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Undercurrents

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SOME IMPORTANT LEGALITIES AROUND GRADE R IN OUR SCHOOLS

It appears from queries we have received that the position of Grade R in our schools is a source of enormous uncertainty. The matter is anything but simple and straightforward, but we have done our best to address the issues below.

Please note that in this piece terms such as “pre-school” and “pre-primary school” are used, not in legal terms, but in the sense and with the meaning ascribed to them in common, everyday, conversational English: so also with the term “big” school, which relates to the school to which learners go when moving on from pre-primary school or early-childhood education.

So, on to the questions and answers.

Is Grade R formally a part of the school or not?

- There could be a few, isolated exceptions to the general rule for historical reasons, but the default position for any post-1994 school is that **the Grade R section** (not pre-Grade R: i.e. Grade 00 or Grade 000) **is part of the related junior/primary school**, if it:
 - Shares the site of the “big” school, or is adjacent or very close to it.
 - Shares the name of the “big” school.
 - Is not in possession of a formal certificate from the Provincial Education Department (from here on referred to as the PED), stating that it is an independent school.
- In such a case:
 - The school fees paid by Grade R learners must be paid into the “big” school’s bank account in the same way as the fees of learners in any other grade.
 - It is permissible to have a separate account in the “big” school’s books for Grade R, so that its profitability, income and expenditure can be readily ascertained; but it should not have a separate account at the bank or a separate set of books.
 - Learners may not be “punished” for the acts or omissions of their parents – such as by being excluded from the school if the parents fail to pay the child’s school fees.
 - The payment of school fees can, however, be legally “enforced by process of law”.

Do Grade R learners form part of the enrolment when it comes to post provisioning norms (PPN) and related aspects of the school?

- Grade R learners should have their details included in the data provided to the PED by way of entries in the Annual Survey each year (i.e. as at 7 March in 2017, and, going forward, on a date announced annually by the DBE).
- They will, nevertheless, not be counted in such a way that they influence the PPN, except presently (to a limited extent, and by special dispensation) in the Eastern Cape and KZN.
- Their numbers will not count towards the grading of the school, the rank or salary of the principal, or the provision of promotion posts.

Are there any formalities with which schools need to comply, or with which they should have complied?

- Any Grade R class (whether public or independent, on a school site or independently-sited) **must** be registered with the relevant PED.
- For any **new** Grade R class the school may wish to open, application (with detailed motivation, including details of prospective learners, the space to be utilised, available facilities for Grade R, etc.), must be made timeously to the PED – ask them for the necessary requirements, forms and explanations.
- Any Grade 00 or Grade 000 (or any other crèche, care-centre, early childhood development centre or class, school, unit or similar at pre-Grade R level) **must** be registered with the Department of Social Development in the province in which it is situated. Again, all details, forms and requirements are available from that department.
- If your school is or has any of the entities referred to above which have not been registered with the relevant department, you need to get the registration in order as a matter of absolute urgency.

Are there any financial obligations attendant upon being registered, or any financial advantages to being registered?

- It will not cost you anything to be registered (other than the cost of providing the facility, bringing it up to the required levels of provisioning – e.g. in respect of the number of ablutions, the provision of a sandpit, etc. – and the furnishing and equipping of the class).
- You will obviously have to employ support staff (almost certainly at least one cleaner/tidier-up/scullery assistant and someone to keep the grounds up to standard); as well as the requisite number of educator-type staff.
- The class is not supposed to exceed 30 in number, and the teacher may either be a specialist-trained pre-primary teacher, a foundation phase teacher or a “practitioner” – someone who has had special training in early childhood education, but has not earned the full degree or diploma required of a qualified teacher.
- You need to be aware that “practitioners” are currently being phased out, and those who have qualified as such are being given the opportunity of following an in-service course at various universities in order to upgrade to full pre-primary teacher status.
- As a registered public facility, Grade R will almost certainly qualify for a limited state subsidy – currently the amount seems to differ from province to province. The Eastern Cape, for example, pays a minimal amount, the Western Cape R18-00 per child per day in Quintile 5 schools; R19-00 per child per day in Q4 schools and R26-00 per child per day in Q1, Q2 and Q3 schools. Equivalent figures have been unobtainable for other provinces, but, per illustration, a Q5 Gauteng school is getting approximately R4000-00 per child p.a.—R400 000-00 or so if you have 100 Grade Rs, an amount certainly not to be sneezed at! We will follow matters up further, and as and when greater clarity or certainties emerge, your provincial GBF Officer will pass on the details.
- Schools should also qualify for a small stipend to supplement the remuneration of a staff member. It also varies from province to province, but presently lies between R5 000-00 and R7 500-00 per month per teacher. (Please note that the stipend is INCLUDED in the Gauteng figure quoted above, but not in the Western Cape amounts.)
- Both the subsidy and the stipendiary support have to be applied for, as does the registration of your “Grade R site”: the registration is not automatic, and unfortunately the moneys do not just routinely arrive in your bank account.

