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PROVINCE OF THE EASTERN CAPE

PROVINCIAL NOTICE

DEPARTMENT OF EDUCATION

EASTERN CAPE SCHOOLS EDUCATION ACT, 1999 (ACT NO. 1 OF 1999):
REGULATIONS RELATING TO INDEPENDENT SCHOOLS

It is hereby published for general information that the MEC responsible for Education in the Province of the Eastern Cape has, acting in terms of section 34 of the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999), made the regulations set out in the Schedule hereto.

PHUMELELE STONE SIZANI
MEMBE OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR EDUCATION

SCHEDULE

CHAPTER ONE

Definitions

1. In these regulations unless the context indicates otherwise, a word which is defined the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999), (hereinafter referred to as the "Act") shall have the same meaning, and -

"person" includes natural and juristic persons;

"application" means the application referred to in regulation 3.

CHAPTER TWO

REGISTRATION OF NEW SCHOOLS

2. (1) Any person may apply to the head of Department for the registration of a school as an independent school, and the head of Department must register such a school, and issue a registration certificate within 90 days to the applicant, if the school complies with the requirements for registration referred to in regulation 3.

(2) The head of Department may provisionally register a school for a calendar year where such school has failed to comply with the requirements for registration, provided that in his or her opinion -

- (a) such provisional registration improves the availability on an equitable basis of educational opportunities and resources in the Province; and
- (b) the applicant satisfies the requirements referred to in regulation 3(4);
- (c) there are reasonable grounds that the schools will satisfy the requirements for registration within a period of one year.

(3) If the head of Department decides not to register a school, the procedure must be as follows:

- (a) the head of Department must, within 90 days, notify the applicant;
- (b) an applicant who is aggrieved by the refusal of the head of Department to grant his or her application may, within 30 days after receiving notice of such refusal, appeal to the MEC, in writing, setting out the grounds of the appeal;
- (c) the MEC must consider the appeal and may confirm, vary or set aside the decision of the head of Department;
- (d) the MEC must within 90 days -
 - (i) notify the appellant of his or her decision; and
 - (ii) provide the appellant with written reasons for his or her decision.

(4) The registration of a school does not imply automatic awarding of government subsidy.

Requirements for registration of a new school

3. (1) The following requirements apply to an application to register a new school with the Department under regulation 2(1):

- (a) Applications for the registration of a school must be made in writing to the head of Department on FORM EGF/IS;
 - (b) The completed form must be lodged with the district office of the Department in which the proposed school is to be established by not later than the 31st March of the year preceding the year of the proposed operation;
 - (c) Subject to subregulation (2)(f) and unless smaller numbers are justified, a primary school must have at least 20 learners per grade, and a secondary school must have at least 25 learners per grade;
 - (d) Schools using programs where learners progress at their own rate, computer or workbook-based programs may motivate for smaller numbers per class.
- (2) The application must be accompanied by -
- (a) a constitution for the school covering all matters relating to the control of the school including its ownership, character, aims, governance, funding and admission policy;

(b) (i) a floor plan and site plan, which shall in the case of a multi storey building, include a floor plan for each floor to be occupied, and which confirms that the proposed school building and grounds comply with Department guidelines;

(i) Facilities required for the implementation of intended curriculum;

(c) proof of security of tenure over the proposed school buildings and grounds for a minimum of three years from the date of commencement of the school;

(d) a certified proof of application for rezoning of a school and that the said building is suitable for the purpose for which it will be used;

(e) a certificate from the relevant health authorities confirming that the facilities at the school meet the minimum health requirements;

(f) proof that the school will be financially viable for a least 12 months after registration;

(g) if applicable, written reasons justifying a decision to enroll fewer than 20 learners per grade in a primary school or fewer than 25 learners per grade in a secondary school;

(h) needs analysis report on the area of the proposed school;

(i) submission of certified copies of academic records of educators; and

(j) a written commitment to appoint suitably qualified educators with a minimum qualification of REQV 13 and that they will be registered with South African Council for Educators.

