

THE REAL COST OF COMPLIANCE

The Impact of South African Regulatory Requirements on Independent Schools



The private education sector has grown virtually across the board in developed and developing countries. Internationally, governments are making greater use of private participation in education to assist in meeting their education policy objectives. As part of an overall reform strategy for South Africa's ailing education system, the Centre for Development and Enterprise (CDE) has become increasingly interested in the potential of low-fee independent schools to provide quality education to disadvantaged learners. This research explores the cost facing these schools of complying with regulatory requirements.

The Centre for Development and Enterprise, South Africa's leading development think tank, focuses on vital national development issues and their relationship to economic growth and democratic consolidation. Through examining South African realities and international experience, CDE formulates practical policy proposals for addressing major social and economic challenges. It has a special interest in the role of business and markets in development.

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Acronyms

ACSI	Association of Christian Schools International
ANA	Annual National Assessment
BRAC	Bangladesh Rural Advancement Committee
CASPA	Catholic Schools Proprietors' Association
CDE	Centre for Development and Enterprise
CIPC	Companies and Intellectual Properties Commission
COIDA	Compensation for Occupational Injuries and Diseases Act
DBE	Department of Basic Education
EE	Employment Equity
EEA	Employment Equity Act
EMIS	Education Management Information Systems
GDE	Gauteng Department of Education
GENFETQA	General and Further Education and Training Quality Assurance Act
IQAA	Independent Quality Assurance Agency
IQMS	Integrated Quality Management System
ISC	Independent Schools Council
ISA	Independent School Association
ISASA	Independent Schools Association of Southern Africa
LSEN	Learners with Special Educational Needs
MEC	Member of the Executive Council
NAISA	National Alliance of Independent School Associations
NAPTOSA	National Professional Teachers' Organisation of South Africa
NNSSF	National Norms and Standards for School Funding
NOD	Non-profit Organizations Directorate
NPC	Non-Profit Company
NPO	Non-Profit Organisation
NSC	National Senior Certificate
OHSA	Occupational Health and Safety Act
PAEPL	Provincial Average Estimate of Expenditure Per Learner
PAYE	Pay As You Earn
PBO	Public Benefit Organisation
PED	Provincial Education Department
PPP	Public-Private Partnerships

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SACE	South African Council for Educators
SAQA	South African Qualifications Authority
SARS	South African Revenue Service
SASA	South African Schools Act
SDA	Skills Development Act
SDF	Skills Development Fund
SDL	Skills Development Levies (Act)
SETA	Sector Education and Training Authority
SIP	School Improvement Plan
SITE	Standard Income Tax on Employees
SMMEEs	Small, Medium, Micro and Emerging Enterprises
UIA	Unemployment Insurance Act
UICA	Unemployment Insurance Contributions Act
UIF	Unemployment Insurance Fund
UK	United Kingdom
VAT	Value Added Tax
WSE	Whole-School Evaluation

Introduction

The private education sector has grown virtually across the board in developed and developing countries. Internationally, governments are making greater use of private participation in education to assist in meeting their education policy objectives through private philanthropic initiatives and the private financing of infrastructure. A key trend has been the emergence of different forms of private involvement in education through public-private partnerships (PPPs).¹ One reason for this expansion is the inability of public school provision to keep pace with the growing demand for education. Other factors include the dissatisfaction with the quality of public education (i.e. large class sizes, teacher absences, and lack of books and teaching supplies), and the demand for schools with a religious affiliation or alternative philosophy to what public schools are able to provide.

In South Africa, the private, officially known as the independent, school sector is characterised by a diversity of not-for-profit and for-profit providers charging a very wide range of fees. Both registered and unregistered (illegal) schools exist. By international comparison, the independent school sector in South Africa is small² and the low-fee segment of schools is especially so, although it is growing rapidly.

As part of an overall reform strategy for South Africa's ailing education system, the Centre for Development and Enterprise (CDE) has become increasingly interested in the potential of affordable or low-fee independent schools to provide quality education to disadvantaged learners.³ There are investors and donors that are keen on investing in or supporting the low-fee independent schools in South Africa, but one of the key risks that CDE identified in its 2015 report, *Investing in Potential: The financial viability of low-fee private schools in South Africa*, arises from the maze of legislation governing independent schools and the high cost of compliance.

The South African Constitution of 1996⁴ and the foundational legislation such as the South African Schools Act (SASA) of 1996, the Companies Act of 2008, the Income Tax Act of 1962, and the Municipal Property Rates Act of 2004 are supportive of independent schools. So too is the Department of Basic Education (DBE).⁵ Registered, not-for-profit independent schools that serve disadvantaged communities are able to access a provincial education department (PED) subsidy.⁶ However, the secondary legislation and ever-expanding regulations from all sectors of government are increasingly disabling.

International experience shows that the nature of the regulatory environment strongly influences the expansion of the independent school sector. Unless it is enabling, the sector will not grow optimally, schools will not survive and thrive, and opportunities for public-private collaboration and partnerships to improve choice, access and quality of schooling for all children will not be optimised in serving the national interest. A high regulatory burden can also have perverse effects on the number of unregistered independent schools. Analysis of the Kenyan private schooling sector indicates that, owing to the complex set of procedures for registering a private school, many school owners are prompted to pre-emptively open their schools without registration.⁷ Similar findings have been observed for Malawi.⁸

There is growing concern in the independent school sector in South Africa about the extensive, time-

consuming and costly tasks required of schools to be fully compliant with all regulations. Between 2010 and 2013, the policy unit of the Independent Schools Association of Southern Africa (ISASA) identified 246 pieces of legislation that affected independent schools and in the first half of 2015, it analysed 36 new ones.⁹

In order to better understand the impact that the South African regulatory environment has on independent schools and especially low-fee ones, CDE undertook research to quantify the time taken, skill level involved, and direct monies paid on regulatory compliance by a sample of independent schools. This report presents the findings of its research.

Why Regulate?

It is natural that the public would be concerned with the educational environment in non-government schools. The children are citizens and their welfare is important. Hence all governments have rules and regulations pertaining to the establishment, operations and results of non-government schools. Mechanisms must be in place to ensure that teaching staff, facilities, equipment, and materials are sufficient and appropriate to enable quality teaching and learning and keep children safe and healthy. Regulation is one way that a government can ensure that provision by both public and private sectors are of high quality.

To ensure quality, governments are fully entitled to check those wishing to open and operate private schools. Those private schools offering high quality education often welcome effective regulation and quality assurance mechanisms. They protect the sector from poor quality, and fly-by-night organisations. Negative publicity about private providers that offer poor quality instruction can harm the reputation of the sector as a whole and affect its credibility.

This is the case in South Africa, where the independent schools and their associations are supportive of necessary, fair and appropriate quality control and accountability and want to work with government as a complementary partner in providing quality education to all learners. A regulatory environment that supports the private sector and assures quality provision of education also ensures the long-term sustainability of the sector.

The International Experience of School Regulation

Government funding policies generally favour public provision over private provision, and in many countries, the regulatory framework does little to support growth in the private education sector.¹⁰ It is clear that the governments in some countries make it more difficult for investors and owners of private education institutions to become established and operate than others. Across developed and developing countries, the experience of regulations for private schools is varied.¹¹ In some countries, they present significant barriers to entry for private providers, as well as constrain the operation of schools in the sector. This is the case where regulations are unnecessarily numerous and restrictive in content, unenforced, and used as an opportunity for bribery and corruption.

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In Kenya, for example, the single regulation requiring all private schools to own the land on which they operate prevents private schools from opening. In India, for private schools to access financial aid, they are required to offer teacher salaries equal to government teacher salaries. For schools that charge low fees, this is particularly difficult. The reason BRAC (formerly Bangladesh Rural Advancement Committee) private schools in Bangladesh have grown so rapidly is because they are able to employ unqualified teachers from the community to teach in private schools. Employing unqualified teachers raises questions about whether those teachers have adequate subject content and pedagogic knowledge, but it does mean that their teacher salaries are much lower than their public school counterparts, thereby enabling the schools to keep costs low, yet still obtaining better results than their neighbouring public schools.

Tanzania offers an example of a heavily regulated private school sector and a host of regulations pertain to non-government school applications. An application must include a declaration of ownership, a mission statement, a completed application, a certificate from the engineering office, a certificate from the health office, proof of land ownership, approval of architectural plans, and a report from the school inspector's office.¹² Once a private school is operational in Tanzania, the government places limits on class size, teacher qualifications, student:teacher ratios, teaching and learning materials, the number of school days per year, student registration, as well as curriculum. The strict land ownership requirements in Pakistan and Kenya restrict the establishment of private schools in those countries. It is not certain, however, whether this level of regulation results in better quality education in Tanzania compared to other similar but less regulated countries. This may be worth exploring in future research.

There are lessons to be learnt about the key elements in developing regulatory frameworks that do not result in barriers to the growth of the private school sector in South Africa.¹³ A few of the important ones are highlighted here.

- Government must provide a sound policy framework for the operation of the private education sector. This requires a recognition of the role of the private sector in the delivery of quality education to all children, and an environment in which the private sector can operate.
- There should be clear, objective, and streamlined criteria and processes for establishing and regulating private education institutions. A lengthy and complex registration processes and onerous regulatory regimes may reduce access by deterring new providers or increasing their costs to such a degree that these institutions become unaffordable. Alternatively, such regulation may push private schools to operate outside the law as unregistered providers, thus leaving the government with fewer levers to protect students and families – particularly those on low incomes.
- Quality assurance and monitoring processes should be established that are based less on compliance to standards and systems, and more on improving the quality of education delivered. A focus on red tape and enforcement of rules adds little to a child's educational experience. A reasonable balance needs to be found that meets government requirements, but is not overly onerous for providers.
- Government must develop the capacity to implement policy and manage private providers. The government agency responsible for regulating the private sector requires information and skills to design, develop and manage registration/accreditation programmes and monitoring functions. If government agencies are understaffed and resourced by people with low skills and competence levels, this leads to long delays and ill-informed judgements.

Research Design

In order to better understand the impact that the South African regulatory environment has on independent schools, and especially low-fee ones, CDE designed research to quantify the time taken in a single year,¹⁴ skill level involved, and direct monies paid on regulatory compliance by registered independent schools.

CDE identified and analysed the policies and regulations affecting independent schools in South Africa, and those affecting public schools by comparison. Interviews were then conducted with three independent schools of different fee levels to verify these as the regulations that most affect independent schools. An interview was also conducted with a representative of the National Professional Teachers' Organisation of South Africa (NAPTOSA) to confirm any that might apply to public schools as well. The outcome of the document analysis and interviews was a set of regulatory requirements for independent schools over and above those required by public schools, which were then used to develop the questionnaire.¹⁵

The questionnaire consisted of 133 questions, and comprised 47 individual compliance tasks, all which involved the time of personnel at various skill levels, and in some cases direct fees. It covered nine categories of regulations (subsidy application, provincial registration, independent schools association membership, Umalusi accreditation, complying with the Skills Development Levy Act, financial management compliance, registering foreign teachers and learners, complying with the Employment Equity Act (EEA), and complying with health and safety regulations).¹⁶

The Sample

To explore the extent of regulations, CDE carefully and purposefully selected registered independent schools that were able to provide rich and valuable information to the study. Criteria for selection included a good understanding of the compliance regulations by the school principal, as well as sound financial management of the school. The schools were also selected to provide insights from, as far as possible, different school size and fee levels within the independent school sector. In addition to those criteria, a manageable distance from Johannesburg, and willingness to participate in the study, were considered as part of the selection process. Given the extent of the time involved to complete the lengthy questionnaire, it required good personal links with schools to persuade them to participate.¹⁷ The result of all of the above mentioned criteria was that all the schools in the sample were members of ISASA, with three also members of other independent schools associations.

