LEGAL FRAMEWORK AND THE RIGHTS & RESPONSIBILITIES OF INDEPENDENT SCHOOLS IN SOUTH AFRICA



abe ANGLICAN BOARD of EDUCATION SOUTHERN AFRICA
ACSI Association of Christian Schools International SOUTHERN AFRICA
AEE ACCELERATED EDUCATION ENTERPRISES
Association of Muslim Schools south africa
Catholic Board of Education
ISASA Independent Schools Association of Southern Africa Quality Values Diversity
Sable South African Board of Jewish Education
Southern African Federation of Waldorf Schools
South African Montessori Association



LEGAL FRAMEWORK FOR INDEPENDENT SCHOOLS

1. **SA Constitution:** Section 29(3), states that **everyone has the right to establish and maintain at their own expense, independent educational institutions that**:
   a) do not discriminate on the basis of race;
   b) are registered with the state;
   c) maintain standards that are not inferior to standards at comparable public educational institutions.
2. **South African Schools Act 1996 –** Section 46 of the Act.
3. **Provincial Regulations for Registration of Independent Schools**
4. **National Norms and Standards for School Funding , 2006** – Subsidies to Independent School.
5. **Rights and Responsibilities of Independent Schools** (DBE and NAISA).



The meaning of Independence – as agreed in the R&R by DBE and NAISA

Independence means Independent Schools are free and have a lawful right to:

1. Follow own distinctive mission (particular ethos, faith or philosophy);
2. Determine own learner admission and promotion policies;
3. Establish own expectations for quality education - choose its curriculum and exit examinations and exercise professional judgement;
4. Determine own governance, financing, and staffing, within the boundaries of the law;
5. Manage own operations in line with the law

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

- **Article 26(3) of the Universal Declaration of Human Rights** provides that "parents have a prior right to choose the kind of education that shall be given to their children." In terms of **section 232 of the Constitution**, customary international law is law in South Africa, unless inconsistent with the Constitution or an Act of Parliament. The rule established by article 26(3) of the Universal Declaration of Human Rights is not inconsistent with the Constitution of SA or any Act. It therefore constitutes the law of South Africa.



NAISA

THE LEGISLATIVE FRAMEWORK FOR THE EXISTENCE OF INDEPENDENT SCHOOLS FOLLOWING THEIR OWN PHILOSOPHY, ETHOS AND RELIGION - CURRICULUM OFFERING

1) In terms of **section 15 of the Constitution**, all persons, including parents have "*the right to freedom of conscience, religion, thought, belief and opinion*".

2) Furthermore, **section 31 of the Constitution** protects the rights of members of "*cultural, religious and linguistic communities to practise their culture and religion*."

3) The effect of these provisions, read with article **26(3) of the Universal Declaration**, is that parents have the right to choose schools which appropriately give expression to their cultural and religious beliefs.

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IMPACT OF CURRENT POLICIES (ESPECIALLY CAPS) ON INDEPENDENT SCHOOLS OFFERING ALTERNATIVE CURRICULA

A. **ACCREDITATION:** Umalusi has, because of current policies on alternative curriculum, refused to accredit schools not offering the CAPS curriculum.

B. **EXAMINATION CENTRE STATUS: Waldorf schools** have been told that they will be losing their examination centre status if they do not change their curriculum and Umalusi insists that they should offer the CAPS curriculum or no further accreditation.

C. **REGISTRATION:** Certain PEDs and District officials continue to deny registration of independent schools that offer alternative curriculum thus denying parents and learners ***their right to education of their choices as guaranteed in the Constitution***.

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What are the main challenges for IS – Why you need to belong to an Association.

1. **Policy Development Challenge** – policies that fail to create a conducive environment for independent education offering to thrive in our country,
2. **Policy implementation problems and challenges**
   a) Limited knowledge and understanding of Government policies and legislation in relation to independent schools especially by District Officials who do monitoring.
   b) Misinterpretation, ignoring of national policy by PEDs, districts and municipalities
   c) Administrative injustice – w.r.t. registration and subsidy of IS.
3. **Complex, multi-layered relationship of sector and government** : co-operation and conflict. Umalusi's stance on accreditation of Alternative Curriculum and the DBE inability to be assertive on this matter.

