

ISASA BELA Presentation to the Select Committee on Education and Technology, Sports, Arts and Culture

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Presentation Outline

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INTRODUCTION: INDEPENDENT SCHOOLING SECTOR

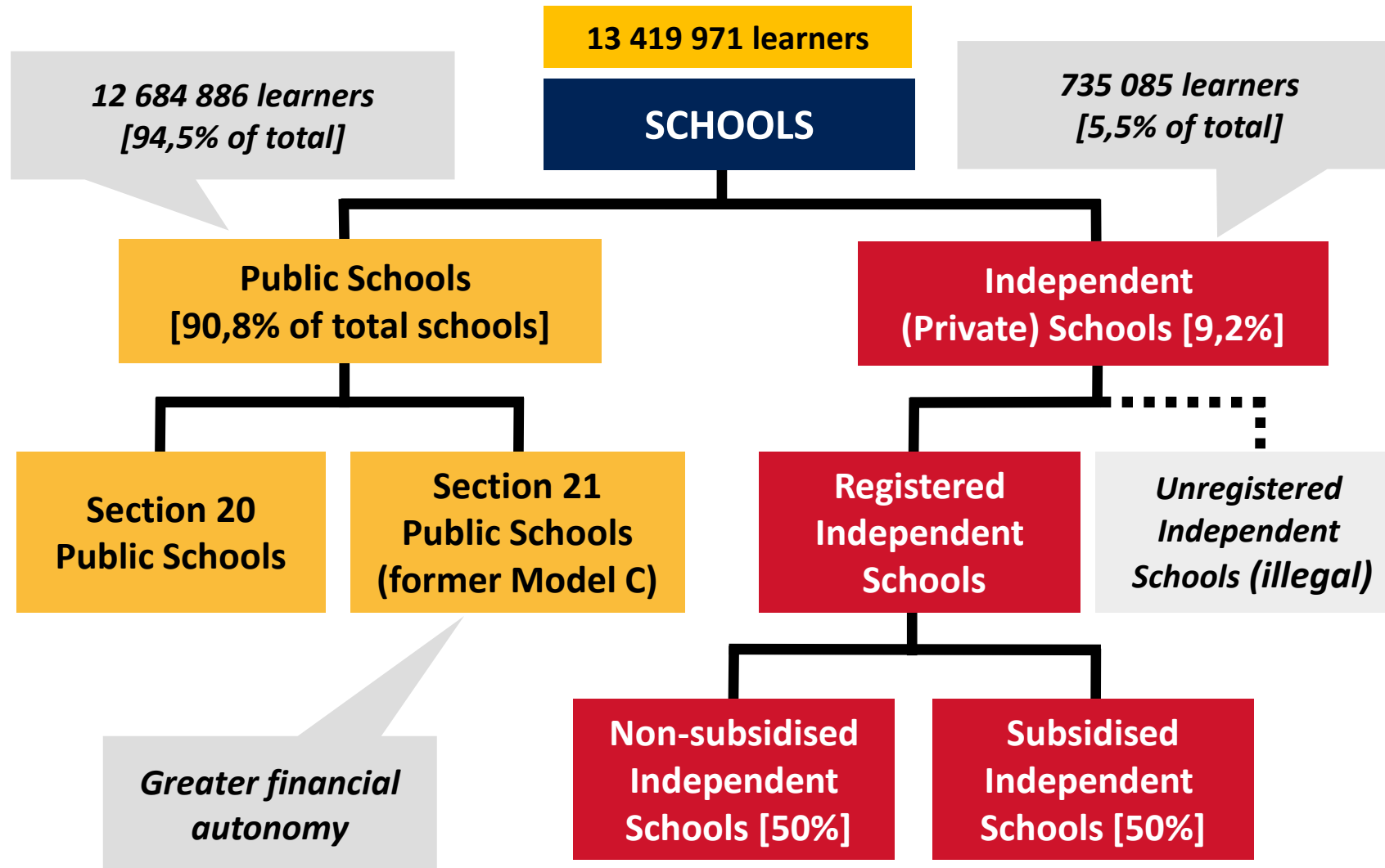


Basic Education Laws Amendment Bill

ISASA welcomes the opportunity to comment on the draft Bill as it proposes to amend the South African Schools Act 84 of 1996, **(SASA)** and the Employment of Educators Act 76 of 1998, so as to align them with developments in the education landscape and to ensure that systems of learning and excellence in education are put in place in a manner which **respects, protects, promotes** and fulfils the right to a **basic education enshrined in section 29(1) and (3)** of the Constitution of the Republic of South Africa, 1996.



