



Partnership for the Common Good

Catholic Public Schools on
Private Property

A short guide

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**MINISTRY: EDUCATION
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Message from the Minister

The South African Schools Act of 1996 established a national schooling system and recognised two categories of schools: public and independent. Within the public school category, a sub-category of 'public schools on private property' was established that allowed for public schools on private land owned by religious bodies, farmers, mines and forestry companies.

Catholic schools on church-owned property were generally state-aided schools and now exist under Section 14 of the Schools Act. The agreements signed with provincial education departments allow these schools to promote and preserve their special religious character.

The partnership between the owners of Catholic schools and the State is an important one, with both parties having something unique to offer. I trust that this booklet will make the roles and responsibilities of everyone involved in the partnership clearer, and I encourage everyone involved to build on a rich legacy and to ensure that the best possible education is available for our children.

A handwritten signature in black ink, appearing to read 'Angelina Motshekga'.

Angelina Motshekga
Minister: Basic Education
Republic of South Africa

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Catholic Schools in South Africa

Catholic schools have existed in South Africa since the first school was established in Grahamstown in 1849. Since that time Catholic schools have served all sectors of the population. Today there are 353 Catholic schools of which 261 are public schools on private property.

What are public schools?

The South African Schools Act (1996) (SASA) allows for two types of South African schools:

- Public Schools (section 12), and
- Independent Schools (section 45).

SASA defines public schools in two categories: Public Schools on State Property (section 13) and Public Schools on Private Property (section 14).

What are public schools on private property?

At the time of the passing of the Schools Act, certain provisions were made to ensure that all schools were incorporated into the National system.

Section 52 (1) dealt specifically with provisions relating to schools other than private (independent) schools. In terms of these provisions all state aided Catholic schools became public schools on private property (section 52(1)).

The Act further guided the MEC to conclude Deeds of Agreement with public schools on private property owners within six months of the Act (Section 56). This was subject to reasonable steps taken by the MEC to conclude the agreements. A MEC who was unable to reasonably conclude the agreement within six months would be able to conclude it later as long as good reasons existed for the delay.

Where agreements were concluded in terms of Section 56, the owner could require that the agreement recognise the distinctive religious character of the school.

Section 14: “a public school may be provided on private property only in terms of an agreement between the MEC and the owner of the private property.”

Section 52 (1): “Any school which was established or was deemed to have been established in terms of any law governing school education in the Republic of South Africa and which existed immediately prior to the commencement of this Act, other than a private school referred to in section 53 is deemed to be a public school.”

Section 56: “If an agreement contemplated in section 14 does not exist at the commencement of this Act in respect of a school, standing on private property and which is deemed to be a public school in terms of section 52(1), the Member of the Executive Council must take reasonable measures to conclude such an agreement within six months of the commencement of this Act”.

Section 57: “If the owner of the private property referred to in section 56 is a religious organisation, such owner may require that the agreement contemplated in Section 14 must recognise, in an appropriate manner, consistent with this Act, the distinctive religious character of the school.”

Catholic Schools that were not private schools became Public Schools in terms of Section 52(1). Schools simultaneously became Public Schools on Private Property through the application of section 56 and section 57. This was done through the Church entering into an agreement with provincial governments usually called the Deed of Agreement.

What is the Deed of Agreement?

A Deed of Agreement is the contract that is made between the provincial Member of the Executive Council (MEC) for education and the owner of the property on which the school is situated.

What is contained in the Deed of Agreement?

The agreement has five main parts whose numbering may differ slightly from province to province:

1. A main agreement between the MEC and the owner
2. A one-page description of the property
3. A lease and in most provinces a maintenance agreement between the MEC and the owner
4. An explanation of the distinctive religious character of the school
5. An agreement between the owner and the school governing body.

What does each of these five parts involve?