Subsidy - ISSUES

Unofficial and unregulated conditions that PEDs and Districts keep trying to impose:

1. Curriculum offering choice – is not a prerequisite to qualify for a subsidy. It is NOT compulsory to offer the CAPS curriculum to qualify for a subsidy;
2. Accreditation with Umalusi is NOT a prerequisite to qualify for a subsidy.
3. To get registered as an Independent School with the Provincial Education Department does not require you to offer the CAPS curriculum

Registration

1. No school may operate legally unless it is registered with the Provincial Education Department (PED) – Delays in response.
2. PED must promulgate *Conditions for Registration & Withdrawal of Registration* after consultation with independent schooling sector
3. Failure to do this would deprive independent schools in a province the right to exist legally constitutes **administrative injustice**
4. Schools granted registration have an EMIS number

Governance

A. Independent schools must:

- meet the requirements of the legal status in terms of the Companies Act or rather the status of their registration with Dept of Social Development
  - ✓ NPO / NPC status requires certain constitutional and financial provisions

B. Independent schools are not:

- required to follow the governance regulations designed for public schools in SASA, e.g. having SGBs as regulated,
- expected to have learner representatives or a majority of current parents on their governing body

Registration of Educators

1. All educators working in SA schools, public & independent, must be registered with SACE
    a) Full Registration: Matric + 3 - REQV 13
    b) Provisional Registration: those with academic qualifications but who have not as yet acquired a professional qualification
    c) Conditional Registration: for scarce skills where schools are unable to find suitably qualified educators
    d) Sectoral Registration: ECD, Montessori, Waldorf, Islamic, Catholic, etc.
2. Continuing Professional Teacher Development - CPTD

Case Law Areas.

1. Subsidies – are a right.
2. Learner Exclusion - contravention of school rules (Code of Conduct)
3. Learner Exclusion – non payment of fees – termination of contract
4. Learners with Special Educational Needs (LSEN) & Chronic health conditions – conditions for inclusion.
5. Racism and discrimination – unconscious bias
6. Dealing with LGBTQA+ issues -
7. Ancestral Calling – in our schools.

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Learner Exclusions

Schools may exclude learners who are in **contravention of school rules, (as codified in the Code of Conduct),** as long as it adheres to the “principle of procedurally fair practice or conduct” by ensuring that learner has:

a) Assistance of a parent or an adult
b) Support from a peer
c) A fair hearing
d) Adequate notice of the intention of the school
e) Right of appeal

Learner Exclusions

For non-payment of fees

- Education provided by an independent school is governed by a **contractual relationship** contained in a signed contract - **not a constitutional obligation**
- School may exclude a learner when fees are not paid because the parents have broken the legal contract to pay fees
- Best practice dictates that adequate warning must be given, especially before year-end exams (caution advised here)

Terminating a Parent Contract

Sections 28(2) and 29(1)(a) of the Constitution must be borne in mind by an independent school when contemplating to terminate a parent contract.

1. **Firstly,** it must afford both the parents and the child an opportunity to make representations on how that decision will impact on the best interests of the child and the impact that the decision will have on a child's right to a basic education. This also fulfils PAJA 2000 prescripts.
2. **Secondly,** consider the steps that can be taken to minimise the impact of the decision on the child's best interest and right to a basic education.
3. **Finally**, if an independent school follows these two steps, it would have discharged its duties under sections 28(2) and 29(1)(a) of the Constitution. An independent school that discharges these obligations and appropriate decision is to terminate the Parent Contract would have acted in terms of the law to reach that decision.

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The Withholding of Report Cards

Under no circumstance must a report card of a learner be withheld by a school.

The National Protocol for Assessment Grade R – 12 Gazetted in 2012 (as amended) states in Chapter 7 Section 25 and Sub-section (12) and (13):

1. The parents or guardians have the right of access to report cards of their children.
2. Schools may not withhold report cards from learners for any reason whatsoever.

BELA BILL – KEY AMENDMENTS

1. Making Grade R the new compulsory school starting age, as opposed to Grade 1, as is currently the case.
2. Compelling the registration of home-schooled learners and engaging a qualified accredited assessor.
3. Criminalising parents who do not ensure their child or children are in school, with fines or jail time up to 12 months.
4. Holding school governing bodies more accountable for disclosures of financial interests - including those related to their spouses and family members.

