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An overview of the functioning of independent schools in South Africa

The purpose of this document is to give a brief overview of the functioning of independent schools with regard to their governance and to explain terminology specific to this type of school. Note, however, that this document offers a broad, overarching perspective and that the founding documents of each school are decisive.

Section 29(3) of the Constitution of South Africa states:

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

- (a) do not discriminate on the basis of race;
- (b) are registered with the state; and
- (c) maintain standards that are not inferior to standards at comparable public educational institutions.”

This right does not preclude state subsidies for independent educational institutions.

Subsidies

The South African Schools Act (SASA) echoes the Constitution in entrenching the right of any person to establish and maintain an independent school at his or her own cost and sets out the grounds on which a provincial education department must register such a school. As stated above, the Constitution does not preclude state subsidies for independent educational institutions. In fact, SASA empowers the Minister of Basic Education to determine norms and minimum standards for the granting of subsidies to independent schools. Such subsidies may be granted by the provincial Member of the

Executive Council (MEC) responsible for education.¹ The norms and standards for granting subsidies to independent schools are included in the National Norms and Standards for School Funding (NNSSF),² which also set out the subsidy conditions. The NNSSF apply uniformly to all provinces, and provincial education departments are obligated to operate according to them. Although an MEC may introduce variations, the intent and spirit of the NNSSF must be maintained. Any independent school that is registered with the provincial education department and meets the requirements stipulated in the NNSSF is eligible for a state subsidy.³

Subsidies provided by the state are proportional to the fees paid by a parent in relation to a learner's enrolment at or attendance of an independent school. The subsidy allocations are clearly set out in the NNSSF.

Governance

SASA imposes no obligation on independent schools to have school governing bodies. However, good practice dictates that independent schools should have a governance structure.

The juristic personality of the independent school will determine its governance structure. Independent schools are established through the founding of a company, a voluntary association, or a trust.

In the case of a company, the board of directors serves as the governance structure. Should a voluntary association be established, its constitution will prescribe who is responsible for controlling the organisation, while a trust is governed through the trustees and the trust deed.

Although the composition of the independent school's governance structure depends on the type of structure established, it should ultimately be representative of the parent body

¹ See the National Norms and Standards for School Funding GN 869 of 31 August 2006 par 18.

² GN 869 of 31 August 2006.

³ Guideline on the Rights and Responsibilities of Independent Schools 1 November 2018 par 8.

of the school. This structure, its election/selection procedures and functions should be reflected in the constitution of the school.

Terminology

In FEDSAS documents, the terms below in relation to independent schools have the stated meaning:

“Constitution”, in relation to the governance of a registered independent school, means a document in which the aim, funding, management as well as other relevant matters relating to the control of an independent school are set out.

“Contract” means the legal contract that regulates the relationship between the school and the parent.

“Governance structure” means either the company, voluntary association or trust established to govern the independent school.

“Independent school” means an independent school as contemplated in chapter 5 of SASA.

“Owner” means the person who or entity that owns and maintains an independent school and in whose name the school is registered in terms of section 46 of SASA.

“Principal” means the person appointed by the owner of the school to oversee the school’s operations on a day-to-day basis.

“Registration certificate” means the certificate issued by the provincial education department upon registration or provisional registration of an independent school.

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