1. **The main agreement** outlines the legal rights and obligations of both the State and the owner. These include:
 - the owner's property rights
 - the terms of the agreement
 - what the MEC is responsible for and what the owner is responsible for
 - the MEC's recognition of the school's religious character
 - breach of agreement and dispute clauses
 - the duration of the lease, the agreement is valid as long as the school exists and may only be closed by the MEC in terms of section 33 after consultation with the owner where due consideration is given to representations made.
2. **The description of the property** is an accurate description of the property including all access roads to the school and listing all parts of the property where servitude exists. The MEC and Owner must ensure that clear road signs giving directions to the public school are erected on access roads to the school where access to the school is by way of private roads. These clauses are included in the deed. It has become an accepted practice to provide a simple one page map of the schools as an addendum.

3. **The lease and maintenance schedule** clearly outlines the terms of the lease and the amount of rent to be paid to the owner for the use of the property. It also spells out the MEC's assurance that maintenance will be done.
4. **The distinctive Catholic character of the school** is described in great detail in this schedule. It includes the following aspects:
 - a community whose values are based on those of Jesus Christ
 - a school that strives to offer excellent, holistic education
 - Values based Religious Education is timetabled and delivered
 - planned care and concern for all members of the school community, but especially the vulnerable, is integral to school life
 - openness to all regardless of status, race or religion
 - promoting and developing learners to take their place as responsible citizens
 - service to both the Catholic and the wider community
 - commitment to working in partnership with the department, the parents and the wider community
 - the life of the school is celebrated in assemblies and religious observances in accordance with the national policy on Religion and Education (2004) clause 16.

5. **Agreement between the owner and the school governing body**

This agreement which forms part of the main agreement is entered into between the governing body and the owner. In the words of the agreement: “the religious organisation and the governing body are committed to working as partners to ensure that the school offers education of excellence with a distinctive catholic character from which all members of the school community, especially the learners, can benefit”. The main purpose of this schedule is to maintain and promote the distinctive Catholic character which is the governing body’s responsibility. It requires that the owner and the governing body work as partners to ensure that quality education with a distinctive Catholic character is offered. The owner is allowed representation at governing body meetings.

The governing body must:

- Fulfill its obligations as outlined in Section 20 of SASA (1996)
- consult with the owner to develop policies which preserve the distinctive Catholic character of the schools. These include:
 - the mission statement
 - the code of conduct for learners
 - policies for religious observances and religious education which are consistent with SASA (section 7), the Religion and Education policy (clause 16), and the Catholic Religious Education policy

- Inform the owner in good time of meetings and provide the owner with records of such meetings
- Set up a committee to preserve and promote the distinctive Catholic character at which the owner must be represented
- Involve the owner fully in all stages of the process for recommending educator and non-educator appointments (with an understanding that the requirements of the Employment of Educators Act and other legislation are balanced with the legitimate right to preserve the school's ethos)
- All nominations for appointment must be accompanied by a letter from the owner confirming the owner's full participation in the process and that the owner is satisfied that the appointment of the person nominated will not be detrimental to the distinctive character of the school.

The Deed of Agreement also allows for action to be taken if someone acts in a way that undermines or harms the distinctive religious character.

Conclusion

The fulfillment of the requirements of the Deed of Agreement can only take place when all involved in the life of the school understand it. The training of owner representatives, the principal and school management team, the staff, governing body members and department officials will greatly assist the goal of providing quality, values-based education in the schools.

Catholic Schools Proprietors Association Mission

The Catholic Schools Proprietors Association shall promote amongst its members, a continued commitment to the ideals of Catholic education and to that end shall:

- operate as a community serving humanity, ensuring greater democracy through communication, striving for justice and promoting the dignity of the person in society;
- integrate faith and life as a life-long process in which children are taught to live responsibly in a community with others;
- take account of new and developing educational insights and collaborate for this purpose with public schools and with others, irrespective of religious allegiance;
- offer itself to all, including those of other faiths, who desire to share its distinctive values, aims and means.

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Angelina Motshekga
Minister: Basic Education
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