The final sample consisted of 20 independent schools educating 11,994 learners. Fourteen of them are in Gauteng, four in the Free State, one in North West and one in KwaZulu-Natal. Four schools are owned by companies engaged in opening 'chains' (a number of schools owned by one entity) of schools towards the lower fee end of the independent school market. Three have a distinct Roman Catholic identity. One Catholic school owned by a religious order, the Dominican Sisters, could also be considered part of a 'chain' of Dominican schools. Three are Anglican schools, one of which is a Diocesan school, one an outreach initiative of a high-fee Anglican school, and another an Anglican Church initiative to provide schooling for the under-privileged that has expanded into a chain of schools.

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The schools were a mix of primary (eight), secondary (three), and combined (nine) schools. CDE defines a low-fee school as one that charges fees below R12,000 a year,¹⁸ a mid-fee school as one charging annual fees between R12,000 and R30,000, and those with fees above R30,000 a year as high-fee schools. Eleven schools were low-fee, three were mid-fee, and six high-fee, and their school budgets ranged from R1.14 million to R72 million a year. The schools sizes ranged from eight small schools (less than 300 learners), seven medium (300 to 800 learners), five large schools (more than 800 learners). The smallest school surveyed had 133 learners and the largest 1,340; the average school size in this sample is 600 learners.¹⁹

A descriptive breakdown of the sample classified by school size (number of learners) and school fee charged is indicated in Table 1.

Table 1: Sample descriptives by size and user fee

Survey Sample						
	Small	Medium	Large	Low-fee	Medium-fee	High-fee
Number	8	7	5	11	3	6
Proportion	40%	35%	25%	55%	15%	30%

CDE (2015)

Of the schools in the sample, those that charge low fees tended to have fewer learners on average (465) than schools charging medium (1,026) and high fees (634). Since the number of medium-fee schools in the survey was very low, only high- and low-fee schools were compared for school fee effects. In interpreting the results, cognisance should be taken of the fact that they are not generalisable to all independent schools, but rather provide an illustrative quantification of the time, skill levels demanded, and direct costs of the regulatory requirements of independent schools. It should be noted, however, that most of the direct costs are uniform and apply across all independent schools.

Methodology

The schools were visited by the researcher, and the schools' principal,²⁰ financial manager or bursar were assisted in completing the questionnaire. This allowed the researcher to clarify some of the information needed to complete the questionnaire, and obtain valuable qualitative information about their experience of the requirements for compliance.

It was evident that at the time of conducting the survey, schools were at different stages of completing the regulatory process because some were newer schools and others well-established. Newer independent schools are typically small as they commonly grow from the needs of poor communities where there is limited or no access to a good public school. Often working parents encourage the owner of a small informal day-care centre to expand into a pre-school, and ultimately the initial grades of a primary school. Over time such schools grow in size as they add more grades and classes as the demand increases. Their 'age' affects the process, in

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particular the stage of the school in, say, the accreditation process as determined by Umalusi.

Table 2 shows the numbers of schools at each different stage of completing the various regulatory tasks required by each of the nine regulatory areas surveyed. These are reflected in the questions pertaining to each area of regulations, making up the various sub-sections of the questionnaire.

Table 2: Task completion under each regulatory theme

	Total number of tasks	Number of schools for which none of the tasks have been completed	Number of schools for which all of the tasks have been completed	Number of schools for which at least 50% of the tasks have been completed
Financial subsidy	4	4	9	13
Provincial registration	19	1	2	14
Independent school association membership	1	2	18	18
Umalusi accreditation	11	4	1	10
Skills development	2	8	12	12
Financial management	1	14	6	6
Visas and IDs	1	6	14	14
Employment equity	5	12	6	7
Health and safety	2	5	14	15

CDE (2015)

In practice none of the sampled schools had completed all related tasks. For example, while 18 of the 20 schools had completed the tasks associated with their membership of an independent schools association, only six of the schools had completed tasks around financial management and employment equity (EE). This non-completion has implications for the analysis of the data, and is explained in the technical report.

Estimating the time taken for the various activities was a difficult task as schools typically did not keep a written record of who participated, and how much time was spent. In most cases, the respondents had to provide informed estimates. Most reported that they were more likely to underestimate the time taken than overestimate it. It was interesting to note that after the survey, many respondents were themselves surprised at how much time and money they spent on compliance and a number decided to keep a much more accurate record in the future, and add a line item to their budget for the time that was spent on compliance.

The questionnaire was designed to capture data on the compliance requirements in the 2014 academic year. However, some tasks were undertaken once annually and some over a number of years, or only every few years.²¹ For questions relating to Umalusi accreditation, schools were asked about the processes involved since the beginning of 2013.

To translate the time and skill level into a rand cost, an estimate of the hourly remuneration cost was used.²²

The category of 'other' personnel was problematic. The average 'other' salary was taken as an average of all the skill levels, but in some instances, those 'other' participants were highly paid professionals such as lawyers and architects. In this case, those personnel were reflected under the highest paid personnel category.

From the research that CDE undertook, valuable information was obtained about the impact of the government's regulatory frameworks and compliance requirements on independent schools in South Africa, compared with those of public schools. Our findings are outlined below.²³

Regulatory Requirements for Public Schools in South Africa

While all schools in South Africa, both public and those independently owned and governed, have to comply with a range of government regulations, the burden of costs is not the same for public schools as it is for independent schools. For example, public schools are deemed to be accredited while independent schools have to be accredited with all the associated compliance costs. The regulatory requirements are also not the same for all public schools, making it difficult to qualify the cost of compliance for public schools as a group. The differences lie between those public schools that manage their own funds and those that do not, and those schools that charge school fees and those that do not.

The vast majority of state-owned schools are established on property owned by the state with buildings erected and owned by the state. Some 28 per cent²⁴ of those public schools have Section 20 status²⁵ and do not manage their own funds. Instead, they receive their allocations of textbooks and stationery directly from the provincial education department (PED). Their lights and water accounts are paid by the PED and repairs are undertaken by the Public Works Department. Hence, the obligation to comply with the legislation that affects school infrastructure and the resources to fund such compliance is borne by the state. For public schools that have Section 21 status, funds are allocated by the PED to the school, after which the school is responsible for maintaining and improving the property, buildings and grounds, purchasing textbooks and educational materials or equipment for the school, and paying for services for the school.

All South African public ordinary schools are categorised into five groups, called quintiles, largely for the purpose of allocating financial resources.²⁶ Public schools that charge fees, typically schools ranked as quintile four and five schools, are better resourced and serve children from wealthier families. As such, they receive a much lower per capita funding allowance from the PED.²⁷ In these schools, parents are expected to carry a much higher share of the financial burden of education provision, and the related regulatory compliance. For example, no public servant, such as a state-employed teacher, is required to pay the Unemployment Insurance Fund (UIF) levy. Thus public schools employing only state-funded teachers do not need to comply with any UIF requirements. For those schools that employ additional privately-funded teachers, time will be spent with complying with the UIF regulations, as well as any Department of Labour requirements including payment towards the Workmen's Compensation Fund.

School quality in public schools is measured through Whole-School Evaluation (WSE), a process prescribed by the WSE Policy,²⁸ as part of the Integrated Quality Management System (IQMS). It is a lengthy and time-consuming process in which school quality is evaluated against nine performance categories and 48 indicators. The school conducts a self-evaluation, and is then visited by a WSE team who conduct a three-day intensive evaluation which includes at least five classroom visits and interviews with staff, senior management, the principal, parents, and the governing body. The school is presented with a lengthy report on its ratings for the quality indicators, which include recommendations for the school to incorporate into its School Improvement Plan (SIP). In 2002, only four provinces had fully established units, and between 2012 and 2014, only 789 schools were evaluated by external WSE teams, suggesting a very small up-take in the system.²⁹ The high time cost involved and lack of district capacity to properly implement the policy has hampered its full implementation. Up-take is low, and there are no consequences for failing to meet the minimum quality requirements.

There is a huge degree of variation between the regulatory requirements of the different types of public schools. For instance, in the case of regulations affecting the employment of teachers by governing bodies, the majority of public schools are not affected. The same is true of the time spent on WSE because its implementation is erratic, inconsistent, and low-stakes. For this reason, a direct quantitative comparison between the compliance costs of independent and public schools was not possible.

It is also important to note that there are no sanctions with severe consequences for public schools for failure to meet requirements. Where Section 21 public schools are legally required to comply with certain legislation and regulations, in practice many do not.³⁰

Regulatory Requirements for Independent Schools in South Africa

By law, independent schools in South Africa are private entities. They are free to choose their own curriculum and set their own examinations, subject to meeting the standards and outcomes of the national curriculum. They can set their own admission policies (that do not discriminate on the basis of race), promote a faith-based or particular educational philosophy, appoint their own staff, and manage their own finances. But to be fully registered as a legal entity, independent schools need to adhere to strict registration requirements or conditions, and comply with numerous laws and regulations. A list of these is given in Appendix 1. While the primary national legislative framework guiding independent schools is broadly supportive of independent schools, there is an ever-expanding web of regulations from all sectors of government with which independent schools need to comply.

It was the view of the school principals in this study that some are poorly considered and impact negatively on independent schools in general. The experience of independent schools in some provinces is that the officials do not know the main legislation and policies affecting independent schools. Hence their constitutional rights are often misunderstood, and the independent school regulations governing them often incorrectly applied or wrongly implemented. This, they contend, together with the requirements for legal existence, governance and

quality assurance, makes regulatory compliance for independent schools an ongoing challenge.

Legal Status

The majority of independent schools in South Africa operate as not-for-profit legal entities. Most not-for-profit independent schools are voluntary associations, trusts or foundations but a large number are registered as non-profit companies (NPCs) and governed by the Companies Act No.71 of 2008. NPCs must register with the Companies and Intellectual Properties Commission (CIPC). In order to receive donor funding and for eligibility for a state subsidy, non-profit organisations (NPOs) should register with the Non-profit Organisations Directorate (NOD) at the Department of Social Development. Applications must include two copies of the organisation's founding documents³¹ which must meet the requirements of Section 12 of the NPO Act. There is no direct cost charged for this registration, but once the organisation is registered, it must submit annual reports (a narrative report, annual financial statement, and an accounting officer's report) including any changes to the organisation's constitution, physical address or office bearers.

Most religious bodies that own schools are voluntary associations and must register with the NOD. Non-profit schools that are structured as a foundation are set up as NPOs, and those that are set up as a trust are registered in terms of the Trust Property Control Act of 1998. The Master of the High Court is responsible for the registration of trusts. No direct costs are involved in these registrations, but time is spent on the registration processes. Twelve of the schools surveyed for this research were registered as not-for-profit companies.

NPOs can apply for, and receive preferential tax treatment from the South African Revenue Service (SARS) if they meet certain criteria.³² If the application is approved by SARS, the organisation is registered as a public benefit organisation (PBO). Approved PBOs may spend income from donations or grants on specific, approved activities for public benefit on a tax-free basis, and may apply for exemption from the Skills Development Levy. PBOs registered as employers whose annual payroll will not exceed R500,000 in the following 12 months are exempt from paying the levy.

Most for-profit schools or small 'chains' of schools are registered as private companies.³³ Two large companies that own many schools, AdvTech and Curro, are registered as public companies and listed on the Johannesburg Stock Exchange. All private companies, personal liability companies, public companies, and state-owned companies must register with CIPC. It is also necessary to open a bank account and register for income tax, Value Added Tax (VAT)³⁴, Pay as You Earn (PAYE), and Standard Income Tax on Employees (SITE) at SARS.³⁵ All schools registered under the SASA are exempt from VAT on both tuition fees and fees for boarding facilities where boarding is incidental to the provision of education.