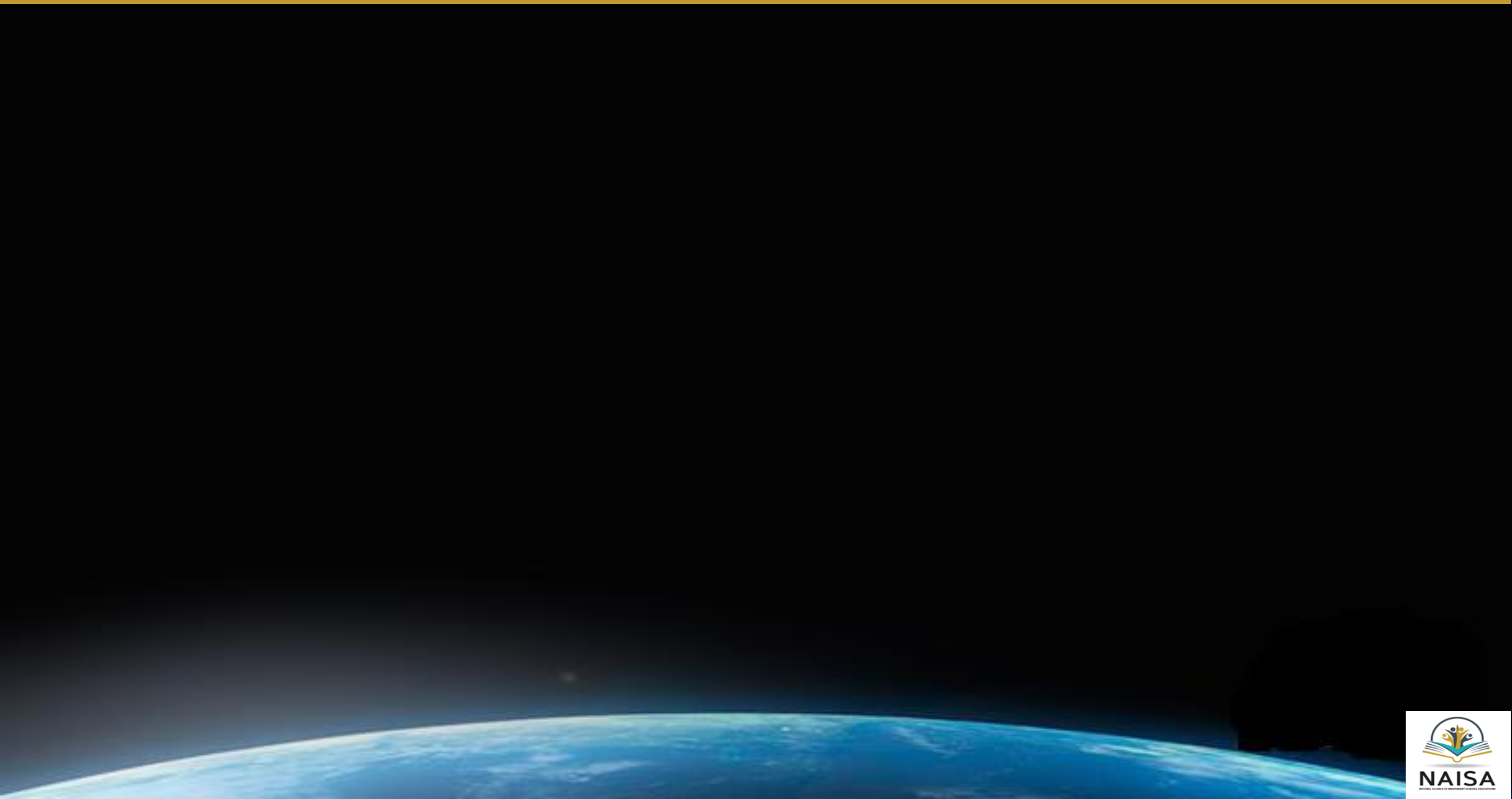
BELA BILL – KEY AMENDMENTS CONT..

5. Prohibiting educators from conducting business with the state or being a director of public or private companies conducting business with the state.
6. Abolishing corporal punishment and initiation/hazing practices.
7. Allowing schools to sell alcohol outside of school hours.
8. Giving government department heads power over language policies and the curriculums a school must adopt.