What are the rights and obligations of parents of learners in Grade R (or earlier) classes?

- Parents of children enrolled at the school in Grade R must have their names entered on the admissions register, and will then enjoy all the same rights and be subject to the same obligations as any other parents:
- They may vote in SGB elections and they may stand for election to the SGB.
- They may apply for total or partial exemption from school fees. (Some schools and even one or two officials hold that, as the department does not fund this or pay fee exemption compensation, schools do not have to grant exemptions and can exclude children whose parents do not pay fees. There is little doubt, though, that this would not stand up in a court of law, and schools are cautioned to be very wary of going this route.)
- Obviously the normal obligations of a parent such as care, support, feeding and so on – both in the home/family sense, and in the school sense – will apply, and one would expect (but cannot demand) that the parents become involved in school activities in the same way that other parents at the school do.
- Pre-Grade R pupils and parents are not part of the formal or legal fabric of a public school, and enjoy none of either the rights or protections referred to above.

What about the separate, independent, off-site facility?

- If your facility is not of the type described above, but operates independently of any “big” school, ***it still has to be formally registered*** with the provincial Department of Education (if it is operating at Grade R level) and/or the Department of Social Development (if it operates at Grade 00, Grade 000 or simply at “child-minder” level).
- ***This latter applies also to the “child-care” or “crèche” facilities which play such an important role in caring for the little people in our suburbs and township areas while parents are out at work.***
- Every such facility should have a formal “registration certificate” to prove its status. This should be displayed in the foyer or at the entrance so that anyone with a need to know can be aware of the status of the school.
- The institution should have its own EMIS-number with the department, by which it is identified.

Another possibility – an independent pre-school facility using public school facilities

This is less common, but it certainly occurs in some instances. Here some outside body, group or school ***uses public school facilities to run an independent school.***

- The entity has to be registered with the Education or Social Development Departments in exactly the manner as described above.
- It will rent the physical facility from the relevant school, and the rental must be paid into the “host” school’s school fund, as with any other school income.
- In all other respects the pre-school facility will operate independently:
 - The principal of the “host” school will not have any jurisdiction over the staff, parents or learners in the pre-school.
 - School fees will be paid to the pre-school, not the “host” school.
 - The name of the pre-school is likely to be unrelated to the name of the “host” school.
 - The parents and staff of the pre-school have no vote at an SGB election of the “host” school, and are not eligible to be members of its SGB.
 - It will not receive any staffing provisioning from the state, its educators will not receive a state salary or stipend, and there is no state subsidy.
 - An independent school has no prescribed governance structure – it makes good sense for it to have a governing body, but how it elects or appoints it, who sits on it, and the nature and extent of its powers and obligations, are not prescribed in law or regulation. (Of course, this means that it is quite possible for the pre-school to write into its constitution a provision that the principal, SGB Chair, even the Foundation Phase HoD of the “host” school or neighbouring “big” school may sit on the SGB of the “guest” or nearby feeder pre-primary school – but not vice-versa, except by co-option, and that means it must be without voting rights.)

Should Grade R children be expected to wear the normal school uniform?

