

**REGULATIONS IN TERMS OF THE WESTERN CAPE PROVINCIAL SCHOOL EDUCATION
ACT
NO. 12 OF 1997**

[PROVINCIAL NOTICE NO. 341 OF 2011]
[DATE OF COMMENCEMENT: 6 DECEMBER, 2011]

These Regulations were published in *Provincial Gazette* 6932 dated 6 December, 2011.

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

I, Donald Arthur Cardross Grant, the Provincial Minister responsible for education in the Province of the Western Cape, hereby promulgates the regulations as set out in the Schedule in terms of sections 28 and 37 of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997).

SCHEDULE

ARRANGEMENT OF REGULATIONS

- [1.](#) Definitions
- [2.](#) Requirements and grounds for registration
- [3.](#) Procedure for registration
- [4.](#) Registration certificates
- [5.](#) Permission for learners to register and sit for examinations
- [6.](#) Monitoring and access to independent schools
- [7.](#) Subsidies to independent schools
- [8.](#) Withdrawal of registration and closure of independent schools
- [9.](#) Appeal to Provincial Minister
- [10.](#) Repeal
- [11.](#) Short title

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—

“**council**” means the South African Council for Educators referred to in section 4 of the South African Council for Educators Act, 2000 (Act 31 of 2000);

“**NCS**” means the National Curriculum Statement determined by the National Minister in terms of section 6A, read together with section 61, of the South African Schools Act, 1996 (Act 84 of 1996);

“**NNSSF**” means the Amended National Norms and Standards for School Funding, 2008, issued in terms of section 39 (7) of the South African Schools Act, 1996;

“**owner**” means the person or entity which owns and maintains an independent school and who controls and manages an independent school, or his or her assignee(s) in whom the control and management of an independent school is vested;

“**registration certificate**” means a certificate issued by the Western Cape Education Department upon registration or provisional registration of an independent school;

“**SAQA**” means the South African Qualifications Authority contemplated in Chapter 4 of the National Qualifications Framework Act, 2008 (Act 67 of 2008);

“**school-going age**” means the age for compulsory school attendance as determined by the Provincial Minister in terms of section 42 of the Act, and up to the age of *eighteen years*, during which a learner follows officially recognised school programmes from Grade 1 to Grade 12;

“**school safety**” means school safety as defined in the safety measures determined by the National Minister in the Safety Measures at Independent Schools, issued in terms of section 61 (a) of the South African Schools Act, 1996;

“**the Act**” means the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997); and

“**Umalusi**” means the Council for General and Further Education and Training Quality Assurance established by section 4 of the General and Further Education and Training Quality Assurance Act, 2001 (Act 58 of 2001).

2. Requirements and grounds for registration.—(1) Any owner may apply to the Head of Department for the registration of a school as an independent school. An independent school must comply with the following requirements to be registered in terms of section 28 of the Act—

- (a) The applicant for registration must 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 fewer than 20, unless such learners are learners with special education needs, in which case the minimum number of learners in a school for special education needs must be 10.
- (b) At the head of such an independent school there must be a principal who, if he or she is the academic head of the school or the head of a phase in the school, must have a teaching qualification recognised by the Authority, and registered with the council.
- (c) The school buildings and grounds must offer the space, design and facilities which conform to standards appropriate to the context in which the school will operate taking into account comparable standards at public schools in the area, and—
 - (i) the buildings and grounds which are or will be occupied by the school must meet the requirements of the relevant health authorities and municipal by-laws, as the case may be; and
 - (ii) tenure of the school buildings and grounds must be secured for a period of twelve months following the registration of such school.