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THANK YOU

NATIONAL ALLIANCE OF INDEPENDENT SCHOOLS ASSOCIATIONS



NAISA

LEGITIMATE EXPECTATION

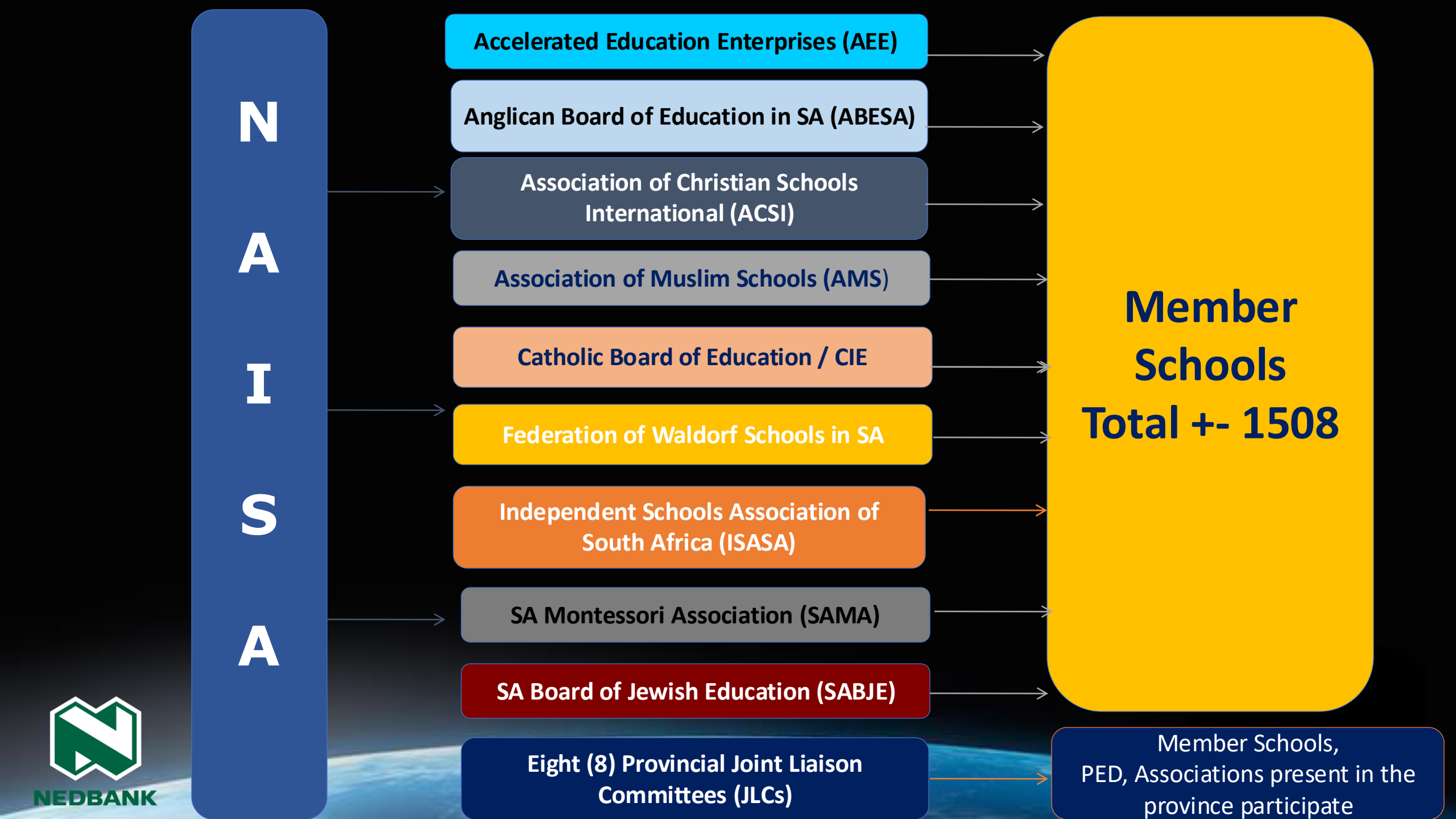
- A legitimate expectation is not concerned with rights but with the expectation of a benefit that the individual has been promised and allowed, and/or a legitimate expectation of a hearing if there is a possibility of a decision being made that will affect his interests.

- Currently the doctrine of legitimate expectation entails that a reasonable expectation based on a well-established practice or an express promise by an administrator acting lawfully gives rise to legal protection when the practice or promise is clear, unambiguous and unqualified.