When the new website for online applications was launched in 2014, the process of registering a company (independent school) with CIPC was fraught with difficulties.³⁶ Some independent schools required the assistance of paid consultants for this registration.

Independent Schools as Employers

Regulatory requirements for an independent school as an employer include compliance with the provisions of a number of acts, each of which has accompanying regulations. Both staff time and direct costs are involved in compliance.

The Unemployment Insurance Act (UIA) of 2001 and Unemployment Insurance Contributions Act (UICA) of 2002 applies to all full-time school staff and their employers. The purpose of the act was to establish a fund to which employers and employees contribute, and from which employees who become unemployed are entitled to benefits. Under the provisions of these acts, staff members at independent schools must pay UIF contributions of two per cent of the value of each staff's pay per month. The employer and the staff member each contribute one per cent.

Employers are required to register with the Compensation Commissioner at the Department of Labour to comply with the Compensation for Occupational Injuries and Diseases Act (COIDA) of 1993. No direct cost is involved in registering, but time is spent by schools in the registration process. Schools are required to register with COIDA as part of their registration with the PED.

The Skills Development Act (SDA) of 1998 aims to regulate the development of the skills of the South African workforce. Skills training is funded through the Skills Development Levies (SDL) Amendment Act of 2010, which regulates a compulsory levy scheme to fund education and training in businesses within various sectors in South Africa. The funds are managed through the Skills Development Fund (SDF). To comply, independent schools must pay one per cent of the total amount paid in salaries to staff on a monthly basis, which goes to the relevant Sector Education and Training Authority (SETA) and the SDF to pay for training. Independent schools that have a total salary bill of less than R500,000 per annum are not required to pay the SDL. This exemption did not apply to any of the schools in our sample.

Certain PBOs are exempt from the SDA but it is necessary to apply to SARS for exemption, which takes considerable time. Twelve of the schools in the survey reported that they were required to comply with the SDA. Eleven of those schools reported paying a direct cost to comply, and the costs ranged from R8,000 to over R400,000. The total amount paid in direct fees was more than R1,600,000, at an average of around R152,000 per school. Four of the schools reported that they contracted outside experts to assist them as they did not have the requisite skills in-house, and one reported that they paid R4,700 for the consultant. Schools are able to recoup part of that levy but only one of the schools actually reported doing so. That school was able to recoup around 20 per cent of the levy, and subsequently spent that money on a staff training programme. Another school indicated that the time taken to recoup such a small proportion of the levy meant that it was 'hardly worthwhile'.

Under the initial SDA legislation, it was possible to claim a proportional refund of up to 50 per cent of the levy to the extent that the company incurred costs on training and skills development of its employees, according to an approved skills development plan. This refund has since been cut to 20 per cent of the skills development levy.

Independent schools with more than 50 employees or an annual turnover of more than R15 million are required to comply with the EEA. In order to comply, independent schools are required to adopt a policy of hiring teachers that demonstrates the promotion of equal opportunity and fair treatment in the workplace. Their compliance is subject to continual monitoring to ensure there are no barriers to equal employment within the organisation. Goals should be set to achieve a demographically representative workforce and to ensure that opportunities exist for advancement across all work categories. An employment equity plan covering between one and five years should be developed in consultation with a representative employment equity forum that establishes objectives and time frames. A senior member of staff should be appointed as an employment equity manager with an adequate budget and sufficient time at his/her disposal to successfully implement employment equity and ensure that an annual report on progress is submitted to the Department of Labour.

Eight of the schools in the sample had to comply with the regulations pertaining to the EEA, and four of those outsourced this task to human resource companies. They spent between R10,000 and R28,000 for the service. Over and above the regulatory imperative, independent schools should be engaging in transformation and diversity as an educational objective, but in employing a racially diverse staff, they face a challenge. It is not easy for low-fee schools, where salaries and benefits do not match those of the public schools, to attract well qualified black South African teachers. Some independent schools in the study took a grassroots approach to obtaining qualified black teachers by training black teacher interns who study for a degree and/or a professional qualification through distance learning institutions. Some of the sample schools are involved in the ISASA Mathematics and English Teacher Internship Programme³⁷ which is carried out in partnership with the DBE and corporate funders.

Compliance with the health and safety regulations is particularly onerous. There are more than 280 health and safety regulations and sub-regulations specified in the Occupational Health and Safety Act (OHS Act), although not all are applicable to schools, and some are applicable to some independent schools and not others, depending on the curriculum offered.³⁸ According to the OHS Act any independent school with more than 20 staff must have a written policy concerning the protection of the health and safety of staff at work and must designate health and safety representatives to serve on a health and safety committee. There should be at least one representative for every 50 staff members, or part thereof. Where two or more health and safety representatives are designated, it is necessary to establish a health and safety committee which should meet at least once every three months.

Seventeen of the schools in the sample had established a health and safety committee in 2014, and 15 trained their staff in 2014. The other two schools only trained their staff every three years. Three of the schools trained their staff using their internal professionals, and the other 12 employed external service providers to do the training. The cost for training ranged between R4,500 and R11,500. In addition to the training, a large amount of money was paid by the schools to make structural changes to comply with the regulations. Some examples were the construction of additional classrooms and toilets (between R200,000 and R1 million), electrical compliance (between R135,000 and R500,000), adding wheelchair ramps (R2,000) and installing hand rails (R12,000). Public schools are also required to establish a health and

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safety committee but training provided by the PED is infrequent, and varies depending on the province. Sixteen schools reported having to purchase health and safety equipment such as fire extinguishers and first aid kits. One school had spent R240,000 on a lightning early warning system. The total spent on purchasing and maintaining equipment was nearly R300,000, and an average of R19,000 per school.

The interviews with school heads suggest that these independent schools take health and safety very seriously. None of the schools expressed frustrations or concern about the time and cost of health and safety requirements and procedures. If quality schooling is first and foremost about providing a safe, healthy environment for work, learning and play, it is clear that the independent schools in the sample invested heavily in trying to achieve this.

There were however frustrations around the processes involved, and it was clear that the requirements of the PED for health and safety compliance as opposed to the municipalities were not clear to school heads. It was apparent that different authorities had different compliance requirements. One respondent had a health and safety certificate which was valid for five years, another had a certificate that was valid for two years. Despite this, the Gauteng Department of Education (GDE) requires the health and safety certificate to be renewed annually, in line with the municipal fire regulations for Johannesburg.³⁹ As one frustrated principal said:

So what do we do, people like us? You say one thing, they say one thing, who do we go to, because nobody seems to know exactly what the regulation [is] and what the policies [are] – there isn't clarity on a lot of these issues. Where do we go, and who do we go to? How do we deal with it?

Provincial Registration

Independent schools may not operate legally as educational providers in terms of the SASA unless they are registered with their PED. The provincial Member of the Executive Council (MEC) for education has the right to establish the conditions for registration and de-registration of independent schools in his/her province. For registration, the compliance conditions are extensive and increasing. Of the seven categories of compliance explored in this research, PED registration was the second most time-consuming for independent schools, after Umalusi accreditation. The requirements for provincial registration of an independent school in Gauteng, for example, are extensive⁴⁰ and listed in Appendix 2 to illustrate this. In some schools, heads felt that the time to compile and submit the supporting documents was disproportionate to the value that accrued to the school. The bursar at one low-fee school, as an example, spent around 160 hours compiling the school constitution and supporting documents, and submitting them for their registration with the GDE.

A delay in provincial registration has significant cost implications for a school: if it opens without the registration it is illegal and can be closed down. Its illegal status will deter some parents from enrolling their children leading to a loss of income. Alternatively it has to delay opening and so bear the cost of salaries and consultants before it receives any fee income.⁴¹

If the PED application is approved, a letter confirming interim registration is issued to the school and to

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Umalusi. At the same time, the school is informed of its obligation to apply to Umalusi for accreditation and final registration is dependent on, among other considerations, the outcome of the school's accreditation process undertaken by Umalusi. In the case of newly established schools, having to obtain Umalusi accreditation (described later) based on an assessment of school quality for a school that has been in operation for less than a year, is illogical. A school needs a few years to establish a record of consistent quality.

It became evident in the research that there is some overlap between the information required for provincial registration and the information required by Umalusi for accreditation. This results in a duplication of activities and an unnecessary compliance burden on the schools. The research also highlighted the fact that schools that registered some years ago had fewer regulations with which to comply. The increased registration requirements and their complexity has necessitated, in some instances, the services of specialist professionals in the relevant field: town planners, architects, auditors and accounting firms are sometimes employed as consultants. It goes without saying that these professionals are costly.

Schools that form part of a chain are hugely frustrated at the compliance required by the PED registration. Each school site has to be registered separately. The bursar at one mid-sized school chain, charging fees between R12,000 and R18,000 per year, spent 290 hours compiling and submitting school site plans for the registration process as the school had to individually register each of the church sites on which its schools are situated. These schools had been operating under a centralised administration for many years, in a model designed to provide cost-effective quality education to economically less privileged children.

Five of the schools reported that they had to make structural changes to the buildings in order to comply with the provincial regulations for registration. These included adding additional toilets (between R100,000 and R3 million) and classrooms (between R3 million and R15 million), as well as making changes to existing buildings such as adding hand rails and wheelchair ramps (between R40,000 and R100,000). The total spend for the five schools was over R21 million, at an average of more than R4 million per school. In addition to the structural changes, four of the schools outsourced the application process to professionals at an average cost of R30,000 per school.

A key requirement for an efficient provincial registration process is sufficient capacity in the provincial office in the directorate responsible for independent schools. A lack of capacity delays a registration process. It was clear that in speaking to the provincial director of the Independent School Directorate in the GDE that a professional staff of seven to administer the registration of more than 800 independent schools in Gauteng was a constraining factor. The director admitted that constraints of limited capacity are exacerbated because '95 per cent of our time is spent dealing with conflicts in schools, the exclusion of learners, non-payment of educators, staff turnover, conflict between the governance structure'. Efficient school registration may suffer. It is likely that other provinces, many of which have less capacity than the GDE, will be similarly over-stretched – with serious consequences for the registration of independent schools.

Forensic Audits of Financial Management

All subsidised schools have to have their financial statements audited annually at their own expense. In 2011, following a case of embezzlement of subsidy monies by an owner of two independent schools, the GDE initiated a series of out-sourced forensic audits in subsidised independent schools. As a result of the audits, 14 of the 205 Gauteng schools that received a state subsidy in 2011 were referred to the South African Police Service for investigation for serious instances of financial mismanagement.⁴² The findings from that investigation suggested that those schools did not have the ability to manage their own finances.

Subsequently, the GDE established an inspectorate for independent schools using in-sourced expertise to provide an end-to-end service to audit the finances of subsidised independent schools, establish operational standards, and check for compliance through rigorous monitoring with announced and unannounced inspections. This tighter monitoring of independent schools has resulted in a dramatic increase in the number of financial audits conducted in independent schools, with a subsequent increase in the time that schools spent on compliance. Between 2013 and 2014, one of the schools surveyed had five separate financial audits, one had three, one had two, and one had a single audit. One school spent as many as 38 hours attending to issues related to its financial audits. Many 'infractions' were minor, such as asset registers that were not up to date. Most concerning was that schools did not receive feedback after each audit so were unable to remedy any problem.

Foreign Nationals

Employing foreign nationals in South Africa is very problematic for independent schools. The outbreak of xenophobic violence in 2008 and again in 2015 indicates some hostility and resistance to the employment of foreigners in some sectors within the country. CDE's 2015 research on teachers in South Africa estimates that in 2013, more than 10,500 foreign teachers were employed in South African schools.⁴³ Typically they are Zimbabwean nationals, teaching subjects in which there is a shortage of South African teachers. Low-fee independent schools find that they are well-trained, committed to teaching and hard-working even though the salaries that they can afford are lower than those of state teachers.