(2) The registration of an independent school is subject to the following conditions—

- (a) A learner may not be admitted to Grade 1 in such an independent school unless he or she complies with the requirements for school-going age as defined in section 27A of the Act.
- (b) The provisions relating to compulsory school attendance as stipulated by section 42 of the Act, which are applicable to learners attending public schools, shall also apply to learners attending an independent school.
- (c) The Head of Department must 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).
- (d) Teaching may only be offered in an independent school once the owner is in possession of a registration certificate for that independent school.
- (e) All educators employed at the independent school must be registered with the council.
- (f) The independent school must participate in the processes of the Central Education Management Information System (CEMIS) of the Western Cape Education Department.
- (g) The owner of an independent school must—
 - (i) keep an admission register in which information about every learner is recorded;
 - (ii) keep a daily attendance register of learners, educators and non-educators;
 - (iii) keep an educator profile of each educator employed at the independent school in which their names, registration with the council, employment contract, qualifications and remuneration are recorded;
 - (iv) keep a record of the registration of all employees with the South African Revenue Service and the Unemployment Insurance Fund;
 - (v) maintain receipt books, detailed financial reports and publish annual audited financial statements; and
 - (vi) permit the Head of Department or an official authorised by him or her to visit any independent school to verify that the above documents are maintained.
- (h) The owner of an independent school must ensure that—
 - (i) the average duration of a school day and the minimum number of school days per calendar year comply with the prescribed notional hours as stipulated in the NCS and Curriculum and Assessment Policy Statement documents;
 - (ii) the curriculum for learners in the various school phases meet the required outcomes of the NCS and are recognised by the Authority and Higher Education South Africa (HESA);
 - (iii) after registration, the independent school applies for accreditation with Umalusi; and
 - (iv) the necessary safety measures are maintained at the independent school as defined under “school safety” in regulation 1.

- (i) The owner or principal of a registered independent school must—
 - (i) inform the Head of Department in writing within 30 days of any transfer of ownership or change in status of the school;
 - (ii) 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;
 - (iii) notify the Head of Department in writing of any change of premises and be provided with a certificate of approval from the local authority that such premises conform with the requirements of the relevant health authorities and/or municipal by-laws, as in regulation 3 (2) (d); and
 - (iv) ensure that any changes to the approved curriculum that an independent school wishes to introduce, must meet the outcomes of the NCS declared as policy by the National Minister, and must be approved by the Head of Department as a change to the original registration requirements.

3. Procedure for registration.—(1) The applicant for the registration of an independent school must apply to the Head of Department on the prescribed form by 30 June of the year preceding the start of the academic year in which the school intends to open.

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

- (a) A constitution or founding document of the school and relevant policies that cover ownership, mission, aims, governance, funding, language and admission;
- (b) A floor plan indicating space measurements, which shall in the case of a multi-floor building include a floor plan for each floor;
- (c) A site plan indicating recreational and other facilities;
- (d) A letter of approval from the local authority stating that the premises have been zoned or have consent use for educational purposes and conform to health and safety requirements;
- (e) Evidence of security of tenure over the proposed school buildings and grounds for a minimum of 12 months from the date of registration of the school;
- (f) Evidence that the school will be financially viable for at least 12 months after registration; and
- (g) Certified copies of the certificates of registration with the council in respect of educators already appointed and an undertaking by the owner that all educators will be registered with the council and that they will provide the outstanding certificates by the time the school starts operating.

(3) A separate application for each of the sites is required if a school wishes to operate on different sites.

(4) The application must be lodged on Form 1 in the Annexure, accompanied by the documents listed in subregulation (2), with the district office in which the proposed school is to be established and shall be forwarded by the district office to the Head of Department within 14 days.

(5) The Head of Department must confirm the date of receipt of the application in writing to the applicant.

(6) The application for registration of an independent school must be approved by the Head of Department within 90 days of receipt of the application, provided that the school complies with all requirements for registration in subregulation (2).

(7) The owner of an independent school may, within 30 days of receiving notice of a decision not to register such an independent school, appeal to the Provincial Minister against the decision of the Head of Department not to register such independent school.

(8) The Head of Department may provisionally register an independent school for a calendar year where such school does not comply with all the requirements for registration, provided that in his or her opinion, there are reasonable grounds to assume that the school will satisfy the requirements for registration within the specified period.