NATIONAL ALLIANCE OF INDEPENDENT SCHOOLS ASSOCIATIONS (NAISA)

Who constitutes NAISA?




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Accelerated Education Enterprises (AEE)
Anglican Board of Education in SA (ABESA)
Association of Christian Schools International (ACSI)
Association of Muslim Schools (AMS)
Catholic Board of Education / CIE
Federation of Waldorf Schools in SA
Independent Schools Association of South Africa (ISASA)
SA Montessori Association (SAMA)
SA Board of Jewish Education (SABJE)
Eight (8) Provincial Joint Liaison Committees (JLCs)
Member Schools Total +- 1508
Member Schools, PED, Associations present in the province participate
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NAISA Membership and Structures.

- The National Alliance of Independent Schools Associations (NAISA) is an alliance of **9 national independent schools associations** and eight (8) provincial **Joint Liaison Committees (JLCs) in 8 provinces** (except Northern Cape) representing **+-1508 independent schools** in South Africa out 2325 registered Independent Schools.
- NAISA is Governed by its COUNCIL formed of representatives from members associations and JLC Chairpersons and an EXCO.
- **NAISA** and the **JLCs** are formally recognised by the **DBE, PEDs, ETDPSETA, SACE and UMALUSI** as the official stakeholder body representing the interest of the independent sector.

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JOINT LIAISON COMMITTEES (JLCs)



These are provincial structures that NAISA has established with the Provincial Education Departments (PEDs).

a) All independent schools in a province can attend JLCs. Independent Schools that are members of a particular association in the province are usually represented by one representative in the JLC,

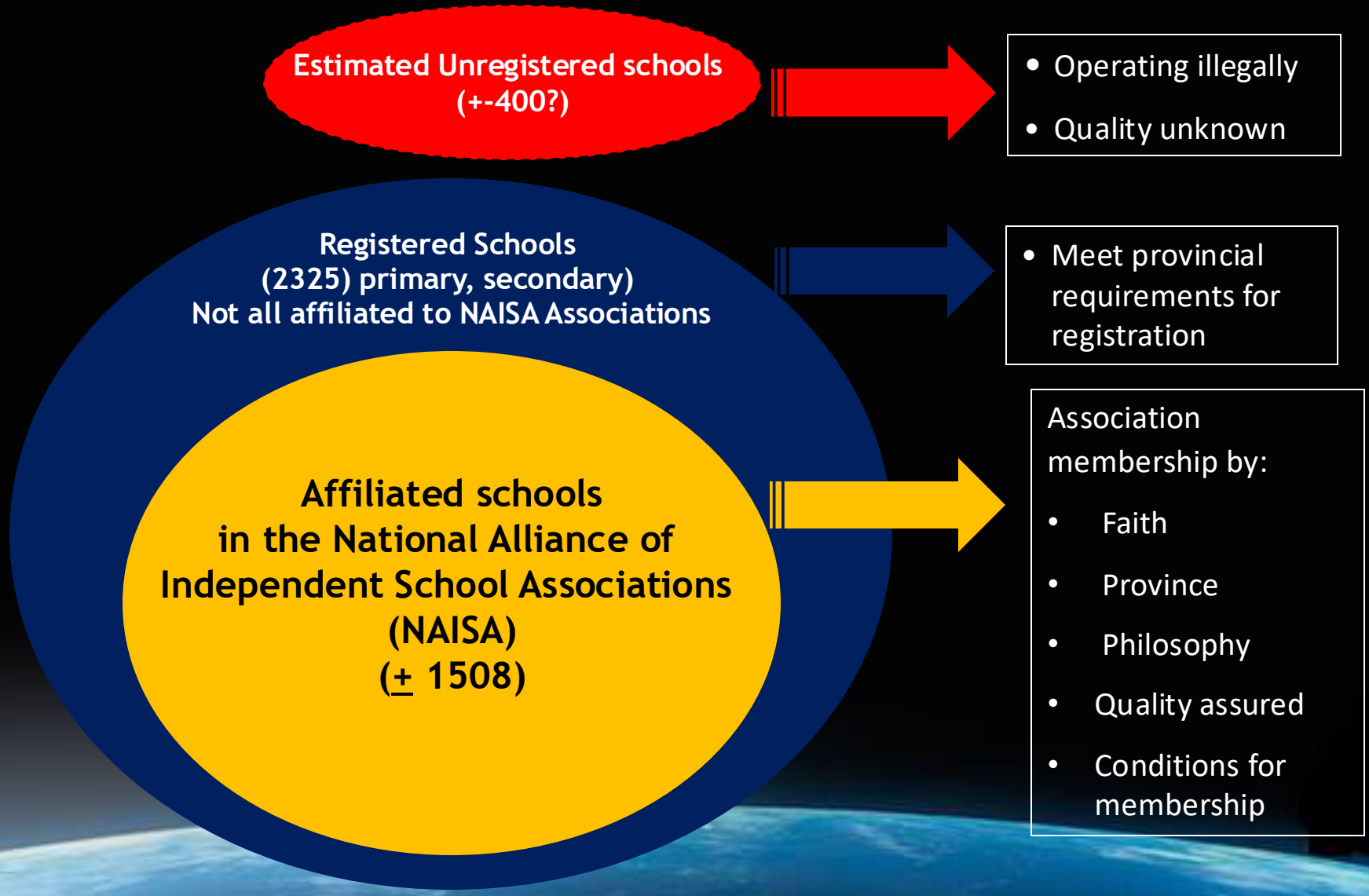
b) PED officials that deal with independent schools are part of JLCs.