Independent schools can legally employ foreign nationals as teachers if they have a valid work permit.⁴⁴ One school employed as many as 23 foreign nationals, and others employed four or five. The South African Department of Home Affairs offers different types of work permits but foreign nationals employed as teachers commonly work in South Africa on a general work permit. Current regulations state that a general work permit shall lapse within six months of issuance and every year thereafter if the holder fails to submit satisfactory proof to the director-general that she/he is still employed.⁴⁵

For a foreign teacher to obtain a general work permit, it is necessary to obtain a certificate from the Department of Labour stating that the prospective employer was unable to find a suitable South African citizen or permanent resident in spite of a thorough search, and that the foreign applicant has the suitable qualifications and proven skills. Compiling this documentation takes time. It is also necessary for the employer to ensure that remuneration and benefits are at least equal to the average salary and benefits of other teachers

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in similar posts. The employer must submit the contract and conditions of employment together with proof of approved qualifications from the South African Qualifications Authority (SAQA) and an undertaking to inform the director-general should the applicant not comply with the visa requirements. It is necessary to lodge a cash deposit equivalent to the value of a return ticket or an undertaking from the employer to cover the cost.

In one of the schools surveyed, the visa of two teachers who are foreign nationals would lapse at the end of 2014. They began the process of re-application in April 2014. The application took several months, and when they were finally processed, the applications were rejected because the certificate from the Department of Labour (a recent requirement) was not submitted with the rest of the required documents. In order to acquire the certificate, the school had to furnish evidence about the candidates originally interviewed for the post and the notes from the interviews. These were no longer on file, so the teachers had to return to their own countries (United Kingdom and Botswana) and the school has had to re-advertise the posts. The teachers will only be able to acquire a new work visa if the school can prove no other South African citizens or permanent residents who apply for the post can be found.

In the case of children who are foreign nationals, they can be enrolled in independent schools on a study visa. Independent schools have a central role to play in assisting learners to acquire a study visa and to comply with the regulations concerning it. In the case of boarding schools, it is usually the head/principal of the school who accepts guardianship and some schools found themselves dealing with many problems regarding study visas, passports and identity documents, and in assisting children to obtain residence.

A number of schools in the survey had foreign national children enrolled in their school. In one school, the learner population included 300 foreign learners from its catchment area in which there are many immigrant families. In this school, the complexity of ensuring that all children have the necessary documentation and medical cover is immense and is extremely time-consuming, particularly as some of the children are orphans, and some were born in a foreign country and have no documentation. Public schools also enrol foreign national learners and have the same burden of compliance as independent schools in this regard.

Umalusi Accreditation

Umalusi was established in terms of the General and Further Education and Training Quality Assurance Act (GENFETQA) No. 58 of 2001, amended in 2008, as the quality assurance body for general and further education and training in South Africa. Section 24 of the National Qualifications Act No. 67 of 2008 designates Umalusi as the Quality Council for General and Further Education and Training. As quality council, Umalusi is empowered⁴⁶ to quality assure and accredit independent schools on the basis of criteria developed in terms of section 23(1) of the Act. Umalusi does not accredit public schools. Accreditation is defined by Umalusi as 'a status granted to an independent school at the end of a quality assurance process and attests to the quality of provision offered'.⁴⁷ The public school equivalent of quality assurance is conducted through the WSE process, which, as already discussed, has very limited up-take in the system, and is without consequences.

The regulations approving the criteria by which independent schools are to be granted accreditation under section 24 of GENFETQA were promulgated by the Minister of Basic Education in 2012.⁴⁸ Until then, no school could obtain full accreditation as Umalusi had not developed an accreditation framework approved by the minister.

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This means that from 2002, every independent school, including those that offer world-class education, was only provisionally accredited until 2013. This involved schools completing a desktop exercise involving monitoring reports and the submission of a host of documents annually. For instance, more than 30 policies covering every aspect of school life and work had to be submitted. When the full accreditation process was initiated in 2013, schools had to reapply and resubmit all their supporting documents online.⁴⁹

For the schools surveyed, Umalusi accreditation was the most burdensome in terms of time, and costly in terms of direct fees.

Quality assurance of independent school is carried out through processes that include:

- the submission of an 'expression of intent' by the school to seek accreditation to offer a qualification;
- the attendance by the school at a quality assurance workshop to guide schools in the quality assurance processes;
- a self-evaluation (undertaken in terms of four criteria: leadership, management and communication; school ethos; teaching and learning; and school results) of quality by the school using a self-evaluation instrument provided by Umalusi;
- the submission of a self-evaluation report by the school to Umalusi, accompanied by supporting documents;
- a desktop evaluation of the self-evaluation report conducted by Umalusi; and
- a school site visit by Umalusi officials, including a number of subject specialists, to verify the self-evaluation report.

Following the visit, Umalusi gives the school feedback on their accreditation status: a failure to receive accreditation, provisional accreditation given for one year, or full accreditation for seven years. Schools granted provisional accreditation must remedy the areas of non-compliance within a year. Post-accreditation monitoring is done to ensure maintenance of standards and continued improvement, and a post accreditation monitoring report is required in years two and four following successful accreditation. Re-accreditation begins again in year six.

For an independent school to successfully complete the accreditation process, fees must be paid to Umalusi at each stage of the process. When the full accreditation process was initially launched by Umalusi in early 2013, the accreditation fee for a school with 600 learners between grades 1 and 12 was set at R75,000. Representations by the National Alliance of Independent School Associations (NAISA) to the Umalusi Council resulted in a reduction of accreditation fees. Schools can now apply for a reduction in accreditation fees, calculated on a sliding scale based on their fee-level.

In the case of subsidised not-for-profit schools, a school that qualifies for the highest subsidy of 60 per cent of the provincial average estimate of expenditure per learner (PAEPL) is eligible for a 20 per cent reduction in accreditation fees, whereas a school that qualifies for a subsidy of 15 per cent of the PAEPL is eligible for a five per cent reduction in accreditation fees. School size is not taken into account with the result that small schools have to pay the same as large schools, even though their learner fee income is smaller. The fee schedule for 2014, including discounted fees, is shown in Table 3.

Table 3: Full accreditation fees for Umalusi 2013/2014⁵⁰

Activities	Foundation Phase School Grade 1-3	Primary School Grade 1-7	High School Grade 8-12	College Grade 10-12	Combined School Grade 1-12	Combined School Grade 1-9
Initial application for accreditation	R1,100	R1,100	R1,100	R1,100	R1,100	R1,100
Self-evaluation report and desktop evaluation	R6,261	R12,229	R18,197	R10,737	R27,149	R19,689
Total site verification Fee	R7,000	R11,000	R15,000	R15,000	R23,000	R15,000
Monitoring fees	R5,500	R5,500	R5,500	R5,500	R5,500	R5,500
Total accreditation fees	R19,861	R29,829	R39,797	R32,337	R56,749	R41,289
Fee less 20 per cent	R15,889	R23,863	R31,838	R25,870	R45,399	R33,031
Fee less 5 per cent	R18,868	R28,338	R37,807	R30,720	R53,912	R39,225

CDE (2015)

Unlike once-off regulatory requirements, the Umalusi accreditation process continues over a number of years, and is repeated on a seven-year cycle, making the full-time cost implications higher than we were able to calculate in this study. If anything, our time cost analysis is most likely an underestimate of the actual time cost.

The cost of an Umalusi process for a low-fee independent school

A low-fee independent school situated across a number of old houses in Yeoville, a poor area of Johannesburg, caters for 600 children from pre-school through to high school. The catchment area for the school includes many immigrant flat dwellers. The school charges fees less than R12,000 per annum for their primary school learners, and between R12,000 and R18,000 for their secondary school learners.

Its Umalusi fee in 2015 includes the application fee (R750), a desktop evaluation (R1,500), moderation of the desktop evaluation (R1,777), processing the application (R350), and 16 sampled school-based assessment tasks (R23,872). After the discount (R4,237.35), the total due was R24,011.65.

This is not an insignificant amount for the school with a small budget and does not cover the additional costs of monitoring reports and a site visit for one or more days that it will have to pay in the future

CDE 2015

Some schools found the thorough quality assurance process valuable. As one respondent said, 'While it's a rigorous process which involved much input and expertise from the head and other senior managers, I think that it's a valuable process and that all schools should be required to undergo this [Umalusi] evaluation.' One school in the survey was particularly pleased with guidance that the Umalusi self-evaluation has given the school and used the evaluations as a tool to monitor themselves and their teachers. They use the format of the

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Umalusi report as the base document for their annual strategy meeting. For those independent schools that adopt this as a strategy, the accreditation time costs are shared with any internal quality assurance processes which amounts to a considerable time saving for the school.

However, there were also many complaints. All 15 schools that had attended quality assurance workshops reported that they found them costly. Those costs included the fee for attending the workshop, travel to and from the venue, and in some instances, the cost of substitute teachers. The cost to the school of each workshop varied depending on the venue, and the number of staff who attended the workshop, but in the sample, schools paid an average of nearly R4,500 per school in direct costs to attend in 2014.

The 10 schools that had completed the self-evaluation report considered the portfolio of evidence that had to be submitted as 'excessive'. One school head mentioned the Umalusi requirement of a policy on policies that guides the development and implementation of internal policies as one of those. In essence, it is a policy that details how all the other school policies will be monitored and when they will be updated and evidence that this has taken place has to be provided by the school.

'The policies that we have to develop and the administration involved are unnecessarily tedious – I'm talking about boxes of files. I have to employ someone just to handle the Umalusi stuff. I wouldn't mind if all of this improved our standards, but it doesn't.'⁵¹ A second complaint was the burden placed on schools that are part of a chain. As one head said, 'Most [heads] have one school, maybe two, but in terms of Umalusi and the GDE, we have seven. So that means we have to have seven Umalusi accreditations at seven times the cost.' A third was a real frustration regarding the unintended consequences of the accreditation process. One school's view was expressed as follows:

We've been on trial, I feel, with Umalusi since 2013 now. We really thought it [Umalusi accreditation] would enhance teaching and learning because we went in with such a positive attitude. We have got policies, we have got rubrics till they're coming out of our ears, we have dotted our i's, crossed our t's. At the moment we are doing our strategic plan for the next five years, and in conversation with my staff yesterday, we actually had decided that, in fact, since we've started [down] this Umalusi road, our teaching and learning is not effective at all. We cannot do collaborative teaching ... when you ask 'is teaching better?', it's gone backwards. And we've got demotivated staff, who are creative people, but who can no longer be creative, because of this.

A recurring complaint about the accreditation process is that the emphasis is on standardised documentary evidence of inputs and procedures for compliance purposes, rather than on school development and improvement of the quality of teaching and learning, and guidance on how a school could achieve this.

The four schools that had compiled and submitted the self-evaluation reports spent an average of nearly R7,000 on this task. The cost of printing and photocopying the portfolio of evidence for the self-evaluation was extensive, and often underestimated by the schools. One school reported spending as much as R8,000 on photocopying supporting documents for its self-evaluation report, and one school spent R7,500 to outsource the compilation of documents, over and above the actual printing costs.

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Outsourcing of compliance requirements to consultants is common where schools do not have the internal skills to complete everything that is required. Often it is low-fee schools which can ill afford it that have to resort to this.

School heads pointed out that the process of submitting the documents was extremely time-consuming. There were difficulties experienced in uploading the large quantity of documents in support of their self-evaluation. The process is made more difficult by slow and unreliable internet connectivity, a real problem for low-fee schools.

Those schools in the survey that had undergone a site visit commented on the experience. One head reported that '14, 15, 16 officials arrive, and every toilet in the school has to be flushed and [expiry] dates checked on spice bottles on the racks and all sorts of things. So it's incredibly detailed and bureaucratic.'