- Grade R learners **could** be required to wear the school uniform of the "big" school, though there are very divergent opinions around the wisdom and educational value of having them do so.
 - Many Grade R educators advise strongly against the wearing of uniforms, especially if it means that the children are expected to wear formal dress – white shirts, uniform skirts, lace-up shoes or formal footwear and the like.
 - Others argue that while Grade R's need more comfortable clothing than older children, this is, after all, the year in which they transition to formal education. The following are among the comments made:
 - ◆ **On "transition"**: the wearing a golf shirt and shorts in school colours helps the children to bridge the gap between "civvies" and uniform.
 - ◆ **On cost**: a sensible, prescribed form of dress can contain costs: it is generally a cheaper and more appropriate option than having no uniform at all, while at the same time it negates both likelihood of, and the problems associated with, a "dress competition" between children.
 - ◆ **On the uniformity issue**: another view claims that, at most, acceptability around the wearing of a school uniform by Grade R learners should stop at an informal, play-type uniform rather than a formal one – e.g. a T-shirt with school logo or some other informal logo, comfortable shorts and easy-to-wear shoes.
- In short, then, there are no regulatory guidelines on the wearing of uniforms at Grade R level, and plenty of contradictory views on the practice. Schools need to debate the issues internally, consult parents where viable, and then take a decision which is most appropriate in their particular circumstances.

The "automatic continuation" conundrum

One of the most knotty problems faced by schools and Grade R learners and their parents revolves around whether "automatic continuation" from Grade R into Grade 1 at the same school is guaranteed, and this situation is exacerbated both by some of our schools and by some officials who attempt to look after their own interests rather than considering logic, practicalities, fairness or the law.

- There certainly are some schools who act in accordance with an approach which says that those Grade R learners who the school wishes to retain should be granted access to Grade 1, without competing against outside applicants, and without having to fill in another application form. Yet some of the same schools also wish to be able to exclude those learners that they do not want, or at least require them to put in a new application and compete for a place in Grade 1. We are not sure that schools can have their cake and eat it in this fashion.
- By contrast, some education officials or departments (the Gauteng Department is a case in point) are adamant that every prospective entrant into Grade 1 must apply for admission at the time they are about to enter Grade 1, and that the school is required to apply the admissions regulations to these learners strictly according to the letter of the law, and allow free competition for places at the school, even where the learners were in Grade R in the same school prior to admission to Grade 1.
- Our reading of the law differs slightly from both of the above. We believe that:
 - The Grade R class at the school is part and parcel of the same educational institution as Grade 1 at that school.
 - A learner who has been admitted to grade R is therefore entitled to continue to grade 1 in the same school without making another application – i.e. we believe that the GDE is operating outside of the law when it decrees otherwise.
 - By the same token, we believe that the school cannot pick and choose from its Grade Rs, deciding to retain some and get rid of others: once a child is enrolled in a school, the only way to bar his or her further attendance at that school is (unless the parents withdraw the learner) through a disciplinary process in which the learner is found guilty of serious misconduct. That clearly doesn't apply in a situation where a child is moving from Grade R to Grade 1!
- We recognise that our reading of the law will not sit comfortably with some of our members, but we also believe that we cannot cherry pick the laws which we wish to abide by, and dismiss those which we don't. In the end, it will probably take another court case to bring finality to the matter, but in the meantime, we believe that ***the best interests of the child could be severely jeopardised if you do not have them put in a new application at Grade 1 level in provinces which demand this, and suggest that you build at least that part of the provincially-decreed application procedure into your admissions process.***

Some closing comments

In a nutshell, there it is – even though it has turned to be a rather extensive nut!

- If you are operating outside the law, we suggest that you take the necessary steps to regularize your position as soon as possible.
- If you are not receiving your dues, despite being entitled to them, make an appointment to see the relevant official in your PED, and put in the necessary application straight away.
- While it is not part of the legalities, it is certainly part of good common sense that every independent pre-primary school should be liaising with the schools that their Grade Rs will be attending the following year.
- Perhaps, for all in this sort of school, this is also a good time to re-look at your structures and operations with a critical eye, and to ensure that your school is compliant, efficient and operating optimally in the changing environment of pre-school and early childhood education in this country – arguably the most critical key to improving the overall education performance of our schools and the young people in them, right up to matric level.

And a final reminder or pointer: bear in mind that the current intent – we will have to wait to see if it is translated into reality – is that every primary school will have a Grade R class by 2020, and every child of the requisite age will be attending such a class.

Are you ready for it?