c) Independent schools that do not belong to any association are also welcomed to attend.

d) JLCs are structures where independent schools in a province get to meet with PED Officials and discuss issues impacting the sector in that province.

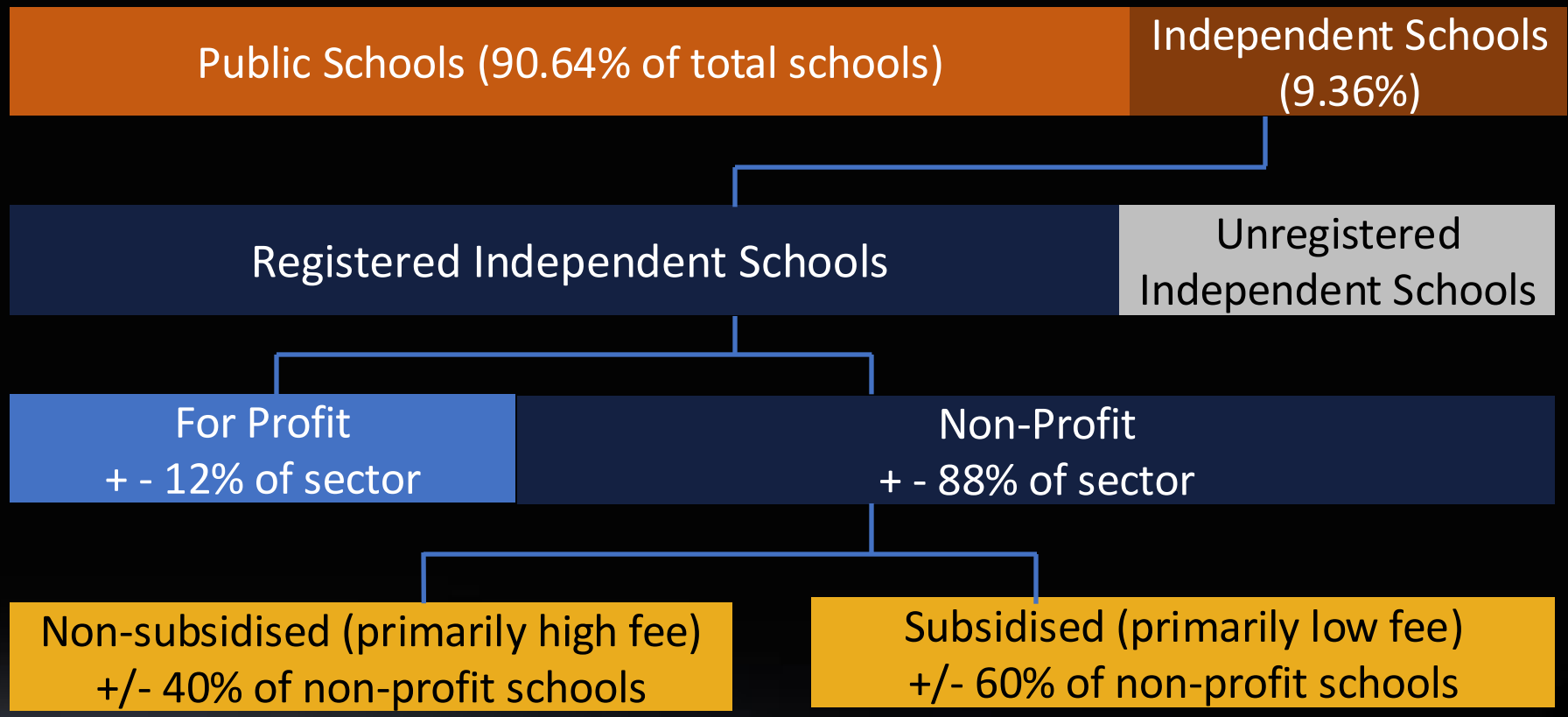
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South African Independent School Sector, 2023