(3) No registration of a school must be granted unless the head of Department is of the opinion that -

(a) the school will not discriminate directly or indirectly, on basis of race;

(b) the school will be able to maintain standards that are not inferior to standards at public schools in the Province;

(c) there is a need for such a school in the area concerned, as determined by already existing schools, both private and public.

(4) A school must not be registered as an independent school if the applicant has been convicted of any criminal offence.

Registration of existing schools

4. (1) A school which is registered as private or independent under the provisions of any law before the commencement of these regulations, shall be deemed to be an independent school registered under regulation 2(1), provided that it satisfies the requirements and conditions for registration provided in regulations 3 and 5 respectively.

(2) If the school referred to in sub-regulation (1) does not satisfy the prescribed requirements or conditions, it will be given 90 days to comply with such requirements or conditions.

(3) If, after the expiry of the period referred to on sub-regulation (2), the school does not comply with the prescribed requirements or

conditions for registration, the procedure must be as follows:

- (a) The head of Department must notify the owner of the school in writing of his or her decision to deregister the school, and the reason for the decision;
- (b) An owner of a school who is aggrieved by the decision of the head of Department may, within 30 days of receiving notice of such a decision, appeal to the MEC in writing, setting out the grounds of appeal;
- (c) The MEC must consider the appeal and may confirm, vary or set aside the decision of the head of Department,
- (d) The MEC must within 90 days from the date on which the appeal referred to in paragraph (b) has been submitted -
 - (i) notify the appellant of his or her decision; and
 - (ii) provide the appellant with written reasons for his or her decision.

Conditions governing registration

5. The following conditions of registration apply to any school that is registered with the Department:

- (a) The head of Department must, within 21 days, be notified of any change of ownership;
- (b) Notice of at least three calendar months must be given to parents, staff, learners and the head of Department of any intention to close or suspend the operation of a school;
- (c) A change of premises must be approved by the head of Department who must be furnished with -
 - (i) the address of the proposed new location for the school; and
 - (ii) all the documentation set out in paragraphs (b) to (e) of subregulation (2), reflecting any new circumstances caused by the change of address;
- (d) Educators appointed must satisfy the minimum qualification (REQV 13) requirement of the Department, unless, upon application by the school, the head of Department is of the opinion that the services of a specified person are of particular benefit to the school;
- (e) At the head of that school there must be a principal who must be a professional educator responsible for the organisation and supervision of the school;
- (f) The admission policy of the school must not discriminate, directly or indirectly, on the grounds of race;
- (g) The number of learners attending the school must not exceed the norms stipulated by the public school in the Province;
- (h) The school must
 - (i) follow the approved curricula of the Department that have been approved by the head of Department;
 - (ii) ensure that the average duration of a school day and the

minimum number of school days are as approved by the head of Department;

- (iii) keep the required registers referred to in Chapter Three.

Deregistration of schools

6. (1) If, in the opinion of the head of Department -

- (a) A school does not satisfy a requirement for registration which was at any time considered by the head of Department as contemplated in paragraph (b) of regulation 3.3;
- (b) A school does not satisfy a condition for registration contemplated in regulation 5; or
- (c) The governing body of a school contemplated in regulation 4(1) fails to comply with the obligation imposed by regulation 4(2), the head of Department must determine a reasonable period for compliance with the relevant requirement of days, condition, or obligation and must in writing instruct the governing body of the school accordingly.

(2) If, after the expiry of the period referred to in subregulation (1), the school still does not comply with the requirements, condition, or obligation -

- (a) the governing body of the school must be granted an opportunity to make written representations against the withdrawal of the school's registration;
- (b) if, notwithstanding the written representation, the head of Department reasonably believes that the school should be deregistered, he or she must furnish the governing body with a notice of withdrawal of registration together with written reasons for his or her decision;
- (c) subject to paragraph (e), the notice of withdrawal of registration must take immediate effect unless the head of Department on good cause indicates otherwise;
- (d) a governing body aggrieved by a decision of the head of Department under paragraph (b) may, within 30 days of receiving notice of the withdrawal of registration, appeal to the MEC;
- (e) unless the MEC on good cause shown directs otherwise, the lodging of an appeal must have the effect of suspending the operation of a notice of withdrawal until the MEC has decided on the appeal; and
- (f) the MEC must consider the appeal and must confirm, vary or set aside, within 30 days, the decision of the head of Department.