Despite the complaints and concerns voiced by independent schools, they take the accreditation process very seriously as it is a high-stakes process with severe consequences for failure to meet the requirements. This is because the process of registration with the PED, which grants the school its right to operate as an educational institution, is closely linked to and dependent on the accreditation process.

State Subsidy

Only not-for-profit low- and mid-fee independent schools serving disadvantaged communities qualify for a provincial subsidy. No for-profit or high-fee school can qualify. State subsidies are calculated on a per-learner basis according to the verified average enrolment of learners in the first two quarters of the previous year. The level of subsidy is determined as a percentage of the PAEPL as calculated by the PED for the relevant financial year. PEDs typically spend less than one per cent of their budget on subsidies,⁵² although Gauteng spends 1.45 per cent as it has by far the largest number of independent schools and their learners in the country.⁵³

An independent school that is not-for-profit, has been in operation for a year, and charges an annual school fee less than 2.5 times the PAEPL, is eligible to apply to their provincial department for a state subsidy.⁵⁴ In 2014, the average national PAEPL was R12,000.

There are five categories of subsidy calculated on a sliding scale.⁵⁵ They range from the highest subsidy of 60 per cent of the PAEPL, to the lowest subsidy of 15 per cent of the PAEPL. The PAEPL as calculated by the various PEDs has been an issue of contention for independent schools. For some years certain provinces did not publish the PAEPL, as required by the National Norms and Standards for School Funding (NNSF) as amended in 2008, or send schools the official letters indicating the amount per learner they would receive the following year, making it difficult for independent schools to determine what they were rightfully owed, or to budget accurately. It is also common practice for provinces to calculate subsidy levels based on a figure that is only a percentage of the actual PAEPL in ordinary public schools. In most provinces the payment of subsidies is delayed. Many provinces reduce the subsidies without proper and timely notification to the schools or consulting with the DBE as they are required to do in the NNSF.

The NNSF allow for a subsidy allocation to be reduced if provincial budgetary constraints deem it to be

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necessary, but a reduction in allocated subsidies should not become de facto policy by default.⁵⁶ PEDs also have 'latitude to vary budgetary allocations between programme areas, in relation to the total funds at their disposal, and the priorities established in terms of national and provincial policies', but subject to certain limits and consultation with the DBE.⁵⁷

All the problems above result in the amount and timing of subsidy payments being unpredictable, with serious implications for school budgeting procedures. However, the lack of adherence to the NNSSF by many PEDs over the years, and decreases in the subsidy allocations, have more than short-term budgetary consequences; they can affect the future level of subsidisation of independent schools.

In order to determine the subsidy category an independent school is eligible for, a base date for school fees is set periodically by the Minister of Education. Once categorised, a school's category remains unchanged until a new base date is published, irrespective of any changes in school fees or provincial expenditure. The base date is set retrospectively to prevent manipulation of fees by schools. Re-categorisation was gazetted by the Minister of Education in January 2014, based on the fees eligible schools charged in January 2013.⁵⁸ This currently determines subsidy categories for 2015 onwards.

When a PED reduces the subsidy significantly or for a number of years, schools are forced to raise their school fees to absorb the subsidy shortfall. At the next re-categorisation, the higher fees often force them into a lower subsidy category as the example below illustrates.

Independent schools that qualify for a state subsidy have to meet a number of other conditions. These include 'good management' criteria, as determined by a provincial management checklist, and verified through unannounced school visits from the department. The management checklists vary from province to province. For the GDE, for example, it includes school details, ownership details, pass rates, overall management, teacher registration, and financial and human resources management. Each of these requires a great deal of documentation to be sourced, compiled and submitted to the provincial department annually.

The consequence of re-categorisation

One of the primary schools in the survey, serving learners from the local rural community, was notified of a subsidy cut when the re-categorisation was applied in 2015. The majority of learners in that school pay school fees of less than R1,500 per annum, with many paying no fees at all. The published highest fee, the basis on which the subsidy is calculated, was R7,200 per annum. This fee was charged to a few middle-class families who could afford to pay more than the other families sending their children to the school. Based on this figure, the subsidy was reduced. If the average fees of the school had been taken into account, it would not have had the subsidy reduced.

CDE 2015

There are also strict conditions regarding academic performance which must be met by the school. For primary schools, the provincial averages for public schools in the Grade 3 and 6 verification Annual National Assessment (ANA) are used as a benchmark.⁵⁹ The average learner achievement in the ANA in the independent school must

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at least equal the provincial average in public schools in the previous year. In addition to rising to the challenge of working with children who live in a context of poverty with all of its attendant problems, these schools find themselves taking in children with learning difficulties who have been struggling in the public schools. To date there are no concessions for learners with special educational needs (LSEN), and some schools fall short of the subsidy benchmark as a result.

The benchmark for comparison for secondary schools are the Grade 12 National Senior Certificate (NSC) results. This is very problematic for budgeting purposes as schools will have announced their budgets and fees for the next year towards the end of the previous year, but only know in the January of the next year what their results are and whether they will qualify for a subsidy or not.

Meeting that benchmark also is difficult for those independent schools that cater for over-aged repeaters in Grade 12 'finishing' schools. Achieving a pass rate higher than the provincial average in a single year is problematic given that the majority of learners start the Grade 12 year having failed in the past. Consequently, those schools lose their subsidy.

Applying for a state subsidy is not the most time-consuming compliance activity, according to the data collected from these 20 schools. However, the late payment of subsidies, and irregular and unpredictable allocation of funds to low-fee schools, in particular, has a serious impact on their income and budgets.

Membership of Independent Schools Association

Independent schools are not obliged to belong to an independent schools association, but many of them choose to do so. It is estimated that around half of the registered independent schools in South Africa belong to one of the eight main national associations of independent schools, and about half of those are members of ISASA.⁶⁰ In the main, independent schools associations are groupings of schools with a common religious or cultural identity, or are committed to a particular pedagogical philosophy.

Typically, these associations provide services for their particular community of schools and require member schools to adhere to shared values. The Catholic Education Network, for example, consists of several structures, all of which play a role in assisting Catholic schools to maintain their Catholic ethos and identity, deliver quality education, and guide their ongoing financial viability. ISASA provides more than 50 services to its member schools. Most independent schools associations are represented on NAISA. It is the officially recognised representative body for the sector that facilitates communications with the DBE, negotiating on matters of common interest on behalf of the associations, while respecting the individual identity of each association.

In addition to all being members of ISASA, one school in the survey was a member of the Association of Christian Schools International (ACSI), and two were members of the Catholic Schools Proprietors' Association (CASPA). In the case of ISASA membership, the application process requires completion of an application form that requires school details, such as the school's founding documents, company registration, registration with the PED, governance structure, learner numbers, class size, teacher registration with the South African Council for Educators (SACE), financial accounts, and schedule of fees. It is the only association that quality assures

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schools for membership: a school is expected to abide by a code of ethical practice and to meet quality criteria.

As each association has its own requirements, the time taken to apply varied among the schools. One school spent as much as 48 hours on its application process. The cost of membership of the various associations varies. ISASA, for example, charges a subscription on a per-learner basis, according to a six-category sliding scale that caters for schools from all socio-economic circumstances.⁶¹ As part of ISASA's quality assurance process, each member school must undergo an evaluation of its quality by the Independent Quality Assurance Agency (IQAA) every six years. Schools pay an annual levy towards the cost of this evaluation. The range of fees paid to independent schools associations was very broad among the schools surveyed, from around R3,000 to as much as R170,000, in the case of a large high-fee school. The average fee paid was around R45,000. This included the actual fee, together with travel costs associated with applying for or maintaining membership status.

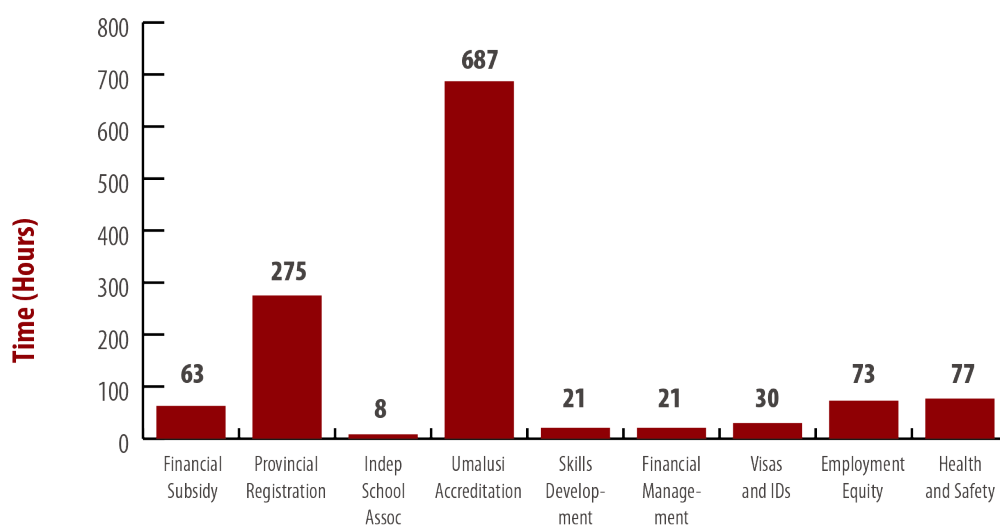
Rand Cost in Terms of Skill Level and Time

Skill Levels, Time and Direct Costs

Figure 1 illustrates the sample average time (in hours) spent on each regulatory category.

Independent schools association membership was estimated to take the least amount of time on average (eight hours), while Umalusi accreditation and provincial registration took the longest, with schools estimated as spending an average of 687 and 275 hours on each, respectively. The time involved in provincial registration and Umalusi accreditation was significantly greater than the time spent on completing other regulatory activities around state subsidy, independent schools association membership, skills development, financial management, and work permit/ID documents.

Figure 1: Average time (in hours) spent on each regulatory category



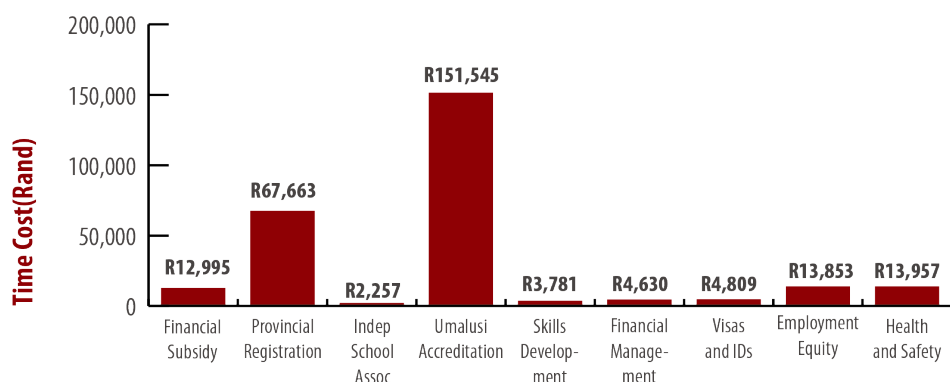
CDE (2015)

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The cost of completing each regulatory theme (taking into account the amount of time and skill level required) is depicted in Figure 2. The results resonate with that of Figure 1: that is, **the highest cost burden for the sampled independent schools related to Umalusi accreditation (about R150,000) and provincial registration (about R68,000).**⁶² Fulfilling the requirements of independent schools association membership had the lowest average cost of about R2,300.