The South African Schooling System

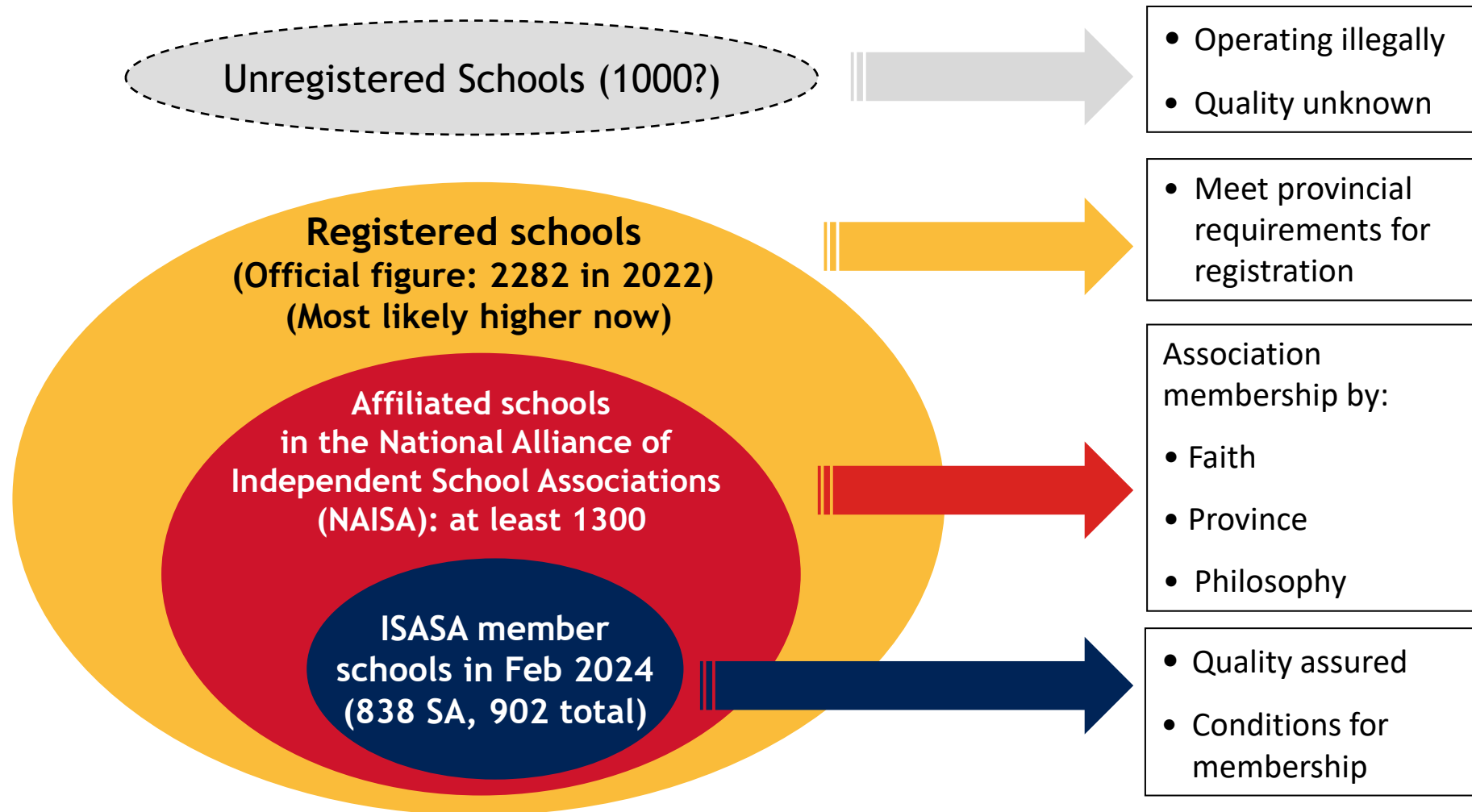


ISASA at a Glance

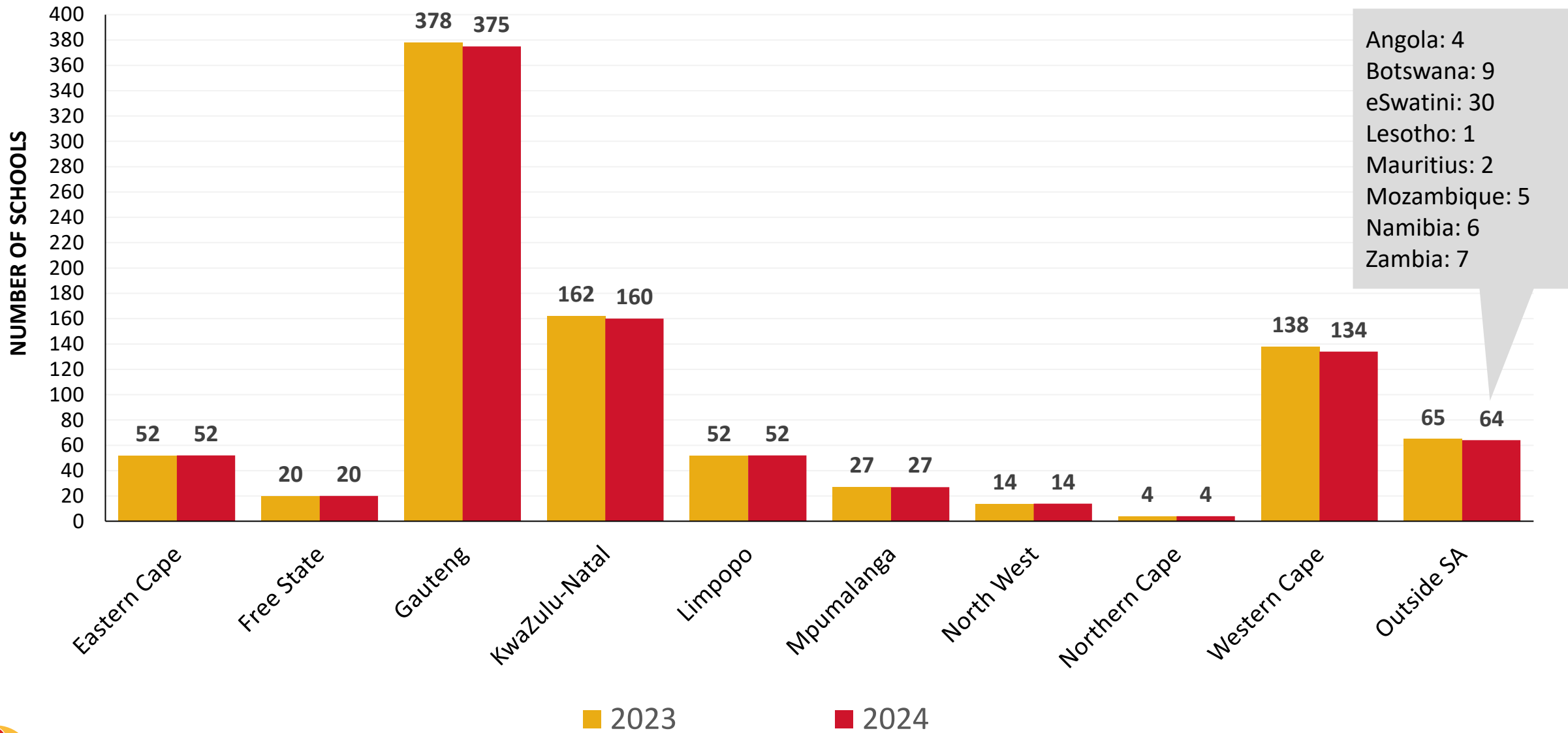
- ISASA is:
 - The ***largest and oldest*** independent schools' association in Southern Africa.
 - A ***voluntary association*** that provides support services and assistance to member schools.
 - An organisation that ***quality assures*** schools on application to become members and every six years thereafter.
 - An ***advocate for the value of independent education*** as a complementary partner to public education.
- ISASA is not:
 - A curriculum or assessment provider.
 - A governing body or inspectorate for independent schools.



