

Notice No. 261, 1998

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**REGULATIONS REGARDING THE REGISTRATION OF AND PAYMENT OF
SUBSIDIES TO INDEPENDENT SCHOOLS**

THE Minister of Education and Culture has under section 40 of the KwaZulu-Natal School Education Act, 1996 (No. 3 of 1996), made the regulations set out in this Schedule.

SCHEDULE

Definitions

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

"Act" means the KwaZulu-Natal School Education Act, 1996 (No. 3 of 1996);

"compulsory school age", in relation to a child, means the age between the limits of which the child is by law subject to compulsory education:

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

"financial subsidy", in relation to a registered independent school, means financial assistance by the State to any such school;

"governing body", in relation to a registered independent school, means the body in which the control and management of the independent school is vested and who represents the owner;

"owner", in relation to an independent school, means the person who owns the school;

"South African Certification Council" means the council established in terms of section 2 of the South African Certification Council Act. 1986 (Act No. 85 of 1986).

Registration

2. (1) Tuition may not be offered in an independent school unless the school is registered as an independent school.

(2) The owner of an independent school must make application on the prescribed forms for registration of the school concerned.

(3) The Secretary may grant provisional registration subject to conditions determined by him- or herself pending the outcome of an application made in terms of subregulation (2).

(4) An independent school in respect of which application for registration is made, must comply with the following requirements:

(a) satisfy the Secretary that it can reasonably be expected that the average number of learners from grade 1 to 12 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 Secretary will not be less than 20: Provided that the Secretary may approve deviations in exceptional circumstances where, in his or her opinion, sufficient reasons exist therefor from this condition to the extent determined by him- or herself;

(b) a professional educator is at the head of the school, and he or she is responsible for the organisation of supervision and control of the conduct at such school;

(c) the school buildings, grounds, design and facilities which are in the opinion of the Secretary, sufficient;

(d) provide proof of tenure of the proposed school buildings and grounds for a minimum period of one year from the date of commencement of the independent school to the Secretary;

(e) admit learners whose birthday falls before the first day of July in the year in which they reached the age of six, or who are older;

(f) employ as educators persons who are in possession of a professional teaching diploma at such school: Provided that, if the Secretary is convinced that the services of such educators, not qualified as aforesaid, are essential for the school concerned, he or she may approve registration notwithstanding the applicant's failure to meet the foregoing provisions of this

paragraph.

(5) The provisions of the foregoing subregulation do not apply in respect of any person who was employed as an educator at an independent school at the date of coming into operation of these regulations, unless he or she ceased or ceases to be employed as a educator at such school after that date and thereafter wishes to again be employed as such an educator at any independent school.

(6) The Secretary must determine the maximum number of learners who may be admitted to a school registered in terms of these regulations, on the basis of the school buildings and grounds referred to in subregulation (4)(c).

(7) Provisional registration in terms of regulation 2(3) may be extended by the Secretary until the Minister has taken a decision in terms of section 39 of the Act.

(8) Educators at a registered independent school must be employed by the owner or a governing body.

(9) The owner of a registered independent school or the governing body thereof must ensure that-

- (a) an enrolment register and an attendance register of the learners attending such school are kept;
- (b) a register of educators employed at such school is kept in which their names, qualifications and remunerations are recorded;
- (c) the Secretary or an official authorised by him or her is permitted to inspect the registers at any time;
- (d) the Secretary is furnished with any information contained in the registers that he or she may require;
- (e) such other records as the Secretary may from time to time determine in general or in any particular case are kept; and
- (f) registers and records referred to in sub-paragraphs (a), (b) and (e) are kept in the manner determined by the Secretary.

(10) The owner of an independent school or the governing body thereof must ensure that-

- (a) the average duration of a school day and the minimum number of school days per calendar year meet the minimum requirements determined by the Secretary; and

- (b) the core curriculum for learners in the various school phases at such school meets the minimum core curriculum in terms of national policy.

Permission for learners to sit for examinations

3. The Secretary must allow pupils of a registered independent school to sit for any examination conducted by or under the supervision of the Department after the payment of examination fees determined by the Secretary. In exercising this function, the Secretary must ensure that the standards and conditions by which and under which such examinations will be conducted by the independent school concerned, are at least equal to those required of a public school for the same examination.

Inspection of independent schools

4. (1) The Secretary may at any reasonable time order that an inspection be held at any registered independent school with regard to the premises, furniture and equipment at the school, the tuition provided, the way in which the school is managed, and any other matter which in the opinion of the Secretary should be inspected.

(2) Whenever the owner, governing body or principal of a registered independent school requests in writing that an inspection be held, the Secretary may cause such inspection to be held and cause a report to be forwarded to such owner, governing body or principal.

Subsidies to independent schools

5. (1) The owner of a registered independent school may apply to be considered for a subsidy.