The seven schools that were the furthest along in completing the regulatory processes (at least two-thirds of the tasks completed) were used to provide a picture of the proportion of the regulatory burden that is carried by staff of differing seniority. While it is difficult to make any kind of generalisation based on these seven schools, **smaller schools had to place slightly more of the regulatory burden on senior staff members (heads, bursars and senior managers), while large schools were able to make more use of the skills of a wider pool of internal professionals (educators, school therapists, sports coaches etc.).** Typically, small schools have a small staff with few at a high-skill or senior level and they are the only ones who can carry out most of the compliance tasks. Large schools with more teachers and staff at middle management levels are able to share out the tasks to them.

Figure 2: Average cost (in rands) spent on each regulatory category in seven schools



CDE (2015)

Table 4: Level of seniority of staff dealing with regulatory compliance in seven schools

School	Head	Bursar	Senior managers	Other managers	Internal professionals	Admin/ Clerical	Other (external)	School size	School fee
1	24.6	20.4	32.8	26.5	10.7	28.8	11.7	Small	Low
2	41.2	0.0	4.2	0.0	29.7	24.9	0.0	Small	Medium
3	0.7	31.8	2.9	3.4	3.4	1.8	20.3	Medium	High
4	9.9	25.7	8.2	0.0	45.6	4.8	5.8	Medium	Medium
5	24.3	14.2	14.9	0.0	16.3	6.4	23.8	Medium	Low
6	7.6	0.3	35.1	0.0	43.5	7.6	5.9	Medium	Low
7	6.6	6.4	23.1	0.1	56.1	2.1	5.7	Large	Medium

CDE (2015)

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Table 5 makes use of the same seven schools in Table 4 that were nearing completion of specific regulatory processes to determine the cost and time involved. The general trend was found to be that time and cost increased as a school completes more of the regulatory processes. Closer inspection of the data revealed that most schools had not completed the Umalusi accreditation process, which was not unexpected as the process for full Umalusi accreditation only began in 2013. The highlighted rows of Table 5 indicate schools that had completed most of the Umalusi accreditation process (roughly 80 per cent). The information clearly indicates that there is a large time and financial cost attached to this. For schools 5 and 7 in Table 5, Umalusi accreditation alone accounted for 75 per cent of the time and financial cost of regulatory compliance.

Table 5: Time and cost related to regulatory compliance

School	Number of tasks completed	Total time (to date of survey) in hours	Total cost (to date of survey)	% of time Umalusi	% of cost Umalusi	School size	School fee
1	34	1,059	R223,470	47%	47%	Small	Low
2	33	3,54	R76,180	2%	1%	Small	Medium
3	36	1,646	R338,120	2%	2%	Medium	High
4	38	2,941	R574,740	58%	53%	Medium	Medium
5	30	1,861	R420,020	24%	27%	Medium	Low
6	32	1,748	R334,210	74%	74%	Medium	Low
7	39	5,257	R984,830	75%	73%	Large	Medium

CDE (2015)

School Size Effects

On average, the total time spent on regulatory activities by the sampled schools was 1,393 hours. Accounting for school size, the schools spent on average approximately two hours and 48 minutes per learner on regulatory compliance. Figure 3 presents the total administrative burden of regulation in total hours, and hours per learner by school size. On average the total time spent by medium and large schools was markedly higher than for small schools. However, once the learner population of the school was taken into account, the per-learner time spent for large schools (1 hour and 50 minutes) was less than that of medium-sized (2 hours and 30 minutes) and small (just over four hours) schools.

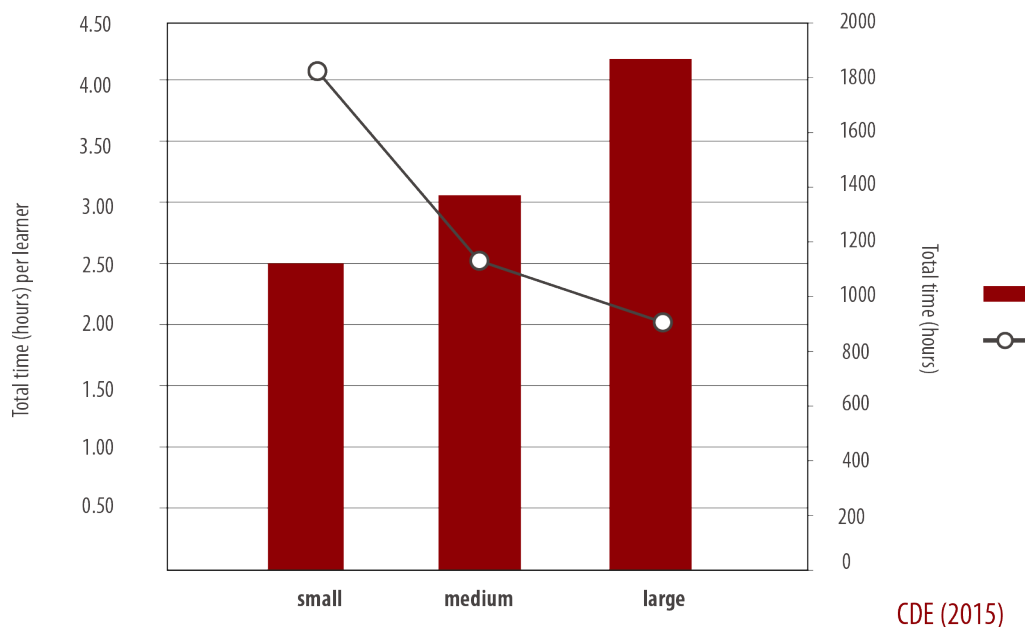
School Fee Effects

It is possible to replicate the above analysis by school fee levels. The average total time spent on regulatory compliance activities by the low-fee schools was 1,234 hours, while high-fee schools spent 1,304 hours on average. The average total cost of compliance for low-fee schools and high-fee schools was estimated to be roughly R270,000 and R290,000 respectively.⁶⁶

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The per-learner equivalents of cost and time by school fee are presented in Figure 5. Given that the order of difference in total time and total cost across low-fee and high-fee schools is about the same and that high-fee schools have on average a 40 per cent larger student body than low-fee schools, it is not surprising that **the per-learner cost (in hours and rand terms) is lower for high-fee schools.**

Figure 5: Per-learner cost related to regulatory compliance, by school fee structure



Note: Bars represent cost per learner, while the line graph represents hours per learner.

Proportion of School Budget Spent on Compliance

However, one way to understand the burden of compliance better is to determine the time and skill level cost as a proportion of the sampled schools' annual budgets.⁶⁷ Budgets were received from 16 schools and their size was highly variable, with the smallest being about R1.14 million and the highest some R72 million. As would be expected, school budgets correlate positively with school size, because personnel remuneration makes up the largest portion of any school budget. After adjusting for the outliers,⁶⁸ there was no statistically significant relationship between total compliance cost and school budget. The independent schools in the sample faced similar compliance costs, irrespective of budget size. For example, a number of the sampled schools with annual budgets of between R2 million and R5 million faced a compliance cost of roughly R200,000 to R250,000, as did schools with higher annual budgets of between R18 million and R25 million. Similarly, schools with relatively low and relatively high annual budgets of R6 million and R66 million, respectively, faced total compliance costs close to R400,000.

The analysis has shown that the burden of regulatory compliance was higher for the small independent schools sampled. As school size is positively related to school budget, the proportion of school budget spent on regulatory compliance was found to be higher for small schools. In fact, small schools in this sample were

found to spend more than five per cent of their school budget on regulatory compliance. As these schools tend to be low-fee schools, the financial burden of regulatory compliance for small, low-fee independent schools is compounded.

Benchmarking CDE'S Findings

CDE found no South African research or benchmarks against which to compare its findings. The difficulty of comparing the cost of compliance for independent schools to that of public schools in South Africa has been explained earlier.

Internationally there is one study that is illuminating: the *Red Tape Survey*,⁶⁹ carried out by the Independent Schools Council (ISC) in the United Kingdom (UK), an organisation which represents some 1,200 independent schools in the UK. They have been lobbying for a single risk-based regulatory framework to reduce the burden placed on the independent school sector by the present set of overlapping and sometimes contradictory regulations. In 2010, the ISC conducted a survey of 76 independent schools (day schools and boarding schools), asking them how much time their school allocated to different regulatory tasks, and who at the school performed them.

They found that, on average, the ISC schools spent over five and a half hours per pupil on compliance with regulations and documentation each year. This is higher than the per-learner time established in this study, but the UK study included time spent on regulations that pertained to boarding schools. This makes the data difficult to compare directly. However it is notable that, as in CDE's study, the per-learner time was markedly higher for smaller schools (9 hours 20 minutes) than for larger schools (2 hours 40 minutes).

In the case of school inspections, the ISC survey found that schools spent about the same time, regardless of school size, making the cost per pupil higher for smaller schools. They also found that school principals in large schools bore around eight per cent of the compliance burden, while school principals in small schools bore more than 15 per cent of the burden. Non-management staff, including teachers at small schools carried about 20 per cent of the burden, while at large schools the equivalent figure was 40 per cent.

Because they were tied up with compliance tasks, the school's senior management indicated in the ISC survey that they had less time available for strategic and managerial tasks.

Although the ISC *Red Tape Survey* and the CDE one are not directly comparable in terms of the regulatory frameworks and level of independent school fees charged in both countries, they reveal similar trends.

Summary of the Quantitative Findings

General Findings

- Independent schools association membership is estimated to take the least time on average (8 hours), whilst Umalusi accreditation (687 hours) and provincial registration (275 hours) take the most time.
- The highest cost for the sampled independent schools is related to tasks involved in the Umalusi accreditation processes (some R150,000) and provincial registration (about R68,000).
- In small schools a larger proportion of the regulatory burden is shouldered by the most senior staff members (heads, bursars and senior managers), while large schools are able to make use of the skills of less senior internal professional staff.

School Size Effects

- Less time is spent complying with regulations per learner in large schools (1 hour and 50 minutes) than in medium-sized (2 hours and 30 minutes) and small schools (just over four hours).
- The cost per learner at R391 is lowest in large schools and highest in small schools at R1,171.

School Fee Effects

- On average, the total time spent on regulatory compliance activities by the low-fee schools in 2014 was 1,234 hours, and in high-fee schools it was 1,304 hours.
- The total cost of compliance for low-fee schools and high-fee schools in 2014 was estimated to be on average some R270,000 and R290,000 per year respectively.
- The per-learner cost (in hours and skill level) in 2014 was lower for high-fee schools.

Proportion of School Budget

- The proportion of school budget spent on regulatory compliance was higher for small schools, which were found to spend more than five per cent of their school budget on regulatory compliance.

Key Issues

A number of important issues arise from CDE's research. These are outlined below.

All national education systems need to ensure the accountability of educational institutions and monitor their quality. In South Africa, this is done through WSE for the public schools, and through Umalusi for independent schools. However, this research has shown that independent schools, as legal entities, educational providers and employers, are subject to more regulatory requirements than public schools, and that accountability in compliance is considerably higher. Most significantly, public schools do not have to be registered or accredited – the two processes with the highest compliance costs for independent schools. All public schools in South Africa are deemed to be accredited, which is ironic, given the low quality of education in many public schools.

Using this small sample of schools as illustrative of the independent school sector, CDE's research indicates that the burden of compliance for independent schools in terms of time taken, skill level involved, and direct monies paid out is substantial. This is particularly the case for those independent schools that are small and charge low fees. As many low-fee schools are new and very small schools, as defined by the DBE, they are really start-up enterprises, which like other small, medium, micro and emerging enterprises (SMMEs) suffer from an

overload of regulations that delay their establishment and growth, and demand skills and costs that they lack. Larger schools with many more staff are able to spread the load of compliance tasks among their range of skill levels, while small schools are not, and so the burden of compliance falls on the shoulders of the principal and the few senior staff. Because all independent schools spend on average similar amounts of time on compliance tasks, schools that charge low fees pay a much higher cost per learner, and spend a higher proportion of their budget on compliance.