Penalties for operating unregistered school

7. (1) No person may -

- (a) establish or maintain a school that has not been registered in terms of regulations 4(3) or 2(1); or
- (b) establish or maintain a school that has been deregistered.

(2) Any person who contravenes sub-regulation (1) is guilty of an offence and is liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

CHAPTER THREE

REGISTERS

Keeping of registers and other documents

8. All registered independent schools must keep the following documentation in such a form and manner as may from time to time be determined or required by the head of Department:

- (a) an admission register and an attendance register of the learners enrolled at or attending the school;
- (b) a record of results of learners as reflected in reports given to parents or guardians;
- (c) a file for each learner containing the following documents:
 - (i) a certified copy of the birth certificate or identity document;
 - (ii) the application form;
 - (iv) a copy of each learner's record of results; and
 - (v) the transfer document and/or a report from the last school attended in which the last standards passed is indicated;
- (d) a register of the educators employed at the school in which their names, qualifications and remuneration are recorded;
- (e) a file for each educator containing -
 - (i) a signed service contract;
 - (ii) proof of South African citizenship or a work permit;
 - (iii) a certified copy of an identity document; and
 - (iv) certified copy of the educator's qualifications;
- (f) financial records, including an annual audited report;
- (g) such other records and documentation as head of Department may from time to time determine.

Total quality management

9. (1) The MEC may, at his or her own instance or on the written request of the owner, governing body or principal of a school, order that an evaluation of a school be made.

(2) The evaluation must be conducted within written terms of reference stipulated by the MEC and pertaining to any requirement or conditions of registration.

(3) The MEC must provide the school with a written report of the evaluation within 60 days of its completion.

CHAPTER FOUR

Conditions of use of subsidy paid in terms of section 31 of the Act

10. (1) A subsidy paid in terms of section 31(2) of the Act may only be

used on condition that -

- (a) it be used to further the education of children as contemplated in the Act;
- (b) the applicant or the school allows an official of the state, designated by the head of Department to inspect the school at any time and provide that official with all documentation and information which may be required by that official;
- (c) the applicant, the school, the governing body or any person immediately reports any financial irregularities or abuse to the South African Police Service or the head of Department; and
- (d) the school complies with the accounting procedures set out in subregulation (2).

(2) Despite any other law, the school must-

- (a) keep proper books and records in relation to receipts and payments;
- (b) prepare a report of all the activities of the school, as a case may be, including financial statements, in respect of each financial year;
- (c) annually, within nine (9) months after the end of each financial year, submit the report and financial statements referred to in paragraph (b) to the head of Department.

(3) "financial year" referred to in subregulation (2) means -

- (a) the period from the date on which the school is registered for the first time to the last day of March in the following year; and
- (b) each period of twelve (12) months ending on the last day of March.

(4) The financial statements must comply with generally accepted accounting principles and any other directions that may be given by the MEC or the MEC responsible for financial matters, as to the information to be contained in such statements, the manner in which such information is to be presented or the methods and principles according to which such statements are to be prepared.

(5) The school, as the case may be must preserve the documents referred to in subregulation (2), as well as all supporting vouchers and receipts, whether original or reproduced, for a period of five (5) years.

Short title

11. These regulations are called Regulation relating to Independent Schools, 2001.

FORM EGF/IS

PROVINCE OF THE EASTERN CAPE

DEPARTMENT OF EDUCATION

APPLICATION FOR REGISTRATION OF AN INDEPENDENT SCHOOL

[Click here to see abovementioned forms on pages 26-34](#)



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