4. Registration certificates.—(1) A registration certificate is issued by the Head of Department for one site only and is not transferable.

(2) A registration certificate is only valid in the province in which it was issued.

(3) All registered schools must display the certificate of registration in a visible location as proof of registration.

5. Permission for learners to register and sit for examinations.—(1) The Head of Department may allow learners at an independent school to register and sit for any examination conducted by or under the supervision of the Western Cape Education Department.

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

(3) The principal of an independent school must apply to the Head of Department to register as an examination centre for Grade 12 external examinations.

(4) The owner or principal of an independent school applying for registration with the Independent Examinations Board or other examination bodies must ensure that the qualification is recognised by the Authority.

6. Monitoring and access to independent schools.—(1) The Head of Department may initiate a monitoring visit to an independent school.

(2) In respect of unsubsidised independent schools, the Head of Department must notify the school in writing of such a visit providing the date, time and purpose of the visit.

(3) In respect of subsidised independent schools, the Western Cape Education Department has the right to make unannounced visits, and to inspect various aspects of the school's records, specifically in the area of financial management.

(4) Should a complaint be lodged against an independent school by parents of the learners enrolled at the school, the Head of Department may, in writing to the principal, request a written report with regard to the complaint.

(5) The principal must within 30 days of receipt of the written request referred to in subregulation (4), respond to the Head of Department in writing.

(6) Should the Head of Department not be satisfied with the written response referred to in subregulation (5), he or she may within 30 days of receipt of such written response, in writing to the principal of the school, request an investigation. Western Cape Education Department officials appointed by the Head of Department must be granted access to the school premises and records at any reasonable time for the purposes of furthering the investigation.

(7) The results of the investigation must be recorded in writing, and made available to both the complainant and the school. If there is a *prima facie* case that the requirements for registration have not been met in this instance, or generally, then the Head of Department may proceed against the school as provided for in these Regulations. If there is a *prima facie* case that the complainant may have a right of action against the school, the complainant may seek legal recourse.

7. Subsidies to independent schools.—(1) An independent school which has been registered for a year or more and is registered as a non-profit organisation may apply for a subsidy in terms of section 31 of the Act.

(2) In line with the provisions of the NNSSF, the subsidy referred to in subregulation (1), must be calculated 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 made available for this purpose, provided that an application for a subsidy must be submitted to the Western Cape Education Department annually on or before 31 March of the preceding year.

(4) If an independent school to which a subsidy has been granted, at any time during the financial year no longer complies with any or all the requirements or conditions for a subsidy, the Head of Department must give the owner written notice thereof, stating which requirement or condition has not been complied with and instructing the owner to satisfy this requirement or condition within a period determined by the Head of Department and stated in the notice.

(5) If, after the expiry of the period contemplated in subregulation 4, the independent school still does not comply with the requirement or condition in question, the provisions of sections 48 (4) and (5) of the South African Schools Act, 1996 shall apply.

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "subregulation 4" is intended to be "subregulation (4)".)

(6) A subsidy shall be payable only in respect of those learners of school-going age who are following the curriculum in Grade 1 to Grade 12, unless the Head of Department determines otherwise in the case of learners with special education needs.

(7) Any person who wilfully furnishes false information or makes a statement which is false or misleading in connection with an application for a subsidy to an independent school shall be guilty of an offence and upon conviction liable to a fine or imprisonment for a period of up to three months.

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

- (a) maintains standards that are not inferior to those of comparable public schools;
- (b) in the case of ordinary learners, consents to participate in the Annual National Assessments and/or the department's diagnostic testing;
- (c) is managed successfully in terms of the conditions of the management checklist for subsidies as required by the NNSSF;
- (d) submits annually by 30 June an audited financial statement on the financial affairs of the independent school to the Head of Department;
- (e) utilises the services of a person appointed by the owner of the independent school and registered as an auditor in terms of the Auditing Profession Act, 2005 (Act 26 of 2005) to audit the records and financial statements;
- (f) finds that the audit referred to in subregulation 8 (e) is not reasonably practicable, and the owner of an independent school appoints a person qualified to perform the duties of an accounting officer in terms of section 60 of the Close Corporation Act, 1984 (Act 69 of 1984), to examine and report on the records and financial statements. No person who has an interest in the affairs of the independent school may be appointed under this regulation; and

(Editorial Note: Wording as per original *Government Gazette*. It is suggested that the phrase "subregulation 8 (e)" is intended to be "subregulation (8) (e)".)