(2) A registered independent school must direct its application for a subsidy to the Secretary on the application forms that will be made available by the Secretary for this purpose: Provided that-

- (a) a subsidy must be approved on an annual basis and payment will be made retroactively each quarter;

- (b) any application for a subsidy must be submitted annually on or before 31 July of the preceding year to the Secretary.

(3) The payment of a subsidy to the owner of a registered independent school may be considered if the school concerned meets the following requirements, namely that such school-

- (a) in the opinion of the Secretary, maintains or will be able to maintain satisfactory scholastic standards;

- (b) determines the remuneration package of the teaching staff attached to such school in such a manner that it is, in the opinion of the Secretary, not more favourable than that of educators employed by the Department;
- (c) accommodates learners in and on the school buildings and grounds in a manner which is in the opinion of the Secretary satisfactory;
- (d) annually submits an audited financial report on the financial affairs of such school to the Secretary;
- (e) pays any subsidy received from the Department into a bank account which has been opened in the name of such school;
- (f) ensures that learners at the different points of exit comply with the requirements laid down by the South African Certification Council;
- (g) submits a certified copy of its founding document to the Secretary;
- (h) complies with all such other educational requirements as may be determined by the Minister;
- (i) is owned by a religious or charitable trust or a company incorporated as an association not for gain in terms of section 21 of the Companies' Act, 1973 (Act No. 61 of 1973); and
- (j) submits proof that the subsidy will be utilized for the provision of education at such school.

(4) Subsidies paid to independent schools in terms of subregulation (3) are limited to the amount made available for this purpose by the Minister.

(5) The owner of the school or the governing body must forthwith inform the Secretary of any change of (a) circumstances which may affect any subsidy granted for the benefit of the school; or (b) ownership of the school.

Withdrawal of registration and closure of independent schools

6. (1) (a) The Secretary may, subject to the provisions of subregulation 1(b) below, withdraw the registration of an independent school if he or she is, on reasonable grounds, convinced that such school does not comply with a registration requirement referred to in regulation 2, or that such school is managed or maintained in a manner or

under circumstances that could in his opinion, be harmful to the physical, intellectual or spiritual well-being of the learners attending such school.

- (b) Before withdrawing the registration of an independent school in terms of subregulation (1)(a) above, the Secretary must-
 - (i) furnish the owner of the school with a written notice of intention to withdraw the registration, stating the reasons why such withdrawal is contemplated;
 - (ii) afford the owner of such independent school an opportunity to make written representations to him or her as to why the registration should not be withdrawn;
 - (iii) duly consider such representations received by him or her.
- (c) The owner of an independent school may appeal to the Minister against the withdrawal of the registration of such independent school.

(2) If the registration of an independent school is withdrawn, the owner may reapply for registration after having taken 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) Any person who is ordered to close an independent school in terms of subregulation (1)(a) and refuses or fails to comply with the provisions in the order, is guilty of an offence and liable on conviction to a fine not exceeding R4 000 or imprisonment for a period not exceeding three months.

Appeal to the Minister against refusal or withdrawal of registration

7. (1) An appeal in terms of section 39 of the Act shall be in writing, with an exposition of the grounds of appeal and must be submitted to the Minister within a period of 30 days of the receipt of the notice in terms of section 35(2) of the Act or regulation 6, as the case may be.

(2) The Minister shall-

- (a) when considering an appeal take into consideration the reasons of the Secretary contemplated in section 35(2) of the Act or regulation 6, as the case may be, as well as the grounds of appeal contemplated in subregulation (1); and
- (b) within a period of 60 days after the receipt of such appeal notify the appellant in writing of his or her decision.

(3) The Minister may, when considering an appeal contemplated in subregulation (1), request the appellant or the Secretary to supply him or her with such further information as he or she may require.

Termination or reduction of subsidy to independent schools

8. (1) (a) The Secretary may terminate or reduce the subsidy from a date determined by him or her if-

- (i) the owner or the governing body of the school no longer meets the requirements set out in regulation 5;
- (ii) the owner disposed of the school; or
- (iii) in the opinion of the Secretary, good reasons exist therefor.

(b) The Secretary may not terminate or reduce a subsidy unless-

- (i) the owner of such independent school has been furnished with a notice of intention to terminate or reduce the subsidy and the reasons therefor;
- (ii) such owner has been granted an opportunity to make written representations as to why the subsidy should not be terminated or reduced; and
- (iii) any such representations received have been duly considered.

Delegation of powers

9. The Secretary has authority to delegate the powers bestowed on him or her in terms of these regulations.

Repeal of regulations

10. The regulations set out in the Schedule below are hereby repealed.

SCHEDULE

Act	Regulation	Date	Extent of repeal
Coloured Persons Education	R1898	1963-11-02	Chapter W in so far

Act, No. 47 of 1963

as it applies to private
schools.

Education Affairs Act (House R699
of Assembly), No. 70 of 1998

1990-03-30 The whole.