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The South African Schooling System - 2023



SIZE AND SHAPE OF THE BASIC EDUCATION SECTOR, 2023



Size of the Schooling System in SA:

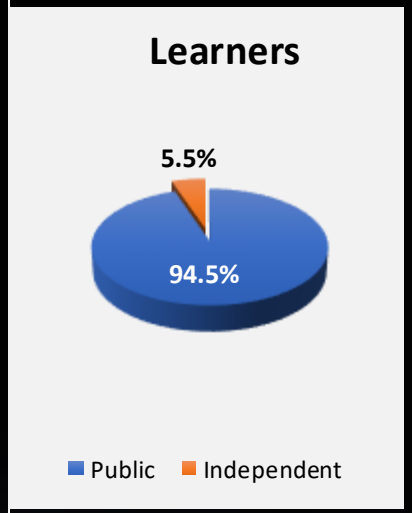
Learners: 13 439 683
Educators: 454 749

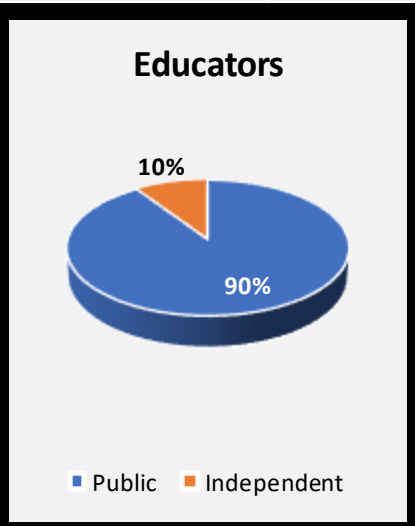
Schools: 24 836

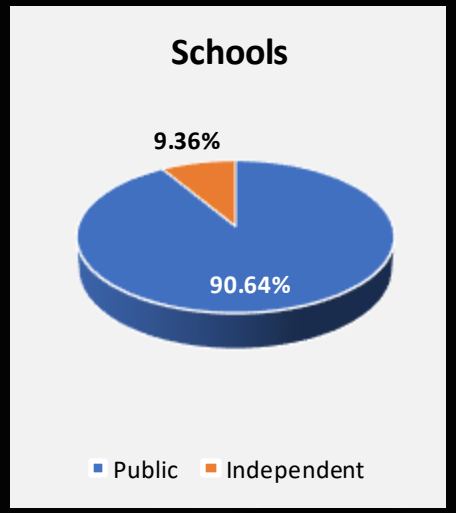
Official languages

English, isiZulu, isiXhosa, isiNdebele, Afrikaans, siSwati, Sepedi, Sesotho, Setswana, Tshivenda, Xitsonga, South African Sign Language

Sector	Learners	Educators	Schools
Public	12 701 575	409 488	22 511
Independent	738 108	45 261	2 325
Total	13 439 683	454 749	24 836







