application for registration contemplated in subregulation (2), is disallowed, the Head of Department may order the proprietor concerned to close the independent school with effect from a date determined by the Head of Department.

(b) Any person who is ordered to close an independent school in terms of paragraph (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.

7. APPEALS TO THE MEMBER OF THE PROVINCIAL CABINET

(1) An appeal in terms of section 33(2) of the Act, shall be in writing, with an exposition of the grounds of appeal, and shall be submitted to the Member of the Provincial Cabinet within a period of 30 days of the receipt of the notice in terms of section 31(1) of the Act.

(2) The Member of the Provincial Cabinet may, when considering an appeal contemplated in subregulation (1), request the appellant or the Head of Department to supply him or her with such further information as he or she may require.

(3) The Member of the Provincial Cabinet shall-

(a) when considering an appeal contemplated in subregulation (1), take into consideration the reasons of the Head of Department contemplated in section 33(1) of the Act. 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.

(B) REGULATIONS RELATING TO THE REGISTRATION OF INDEPENDENT PRE-PRIMARY SCHOOLS

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 otherwise indicates-

"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 independant pre-primary school by the proprietor are set out:

"education" means education as defined in section I of the Act;

"education department" means the Western Cape Education Department;

"educational programme" means an educational programme approved by the Head of Department;

"educator" means an educator as referred to in section 1 of the Act;

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

"independant pre-primary school" means an independant school as contemplated in section 1 of the Act;

"learner" means a learner as defined in section 1 of the Act;

"learner with special education needs" means a learner with special education needs as defined in section 1 of the Act;

"member of staff" means a member of staff as defined in section 1 of the Act;

"Member of the Provincial Cabinet" means the Member of the Provincial Cabinet responsible for education in the Province of the Western Cape;

"principal" means a principal as defined in section 1 of the Act;

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

"the Act" means the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997).

2. REQUIREMENTS AND CONDITIONS FOR REGISTRATION

(1) An independent pre-primary school shall comply with the following requirements to be registered in terms of section 28 of the Act:

(a) The applicant for registration shall satisfy the Head of Department that it can reasonably be expected that an average enrolment of at least 20 learners for each school quarter can be maintained.

(b) At the head of such an independent pre-primary school there shall be a principal. who shall be responsible for the organisation and

supervision of, the conduct at, and the control of the independent pre-primary school.

(c) The school buildings and grounds shall offer the space, design and facilities that are sufficient in the opinion of the Head of Department.

(d) The applicant must satisfy the Head of Department that the independent pre-primary school will make a contribution to the provision of pre-primary education in the area concerned.

(2) The registration of an independent pre-primary school shall be subject to the following conditions:

(a) Except with the approval of the Head of Department, a learner shall-

- (i) not be admitted to such an independent pre-primary school before he or she has reached the age of three years; and
- (ii) not remain in such an independent pre-primary school after the last school day of the year in which he or she has reached the age of six years: Provided that the provisions of this paragraph shall not apply to a learner who has been exempted from compulsory school attendance in terms of the provisions of section 43 of the Act.

(b) The admission of a learner with special education needs to an independent pre-primary school must be reported to the Head of Department.

(c) On the basis of the school buildings and grounds referred to in

subregulation (1)(c), the Head of Department shall determine the maximum number of learners who may be admitted to such an independent pre-primary school.

(d) The proprietor of such an independent pre-primary school shall ensure that-

- (i) the average duration of a school day and the minimum number of school days per calendar year comply with the directions of the Head of Department; and
- (ii) educational programmes are offered to learners in the independent pre-primary school.

(e) The proprietor of such an independent pre-primary school shall-

- (i) keep a register of learners admitted to the independent pre-primary school and a daily attendance register of the learners attending such an independent pre-primary school, in the manner determined by the Head of Department;
- (ii) keep a register of the educators employed at the independent pre-primary school and of the other members of staff involved with the educational programme, in which register the names, registration numbers (if any), qualifications and remuneration shall be recorded in the manner determined by the Head of Department;
- (iii) permit the Head of Department, or an official authorised by him or her, to inspect the registers at any time; and

(iv) keep such other records as the Head of Department may from time to time determine in general or in any particular case.

(f) The appointment of any educator, or any other member of staff involved with the educational programmes, shall be done by the proprietor, who shall notify the Head of Department of the appointment and state the qualifications and experience of the person concerned.

3. WITHDRAWAL OF REGISTRATION OF INDEPENDENT PREPRIMARY SCHOOLS

(1) (a) The Head of Department may, subject to the provisions of paragraph (b), withdraw the registration of an independent pre-primary school if he or she is on reasonable grounds convinced that not all the registration requirements or conditions referred to in regulation 2, are being complied with, or that the independent pre-primary school is being managed or maintained in a manner or under circumstances that could in his or her opinion, be harmful to the physical, intellectual or spiritual well-being of the learners attending such independent pre-primary school.

(b) Before withdrawing the registration of an independent pre-primary school under paragraph (a), the Head of Department shall in a written notice addressed to the proprietor of the independent pre-primary school-

(i) notify the proprietor of the proposed withdrawal;

(ii) furnish the reasons for the proposed withdrawal; and

(iii) afford the proprietor the opportunity to comply, within the period specified in the notice, with the said requirements and conditions.

(c) If the proprietor fails to comply with the said requirements or conditions within the period referred to in paragraph (b)(iii), the Head of Department may withdraw the registration of the independent pre-primary school concerned with effect from a date determined by him or her.

(2) If the registration of an independent pre-primary school is withdrawn, the proprietor may re-apply 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 subregulation (1)(a), are improved or eliminated, as the case may be.

4. APPEALS TO THE MEMBER OF THE PROVINCIAL CABINET

(1) An appeal in terms of section 33(2) of the Act, shall be in writing, with an exposition of the grounds of appeal. and shall be submitted to the Member of the Provincial Cabinet within a period of 30 days of the receipt of the notice in terms of section 33(1) of the Act.

(2) The Member of the Provincial Cabinet may, when considering an appeal contemplated in subregulation (1). request the appellant or the Head of Department to supply him or her with such further information as he or she may require.

(3) The Member of the Provincial Cabinet shall-

(a) when considering an appeal contemplated in subregulation (1), take into consideration the reasons of the Head of Department contemplated in section 33(1) of the Act, 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.