CDE's research revealed that the burden of compliance affects more than independent schools' budgets, as the ISC's research in the UK also found. In general schools find the Umalusi accreditation process complex and very time-consuming. One of the school's criticisms of Umalusi's current quality assurance processes is that they result in schools putting all their energy into compliance in order to obtain accreditation, at the cost of strategic planning, innovation, and improving the quality of teaching and learning. If accreditation is such high-stakes, a school is forced to spend a lot of time ensuring that it will meet the criteria, at the expense of focussing on quality.

From its research on low-fee independent schools since 2008, CDE has concluded that for them to be able to charge even lower fees and thus provide access to good schooling for even poorer communities, two things are essential: increased government subsidies and decreased compliance costs. Thus the problem of high compliance costs, especially in the case of low-fee schools, which are typically smaller than higher fee schools, is not just an issue for the independent school sector but for the country. The growing web of legislation and associated costs are a major impediment to low-fee schools being successfully registered and at the expense of increased access to good education in poor communities which are un-served or under-served by the public school system.

Recommendations

In order to better understand the impact that the South African regulatory environment has on independent schools, CDE undertook to determine the regulations most affecting independent schools, and explore the schools' experience of the regulatory requirements, as well as the direct cost and time cost implications. Based on its international and local research, CDE recommends a more appropriate regulatory framework for the independent school sector in South Africa that will still provide for adequate accountability and quality assurance. Such a framework should:

- **Balance quality assurance for accountability and quality assurance for school improvement.** The quality assurance process should provide more detailed information for schools about the areas of strength and weakness in their teaching and learning processes, the reasons for these, and how they can be improved. This would promote continuous improvement towards excellence. In this regard, Umalusi's current quality assurance model falls short; the emphasis is on standardised documentary evidence of inputs and procedures for compliance purposes rather than on school improvement and providing guidance in how to achieve this.
- **Remove duplication in the quality assurance processes.** Umalusi accreditation and provincial

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registration are inextricably linked. Provincial registration relies on provisional Umalusi accreditation, which involves quality assurance processes, but a school cannot operate legally, and therefore be quality assured, until it has been registered by the province. This leads to delays in the registration processes and 'provisional' status as a registration option for new schools. Given the complexities involved in each of these processes, it is not surprising that they require by far the most amount of time, and hence cost schools the most in terms of time and skills. Umalusi also has a high direct fee cost, especially for small and low-fee schools.

The questionnaire did not specifically collect data on the time involved by subsidised schools on compiling and submitting detailed information required by the PEDs with regard to teaching and learning, and curriculum implementation. It became evident, however, during the research that much of what is compiled and submitted as evidence of teaching and learning to Umalusi to satisfy Criterion 3 (Teaching and Learning), is also required by the PED, especially in the case of subsidised schools. This is an obvious and unnecessary duplication of tasks for schools.

As a result of the myriad of accountability and quality assurance requirements governing independent schools, the quality of their education is checked and rechecked by two different government bodies. With up-to-date and accurate PED databases and effective data management, it should be possible for Umalusi to gain access to the same information. Thus the duplication of tasks would be eliminated, minimising costs for the schools. However, to make this possible, the units/sections responsible for EMIS independent schools in the PEDs need to be staffed with sufficient, adequately skilled staff.

- **Focus on outcomes rather than inputs and processes.** In the case of both Umalusi and PEDs' requirements of schools, the emphasis is on compliance with standardised, uniform inputs and processes, rather than learning achievement and outcomes. This is most problematic when the PEDs or Umalusi officials incorrectly insist that independent schools follow the highly prescriptive state curriculum. Training for both Umalusi and provincial officials is necessary to ensure that the constitutional rights and policies governing independent schools are fully understood, and upheld.

As a result of this one-size-fits-all approach to independent schools, their freedom to follow their distinctive missions and 'space' to offer teaching and learning that is different from public schools is circumscribed. The tight standardised monitoring of inputs and processes promotes uniformity of practice, which impedes educational innovation and creativity in teaching and learning, a hallmark of independent schools. Ultimately, this retards educational progress in a rapidly changing world that requires that new methods and approaches to education be developed and trialled. If successful in independent schools, they could be adopted by both public and independent schools to the benefit of all learners.

In line with the Department for International Development (DFID) of the United Kingdom, CDE recommends a 'Tight-Loose-Tight' approach to independent school regulation where the government provides clear specification for performance (tight), allows schools considerable autonomy in their day-to-day operation (loose), but holds them to account for performance (tight).⁷⁰

For schools that offer Grade 12, the NSC results can be used as a proxy to determine whether independent

schools are providing quality education that meets the outcomes of the national curriculum at standards that are not inferior to comparable public schools, as required by the Constitution. For schools that do not offer Grade 12, the ANA test score have been used to date. Given the questions about the reliability of the ANAs to judge quality,⁷¹ and the uncertain future of the ANAs, their use as a high-stakes benchmark for subsidised schools is questionable. An alternative measure of quality needs to be found.⁷²

- **Adopt a differentiated approach to quality assurance.** If outcomes were the focus of quality assurance of independent schools, a differentiated approach, such as that adopted by the English inspectorate, Ofsted, could be used instead of the uniform approach at present. A differentiated approach is proportionate to risk: good schools are allowed to get on with the task of producing quality learner achievement without continual, unnecessary quality assurance, and those schools that perform very poorly are targeted for quality assurance and assistance to improve. Schools that achieve excellent results should only be quality assured infrequently with a light touch, and the time and effort of officials could be spent on those schools whose results are unacceptably low. This would relieve the understaffed PEDs and Umalusi of the burden that blanket quality assurance processes and checks require, as well as reduce the regulatory costs of well-performing independent schools.

For the independent school sector to effectively complement the public school sector, and provide more and differentiated schooling opportunities for all South Africans, including the poor, the playing field between independent and public provision needs to be level. Regardless of whether children attend a public or an independent school, providing a good quality education to all South African children should be the top priority. This can be achieved if quality assurance through effective monitoring, and accountability, is applicable in all schools in South Africa. To this end, expanded access to independent schools must be facilitated through an appropriate regulatory framework, and quality in public school raised through a better system of quality assurance and accountability. The four recommendations above will go a long way to achieving the first part. It is up to the DBE to ensure the second.

Concluding Remarks

Many independent schools in South Africa, as in other developing countries, serve poor families – and increasingly so. They provide access to good education where there are no, or insufficient public schools, offer alternative types of education, and innovate with new ways of educating children.

While it is important that the state maintains regulatory oversight in respect of quality of education in independent schools and the expenditure of public money, CDE's research shows that the current regulatory framework is not enabling, imposes high compliance costs, and demands more of independent schools than public ones. It also shows that the burden of compliance for all independent schools is far from insignificant, but that small independent schools in particular experience higher relative costs of compliance. This unnecessarily delays their establishment and increases the number of schools that operate illegally.

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The ideal is a regulatory balance between the need to protect the public interest and independent schools' need for sufficient freedom and flexibility to pursue their distinctive missions in providing quality education, at no, or a lower, cost to the state than public schools.

In order to improve the quality of the public school sector, government has enforced greater standardisation of inputs and processes in public schools through strict compliance with the national curriculum, its delivery and assessment. Unfortunately, this standardisation has overflowed into the independent school sector.

Independent schools should be seen as sources of educational innovation and as an important partner in the challenge of providing quality education to all learners in South Africa.

CDE's research over many years has shown that the low-fee independent schools can make a significant difference in expanding educational opportunities for poor South African children. It is thus in the interest of the country's education system, and especially learners in poor communities, that the regulatory framework of the independent school sector be reformed. Monitoring should impose less of a burden and be more appropriate and facilitative to contribute to the growth and sustainability of low-fee independent schools.

Endnotes

1. Centre for Development and Enterprise, *Low-Fee Private Schools: International experience and South African realities* (Johannesburg: CDE, 2015), www.cde.org.za/low-fee-private-schools-international-experience-and-south-african-realities/.
2. Centre for Development and Enterprise.
3. The definition of a private or independent school differs from country to country. In South Africa a broad description is used. Effectively any school that is not a public school (state-controlled) is an independent one (privately governed and operated).
4. The Constitution was formally entitled the Constitution of the Republic of South Africa, 1996. It was previously also numbered as if it were an Act of Parliament—Act No. 108 of 1996—but, since the passage of the Citation of Constitutional Laws Act, neither it nor the acts amending it are allocated act numbers.
5. Ms Angie Motshekga in her opening address at the 2013 ISASA conference, www.gov.za/opening-address-2013-conference-independent-schools-association-southern-africa-minister-basic.
6. The right of independent schools to exist is guaranteed provided that they do not discriminate on the basis of race, are registered with the state, and maintain standards that are not inferior to those of comparable public schools.
7. S.P. Heyneman, J.M.B. Stern, 'Low cost private schools for the poor: What public policy is appropriate?' *International Journal of Educational Development*, 2013, <http://dx.doi.org/10.1016/j.ijedudev.2013.01.002>.
8. J. Chimomo, 'Expanding post-primary Education in Malawi: Are private schools the answer?' *A Journal of Comparative and International Education* 39(2), 2009, 167-184.
9. J. Hofmeyr, 'Change, access, quality and choice: The independent school sector in Gauteng 1994–2014,' F. Maringe, M. Prew, eds., *Twenty Years of Education Transformation in Gauteng 1994 to 2014: An Independent Review* (Johannesburg: African Minds for the Gauteng Department of Education, 2014).
10. J. Fielden, N. LaRocque, 'The evolving regulatory context for private education in emerging economies,' Discussion paper (The World Bank international colloquium on private education, 2008).
11. Heyneman and Stern

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12. Ibid.
13. Fielden and LaRocque
14. For the purposes of this research, data was collected for the 2014 academic year.
15. The submission of annual data to the PEDs was not included as it applies to all schools.
16. Not all of the categories investigated were compulsory for compliance. For example, registering with an independent schools association is voluntary, but the schools benefit from the independent schools associations. In 2013, around 90 per cent of independent school were members of an association, this according to the Centre for Development and Enterprise, *Affordable Private Schools in South Africa* (Johannesburg: CDE, 2013).
17. Fortunately, CDE had good personal relationships with ISASA member schools because Dr Jane Hofmeyr had once been the Executive Director of ISASA. However, it took months of emails and phone calls to persuade those in the final sample to agree to participate. Without those links it would have been almost impossible to obtain a willing group of schools. Similarly, in finding a researcher to undertake this research, it was necessary to choose someone with experience of school legislation and credibility among the schools. The results was the selection of a retired principal of independent and public schools, who worked part-time as an ISASA Regional Director.
18. There is no universal definition of what constitutes a low-fee school. What is regarded as 'low-fee' differs from country to country. CDE has defined low-fee independent schools in South Africa as those that charge fees of less than R12,000 per year.
19. According to the *Ordinary Schools National Masterlist* (Pretoria: DBE, 2015), approximately 60 per cent of independent schools in South Africa are small (or micro) sized (see the final column of Table 1 in the technical report). This is not surprising, given that independent schools commonly grow from the needs of poor communities where there is limited or no access to a good public school. Often working parents encourage the owner of a small informal day-care centre to expand into a pre-school, and ultimately the initial grades of a primary school. Over time such schools grow in size as they add more grades and classes as the demand increases. The data therefore suggests that small-size independent schools are under-represented in the sample collected.
20. In independent schools, school principals are commonly referred to as 'heads', but the term 'principals' is typically used in the report.
21. The details of how this was dealt with is also explained in the technical report.
22. This data was obtained from the ISASA recommended salary scale, but we cannot presume that it is the same for all personnel involved. As such, it is an average, and an estimate.
23. To check the findings, CDE conducted two testing workshops with a range of schools and other stakeholders, including the GDE, and gave a separate briefing to the Umalusi staff and chair which enabled us to supplement information.
24. According to the *Ordinary Schools National Masterlist* (Pretoria: DBE, 2015).
25. The South African Schools Act identifies two kinds of schools: Section 20 and Section 21 schools. Section 21 schools have greater powers and responsibilities than Section 20 schools.
26. Quintile 1 is the 'poorest' quintile, while quintile 5 is the 'least poor'. These poverty rankings are determined nationally according to the poverty of the community around the school, although it should be noted that owing to rapid changes in the learner demographics in certain schools, some schools are not accurately categorised. Schools in quintile 1, 2 and 3 have been declared no-fee schools, while schools in quintiles 4 and 5 are fee-paying schools.
27. These are ranked as quintile 4 and 5 schools, and cater for about 40 per cent of the school going population. In 2014, according to the 2011 Amended National Norms and Standards for School Funding, Q1 schools received R1,065 per learner, while Q5 schools received R183 per learner. CDE (2013)
28. Department of Education, 'The National Policy on Whole-School Evaluation Policy,' Government Gazette 433 (22512) of July 2001 (Pretoria: Department of Education, 2001).
29. Questions to the Minister of Basic Education on 18 March 2014, https://pmg.org.za/question_reply/502/ on 23 September 2015.
30. Telephonic communication by NAPTOSA representative to Jane Hofmeyr at CDE on 19 August 2015.