- (g) pays any subsidy received from the education department into a bank account as contemplated in the Banks Act, 1990 (Act 94 of 1990), which has been opened in the name of the independent school.

8. Withdrawal of registration and closure of independent schools.—(1) The Head of Department may, subject to the provisions of subregulation (2), withdraw the registration of an independent school if he or she is convinced on reasonable grounds that such an independent school is not complying with all the registration requirements or conditions referred to in regulation 2.

(2) Before withdrawing the registration of an independent school in terms of subregulation (1), the Head of Department shall, in a written notice addressed to the owner of the independent school—

- (a) notify the owner of the intention to withdraw;
- (b) furnish the reasons for the intention to withdraw;
- (c) give the owner an opportunity within 60 days of receipt of the written notice, to make written representations as to why the registration should not be withdrawn; and
- (d) consider such representations and inform the owner within 30 days of receipt of the written representations, of his or her decision.

(3) 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 subregulation (1), are improved or eliminated, as the case may be.

(4) The owner of an independent school may within 30 days of receiving notice of such a decision appeal to the Provincial Minister against the withdrawal of the registration of such independent school in terms of section 33 of the Act.

(5) If the registration of an independent school is withdrawn by the Head of Department in terms of subregulation (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.

(6) Any person who is ordered to close an independent school in terms of subregulation (5), 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 not exceeding three months.

9. Appeal to Provincial Minister.—(1) An appeal in terms of section 33 (1) of the Act, must be in writing, with an exposition of the grounds of appeal and shall be submitted to the Provincial Minister within a period of 30 days of the receipt of the notice refusing the application or withdrawing registration.

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

(3) The Provincial Minister must—

- (a) when considering an appeal contemplated in subregulation (1), take into consideration the reasons of the Head of Department contemplated in section 29 (2) 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 and the reasons therefore.

(4) In the case of an appeal against a decision to withdraw the registration of an independent school the school will continue to function until the Provincial Minister announces his/her decision.

10. Repeal.—The Regulations relating to the Registration of and Subsidies to Independent schools (including Independent Pre-Primary Schools) as published in *Provincial Gazette* 5313 of 30 November 1998 under Provincial Notice 639 of 1998 are hereby repealed.

11. Short title.—These Regulations are called the Regulations relating to the Registration of and Subsidies to Independent Schools (Excluding Independent Pre-Primary Schools).

Form 1

Western Cape Education Department

APPLICATION FOR REGISTRATION OF AN INDEPENDENT SCHOOL

NAME OF SCHOOL							
STATUS OF SCHOOL	Primary	Combined	Secondary	TYPE	Ordinary		
					LSEN		
STREET ADDRESS		Postal Code:					
POSTAL ADDRESS		Postal Code:					
E-MAIL ADDRESS							
TELEPHONE NUMBER		FAX NUMBER		CELL NO.			
CIPC REGISTRATION NUMBER (where applicable)							
TYPE OF OWNERSHIP	Private Company		Religious Group				
			Other				
NAME OF PRINCIPAL						TEL. NO.	
GOVERNING BODY							
Does school have a governing body or board of directors?				Yes		No	
Name of owner or chairperson of governing body/board of directors:							
Address:							
Telephone number:							
EDUCATIONAL AND OTHER FACILITIES							
TYPE OF BUILDING(S)	BRICKS AND MORTAR						
	WOOD AND CORRUGATED IRON SHEETS						
	CONTAINER ACCOMMODATION						
	OTHER (Specify):						
ADMINISTRATIVE FACILITIES							
Indicate number of rooms (If none has been provided, state "None"):							
Office of principal							
Offices for heads of department							
Strongroom							
Storerooms							
Reception area and/or secretary's office							
Staffroom							