The South African Independent School Sector



ISASA Membership by Province and Country



ISASA SUBMISSIONS



Submissions

ISASA's submissions are not exhaustive of all the issues pertaining to the proposed amendments. We highlight the key concerns emerging from our experience in the independent schooling sector and our engagement with member schools on issues affecting them with regard to the South African Schools Act.

We present our submissions on relevant sections and provide related recommendations.



Section I: Definitions



Section I: Definitions

“corporal punishment” means any deliberate act against a child that inflicts pain or physical discomfort, however light, to punish or contain the child, which includes, but is not limited to –

- (a) hitting, smacking, slapping, pinching or scratching with the hand or any object;*
- (b) kicking, shaking, throwing, throwing objects at, burning, scalding, biting, pulling hair, boxing ears, pulling or pushing children; and*
- (c) forcing children to stay in uncomfortable positions, forced ingestion, washing children’s mouth out with soap, denying meals, heat and shelter, forcing a child to do exercise or denying or restricting a child’s use of the toilet;”*



Section I: Definitions

- The United Nations Committee on the Rights of the Child (UNCR) defines corporal punishment to include “...non physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention”

Recommendation:

- It is recommended that the definition of ‘corporal punishment’ is widened to include **non-physical forms of punishment** as defined by the UNCR, that have the potential to inflict fear and/or infringe upon the right of the child to human dignity.



Section I: Definitions

Recommendation:

- To include subsection (d) as follows under the definition:

“corporal punishment” means any deliberate act against a child that inflicts pain, fear or physical discomfort, to punish or contain the child, which includes, but is not limited to –

...

- (d) any other act that seeks to belittle, humiliate, threaten, induce fear or ridicule.”



Section 3: Compulsory Attendance



Section 3: Compulsory Attendance

*“(1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom she is responsible to attend school, starting from **Grade R on the first school day of the year in which such learner reaches the age of six years** and not leaving school until the last day of the year in which such learner reaches the age of 15 years or will complete grade 9, whichever occurs first: Provided that a learner who will turn six after 30 June must start attending grade R the following year.”*



Section 3: Compulsory Attendance

- SASA specifically provides for the age of admission under section 45A as follows:
 - Grade R is age four turning five by 30 June that year
 - Grade I is age five turning six by 30 June that year
- Section 3(1) is at variance with provisions specifically set out for the admission age of learners at independent schools, and therefore the proposed amendment to section 3(1) should expressly indicate that it is only applicable to public schools.
- To avoid any confusion regarding non-compliance, resulting in undue penalties and/or imprisonment.



Section 3: Compulsory Attendance

Recommendation:

- To amend section 3(1) as follows:
 - “(1) Subject to this Act and any applicable provincial law, every parent must cause every learner for whom she is responsible to attend school. **Learners at public schools must be permitted for admission starting** from Grade R on the first school day of the year in which such learner reaches the age of six years and not leaving school until the last day of the year in which such learner reaches the age of 15 years or will complete grade 9, whichever occurs first: Provided that a learner who will turn six after 30 June must start attending grade R the following year.”



Section 36: Leasing of School Premises



Section 36: Leases

“36(2) Despite subsection (1), a governing body may not, without the written approval of the Member of the Executive Council, enter into any loan, lease or overdraft agreement [so as to supplement the school fund, without the written approval of the Member of the Executive Council] for any purpose.”

- In light of recent administrative delays, it is hoped that this provision does not constrain a number of low-fee independent schools and/or Early Child Education centres and programmes from renting premises from local public schools for their school activities and/or events.



Section 36: Lease

Recommendation:

ISASA's recommendation is that where the request to lease the property of a public school is not denied after a certain period, then the Member of the Executive Council should be deemed to have granted their approval.



Section 36: Lease

Recommendation:

To insert subsection (5) and include procedural measures therein as follows:

- (5) The Head of Department may not take action in terms of subsection (4) unless he or she has –
- (a) in writing informed the independent school of his or her intentions to act and the reasons therefor;
 - (b) granted the independent school a reasonable opportunity to make representations to him or her relating to such intention; and
 - (c) given due consideration to any such representations received; and
 - (d) informed the independent school of his or her final decision, in writing.



Section 46: Registration of Independent Schools



Section 46: Registration of Independent Schools

“46(4) Any person who contravenes subsection (1) is guilty of an offence and liable, upon conviction, **[liable]** to a fine or to imprisonment for a period **[of three]** not exceeding 12 months, or to both a fine and such imprisonment.”