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31. The founding documents include the constitution for a volunteer association, a memorandum of incorporation or articles of association with the company's registration letter for a non-profit company, and a deed of trust with the trustees' authorisation letter for a trust.
32. These requirements are set out in the Income Tax Act, 1962.
33. The Companies Act No. 71 of 2008 specifies the following profit business entities: Sole Proprietor, Private Company – (PTY) Ltd, Personal Liability Company – Inc, Public Companies (Ltd.), State Owned Company.
34. All schools registered under the South African Schools Act are exempt from VAT on both tuition fees and fees for boarding facilities, where boarding is incidental to the provision of education. For other services, VAT is only paid if a school's vatable income exceeds R1 million, making it likely that small low-fee schools are exempt from paying VAT.
35. All schools registered under the South African Schools Act are exempt from VAT on tuition fees and fees for boarding facilities where boarding is incidental to the provision of the school's education.
36. Companies and Intellectual Property Commission (CIPC), Volume of transactions increase as uptake of the new CIPC website continues, Media Release 4 of 2014, 3 October 2014, http://www.cipc.co.za/files/1314/1275/5875/Media_release_-_Progress_on_new_website_uptake_1_Oct_2014.pdf.
37. The ISASA teacher internship programme provides an alternative training model to supply teachers in the scarce subject areas of Mathematics and English. Based on a decade of ISASA schools' experience, they involve school-based training, mentoring, and completion of a university degree by the trainee teachers in member schools.
38. Available at <http://www.labour.gov.za/DOL/legislation/regulations/occupational-health-and-safety/regulation-ohs-general-safety-regulations>.
39. City of Johannesburg Metropolitan Municipality, 'Emergency services by-laws', *Provincial Gazette Extraordinary* no. 179 dated 21 May 2004 under Notice no.826 (Johannesburg: City of Johannesburg Metropolitan Municipality, 2004).
40. Gauteng Department of Education, *Application form for the registration of an independent school in the province of Gauteng 2014/15* (Johannesburg: GDE), www.education.gpg.gov.za/Schools/Documents/APPLICATION%20FORM%20INDEPENDENT%20SCHOOLS.pdf.
41. The recent change by the GDE of the date for submission of the application for registration from 1 September to 1 April in the year before the school plans to open, effectively means that schools have to rent/complete their premises nearly a whole year before any fee income comes in. This is huge start-up cost for low-fee schools, in particular, and a deterrent to registration.
42. Statement issued by the Gauteng Department of Education Head of Communication Charles Phahlane, 2 April 2013, www.politicsweb.co.za/news-and-analysis/14-independent-schools-referred-to-saps-for-invest.
43. Centre for Development and Enterprise, *Teachers in South Africa: Supply and demand 2013-2025* (Johannesburg: CDE, 2015), www.cde.org.za/teacher-supply-and-demand-2013-2025/.
44. Umalusi, *Policy and criteria for the quality assurance, accreditation and monitoring of independent schools and private assessment bodies* (Pretoria: Umalusi, 2012), www.umalusi.org.za/docs/policy/2012/approved_schools_policy.pdf.
45. There are a number of foreign nationals teaching in public schools for similar reasons, with the same conditions of service, and same work permit requirements, as those employed in independent schools.
46. Section 23(2) of the GENFETQA No. 58 of 2001.
47. Umalusi website, <http://umalusi.org.za/services.php?cat=Accreditation>.
48. Umalusi (2012)
49. Presentation of Umalusi's *Strategic Plan 2013* to the Parliamentary Portfolio Committee, April 2013, <https://pmg.org.za/committee-meeting/15702/>.
50. Accreditation fee structure provided by Umalusi.
51. Helenne Ulster, principal of United Church School, quoted in S. Planting, 'SA's independent schools jump through hoops for Umalusi,' *Moneyweb*, June 2013.
52. Hofmeyr (2014)

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53. According to the DBE, *School Realities*, (Pretoria: DBE, 2014), 46 per cent of independent school learners were in Gauteng.
54. Department of Basic Education, *South African Schools Act No. 84 of 1996: National Norms and Standards for School Funding (as amended in 2008)* (Pretoria: DBE, 2008).
55. The subsidy calculation is based on the highest level of the fees published by a school. Separate PAEPLs are calculated for primary and secondary phases. The categories are as follows: Category 1 – the highest fee is up to 0.5 times the PAEPL in public schools are eligible for a subsidy of 60 per cent of the PAEPL; Category 2 – the highest fee is higher than 0.5 and up to 1.0 times the PAEPL are eligible for a subsidy of 40 per cent of the PAEPL; Category 3 – the highest fee is higher than 1.0 and up to 1.5 times the PAEPL are eligible for a subsidy of 25 per cent of the PAEPL; Category 4 – the highest fee is higher than 1.5 and up to 2.5 times the PAEPL are eligible for a subsidy of 15 per cent of the PAEPL; Category 5 – the highest fee is higher than 2.5 times the PAEPL are not eligible for a subsidy.
56. Department of Basic Education, *South African Schools Act No.84 of 1996: National Norms and Standards for School Funding (as amended in 2006)*, Paragraph 191, (Pretoria: DBE, 2006).
57. Ibid.
58. The previous base date for school fees was January 2008, implemented in 2010.
59. Verification ANA applies when a nationally-representative sample of schools are randomly selected where there are additional moderating/verifying procedures conducted at grades 3, 6 and 9 by an independent agent. In the past this has been conducted by the HSRC (2011) and Deloitte (2013). There was no verification process in 2012 because the tender for service providers went out too late, and there is no certainty about what happened in 2014.
60. Hofmeyr (2014)
61. In 2015, ISASA membership fees ranged from R43 per learner (pre-school) to R204 per learner (secondary school).
62. From figures B1 and B2 in Appendix B we can see that in some instances the geometric mean is substantially lower than the arithmetic average, although the general trends remain the same
63. The use of the word 'effect' is in no way meant to imply causation, but rather correlation and association.
64. Note again from Figure B3 of Appendix B that the arithmetic mean measures of these values are higher.
65. Note from Figure B4 of Appendix B that the arithmetic mean measures of these values are higher.
66. The arithmetic mean equivalents are R390,000 for both low-fee and high-fee schools.
67. Information regarding total schooling budget expenditure was collected from 16 of the 20 schools.
68. See technical report for details of statistical adjustment. For this analysis, schools with a budget below R35 million were used.
69. M. Winkelmann, *Red Tape Survey* (London: Independent Schools Council, 2010).
70. Department for International Development, *Engaging the Low-cost Private Schools in Basic Education: Issues, challenges and opportunities*, Guidance Note (London: DFID, 2013).
71. National Education Evaluation & Development Unit, *NEEDU National Report 2012: The state of literacy teaching and learning in the Foundation Phase* (Pretoria: NEEDU, 2013).
72. CDE is currently using international and local research and experience to designing an appropriate,

Appendix 1: Laws and Regulations Applicable to Independent Schools

Registering an independent school as a for-profit legal entity

1. Companies Act No. 71 of 2008

Registering an independent school as a non-profit legal entity

2. Section 1 and 12 of the Non-profit Organisations Act No. 71 of 1997

The regulatory requirements for an independent school as a legal entity

3. Unemployment Insurance Act No. 63 of 2001 and the Unemployment Insurance Contributions Act. No. 4 of 2002
4. Compensation for Occupational Injuries and Diseases Act No. 130 of 1993
5. Skills Development Act No. 97 of 1998
6. Skills Development Levies Act No. 9 of 1999
7. Employment Equity Act No.55 of 1998
8. Occupational Health and Safety Act No. 85 of 1993 as amended by the Occupational Health and Safety Amendment Act No. 181 of 1993

The regulations pertaining to school subsidies

9. Amended Norms and Standards of 2008, Paragraph 177 (1) of The South African Schools Act No. 84 of 1996
10. Amended National Norms and Standards of School Funding, 2006, Paragraph 176, 180, 188, 191, 192 and 193 of The South African Schools Act No. 84 of 1996

The regulations pertaining to provincial registration

11. Employment of Educators Act No. 76 of 1998
12. Basic Conditions of Employment Act No. 75 of 1997
13. South African Schools Act No. 84 of 1996

Umalusi

Umalusi sets and monitors standards for general and further education and training in accordance with:

14. National Qualifications Framework Act No. 67 of 2008
15. General and Further Education and Training Quality Assurance Act No. 58 of 2001

Appendix 2: The Requirements for Provincial Registration of an Independent School in Gauteng

In Gauteng, the documentation required with the application includes:

- a) The school constitution for the independent school including its ownership, character, aims, governance and funding.
- b) Floor and site plan, which shall, in the case of a multi-storied building, include a floor plan for each floor in accordance with departmental guidelines.
- c) Adequate and functional toilet facilities according to GDE building requirements with at least two toilets for 40 learners in a primary school and at least two toilets per 35 learners in a secondary school.
- d) A zoning certificate.
- e) Details of the facilities for curricular, co-curricular and extra-curricular activities, with adequate open space for learners to play in during breaks, adequate and safe sports facilities, and where there is an agreement to use sports facilities with another institution, a formal contract.
- f) Details of facilities that will serve the needs of learners with disabilities.
- g) Proof of security of tenure (e.g. lease contract, deed of transfer, title deed) over the proposed school buildings and grounds.
- h) A certified copy of a health certificate that the proposed facilities at the independent school meet with the health requirements. The health certificate must indicate the number of learners that can be accommodated in the allocated space.
- i) A certified copy of a fire certificate from the relevant municipality confirming that the proposed facilities meet the requirements of the municipal by-laws.
- j) Proof in the form of a legally binding surety that the independent school will be financially viable for a minimum period of 12 months after registration as well as a latest financial statement and/or an auditor's statement that the school is financially viable for a year.
- k) In the case of an independent school owned by a natural person(s), a certified copy of the owner's identity document, an owner's profile which includes the owner's full name, identity number, full address, brief statement on education vision, company registration documents, SARS documents. If the owner is not a South African citizen or permanent resident, certified copies of his or her passport and work permit and proof of registration with SARS.
- l) In the case of an independent school owned by a juristic person, certified copies of the constitutive instruments of the relevant juristic person.
- m) A copy of the parents' contract and a copy of the teachers' contract.
- n) A copy of the admission policy.



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