Sick bay			
PLAYGROUND			
Size of the playground (m ²)			
ABLUTION FACILITIES			
Number of toilets available:	(i) Boys		
	(ii) Girls		
	(iii) Male educators		
	(iv) Female educators		
INSTRUCTION ROOMS (Indicate number)			
Ordinary classrooms			
Science rooms			
Computer rooms			
Music			
Civil Technology			
Hospitality Studies			
Other (Specify)			
EDUCATION BUILDINGS			
Has property been rezoned for educational purposes?	Yes	No	
The following municipal services are available:	Water		
	Electricity		
	Sewerage		
	Refuse removal		
The following documentation on the education building must be attached to the application:			
(1) Floor plan of the building(s) to be used for education purposes and an indication of the different classrooms (The floor plan(s) need not be to scale). Each classroom must be numbered clearly and the following indicated:			
<ul style="list-style-type: none"> The purpose for which each room will be used The floor area, in square metres, of each room In the case of ablution facilities, the number of toilets, urinals and wash basins 			
(2) A site plan indicating the position of the building(s), recreational facilities and total area in square metres or hectares.			
(3) A report from the municipality on the suitability of the building(s) for education purposes and stating whether the building(s) conform(s) to health regulations.			
AVAILABILITY OF MANAGEMENT INFORMATION SYSTEMS AND RECORDS			
Are management information systems maintained and updated regularly?	Yes	No	
Are the following available?:	Employment contracts		
	Attendance registers for personnel		
	Admission register for learners		
	Attendance register for learners		
	Learner profiles		
	Staff profiles		
	Financial records		
Are records filed and kept in cabinets or a strongroom?			
Other comments			
EQUIPMENT AND FURNITURE			
Is each classroom equipped with—	Yes	No	Number
a desk for every educator?			

a desk for every learner?			
a blackboard or writing board for each classroom?			
Does each learner have the required number of textbooks for each subject?			
TEACHING AIDS			
Computers			
Video equipment			
Data projector			
Audio equipment			
Other (specify)			
INFORMATION ON LEARNERS			
<i>Particulars of the learners must be provided on Annexure A.</i>			
CURRICULUM			
<p>Does the school offer the National Curriculum Statement as a core curriculum? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If not, indicate what curriculum is offered and if it is in line with the National Curriculum Statement.</p>			
INFORMATION ON EDUCATORS			
<p>Does the school have a sufficient number of qualified educators? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>Are the educators registered with SACE (South African Council for Educators)? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p><i>Particulars of the educators must be provided on Annexure B.</i></p>			
SPORT AND CULTURAL ACTIVITIES			
Indicate what sports and cultural activities are offered by the school.			
SCHOOL CALENDER			
(Editorial Note: Wording as per original <i>Government Gazette</i> . It is suggested that the word "Calender" is intended to be "Calendar".)			
<p>Does the school follow the approved school calendar of the WCED? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If not, indicate number of school quarters and school days per quarter.</p> <p>Indicate the number of contact hours per grade per week.</p>			

I, the undersigned, declare that the above information and the information accompanying this application to be correct and complete.

Name of principal (block letters)

Signature of principal

Date

ANNEXURE B

QUALIFICATIONS OF TEACHING PERSONNEL

(If there is insufficient space below, provide information on additional pages and attach them to this form.)

PLEASE NOTE: CERTIFIED COPIES OF THE QUALIFICATIONS OF EDUCATORS MUST BE SUBMITTED WITH APPLICATION

SURNAME & FIRST NAME	SEX	POST AND RANK	QUALIFICATIONS	TEACHING EXPERIENCE	SALARY (BRUTO) P.M.	SUBJECTS TAUGHT