Section 46: Registration of Independent Schools

- The introduction of a harsher sentencing for non-registration of independent schools is concerning, despite the number of growing low-fee independent schools being established in support of affordable quality education, of a standard comparable to public schools – in the effort of ensuring children’s attainment of the constitutionally enshrined right to a basic education.
- It is important to note that a **condition of membership to ISASA** is the registration of schools with the Provincial Education Department, however this should not be ignorant of the burdensome regulatory requirements that form part of the registration process.

Section 46: Registration of Independent Schools

- Registration approvals require substantial monetary output by various stakeholders, which involve delays in obtaining mandatory clearance certification for final registration.
- The finding of a conviction of guilt should afford independent schools a procedural process and/or opportunity to make submissions and representations on the process in obtaining final registrations, prior to such findings being made.



Section 46: Registration of Independent Schools

Recommendation:

To insert subsection (5) and include procedural measures therein as follows:

- (5) The Head of Department may not take action in terms of subsection (4) unless he or she has –
 - (a) in writing informed the independent school of his or her intentions to act and the reasons therefor;
 - (b) granted the independent school a reasonable opportunity to make representations to him or her relating to such intention; and
 - (c) given due consideration to any such representations received; and
 - (d) informed the independent school of his or her final decision, in writing.



Section 48: Granting of subsidies to Independent Schools



Section 48: Conditions of Eligibility

48(2) *The Member of the Executive Council may, out of funds appropriated by the provincial legislature for that purpose, grant a subsidy to an independent school, subject to conditions determined by the Member of the Executive Council.*



Section 48: Granting of Subsidies

- Subsection 48(1) indicates that the Minister may, by notice in the Government Gazette “*determine norms and standards for granting subsidies to independent schools...*”.
- The Minister has determined these norms and standards through the *Amended National Norms and Standards for School Funding (NNSSF)*.
- The NNSSF provides uniform conditions for eligibility of subsidies in clauses 176 and 177. It is important to note, section 174 of the NNSSF provides that “*the national norms apply uniformly in all provinces. However a provincial MEC may vary them so long as their spirit and intent is maintained. The Head of Department must consult the national DoE on this matter.*”



Section 48: Conditions of Eligibility

- The insertion of the proposed amendment in the BELA Bill undermines the spirit of uniformity in the application of the NNSSF across Provincial Education Departments (PED).
- For the Education Members of the Executive Committee to determine conditions over and above those determined by the Minister in the NNSSF, this creates regulatory uncertainty and may prejudice subsidised independent schools in different provinces.
- Since the promulgation of the NNSSF, certain PEDs have, and others have not complied with the uniform conditions of eligibility – despite that these exist.
- Despite ISASA's best efforts to monitor subsidies granted to provinces, we have found that provinces are unwilling to share information pertaining to subsidy allocations and indicative figures for the upcoming year. This has prevented certainty for schools and a lack of transparency for their successful management and operations.



Section 48: Conditions of Eligibility

- Placing the responsibility on the Education Members of the Executive Council to determine conditions for subsidy payment will disadvantage subsidised independent schools, that may find these schools subjected to stringent and prejudicial conduct without accountability and/or clarity on the regulatory provisions placed on them by Professional Education Departments.
- The proposed amendment confers unfettered power with no corresponding checks and balances to ensure accountability against abuse. This risk will ultimately be borne by marginalised learners.



Section 48: Conditions of Eligibility

Recommendation:

- ISASA recommends that the phrase ‘subject to conditions determined by the Member of the Executive Council’ **not be inserted** into section 48(2) of the BELA Bill.
- Our further recommendation is to have subsidised independent schools report once a year, and to be linked to the submission of the audited or examined annual financial statements referred to subsection 6(b) being proposed for amendment.
- This is by no means an effort to evade accountability by subsidised schools, but rather, to create a platform to ensure that such accounting practices ease the administration burden in accordance with the NNSSF.



CONCLUSION



Conclusion

While ISASA is encouraged by the rationale and spirit of the amendments to education laws and policies, we are also concerned regarding the added layers of regulation to the independent schooling sector may infringe on the rights of learners to a quality basic education. We believe that these should be uniform and transparent, and ensure that teaching and learning continues without overburdening the administration and operational requirements of independent schools.