Source: School Realities 2023

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SECURING THE JEWELS

The Three Pillars that underpin Independent Schooling in SA



PROTECTING OUR INDEPENDENCE



THE NATIONAL ALLIANCE OF INDEPENDENT SCHOOLS ASSOCIATIONS (NAISA) PARTICIPATION IN EDUCATION STRUCTURES

NAISA IS REPRESENTED IN THE FOLLOWING DBE HEDCOM SUB-COMMITTEES

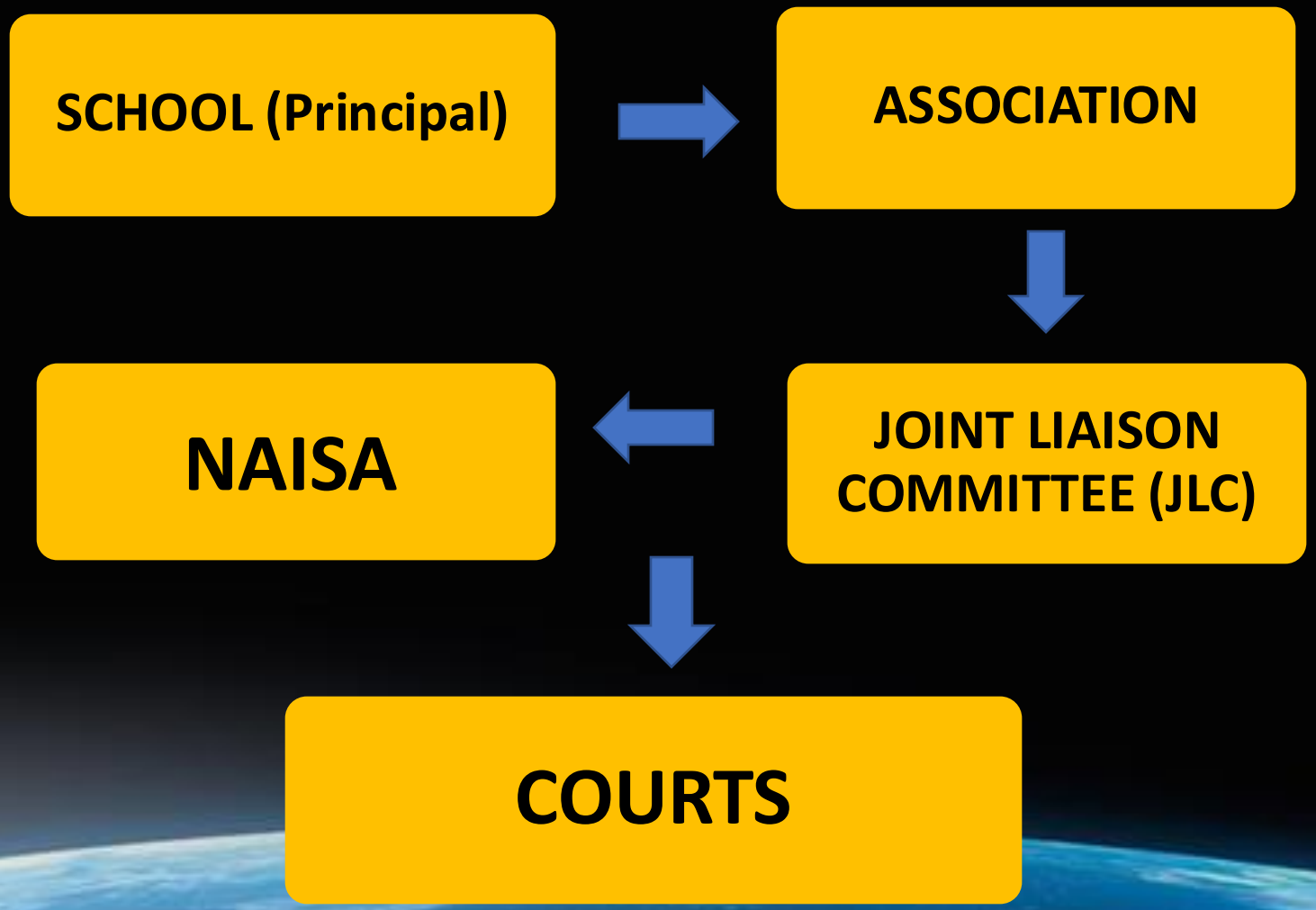
- Education Management and Information Systems **(EMIS)**
- National Examinations and Assessment Committee **(NEAC)**
- Teacher Development and Curriculum Management **(TDCM)**
- **HEDCOM SUB COMMITTEE on Independent Schools**

NAISA IS RECOGNISED AND/ OR HAS REPRESENTATION IN STATUTORY BOARDIES

- **ETDPSETA**
  REPRESENTATION AT BOARD LEVEL AND OTHER COMMITTEES AND CHAMBERS
- **SACE**
  REPRESENTATION
- RECOGNNISED BY **UMALUSI** THROUIGH A COMMUNICATIONS PROTOCOL

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OUR LINES OF DEFENDING OUR INDEPENDENCE.



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