

INFORMATION SHEET: NOT-FOR-PROFIT REQUIREMENTS

Investigations

Background

Non-government schools in NSW receive funding from the NSW Department of Education for the benefit of students at the school. Under Part 7, Division 3 of the Education Act 1990 (Act), to receive funding, a non-government school must not operate for profit. This means that the income and assets of the school must be used for the operation of the school. The complete not-for-profit requirements are contained in s83C of the Act.

Each year some schools are selected for a review of their not-for-profit compliance. The schools are selected through a risk-based ranking of non-government schools which uses data from a number of sources. Schools identified through referral may also be reviewed.

An audit may be undertaken as part of this review, conducted by an independent firm on behalf of the Non-Government Schools Not-for-Profit Advisory Committee (Advisory Committee).

If there is a reasonable suspicion of for-profit or non-compliant activity then the Minister may also put the school under investigation under s83H of the Act.

What is an investigation?

An investigation is a way to assess potential for-profit or non-compliance issues identified at the school. Opening an investigation under s83H of the Act allows the Minister to determine if a for-profit or non-compliance declaration should be made (following a recommendation of the Advisory Committee) or if no further action should be taken. A non-compliance declaration can also be made after an investigation occurs if the school or proprietor:

- fails to provide reasonable assistance during the investigation s83E(2)(a); or
- fails to comply with a direction made under s83I; or
- operates (or has operated) for-profit but the Minister is satisfied that the not-for-profit issues are minor or more appropriate action can be taken.

Why is my school being investigated?

The review of your school's compliance with the not-for-profit requirements of the Act has identified potential non-compliance or for-profit issues. An investigation is being carried out to support the resolution of the issues identified.

Schools (and their proprietors) will be informed in writing if they are being investigated under s83H of the Act. If your school is audited, you will be provided with an opportunity to review the audit report. If your school or proprietor receives a directions letter under s83I of the Act, this will relate to the potential compliance issues. General information may also be provided about the investigation process at that time.

Do I have to comply with an investigation?

Yes, schools are required under the Act to provide reasonable assistance to the investigation. Failing to assist may result in your school determined to be non-compliant under s83E(2)(a) of the Act.

How long will an investigation take?

The time an investigation takes will vary depending on the issues identified at the school. However, under the Act the Minister is required to complete the investigation as soon as reasonably practicable. Schools are encouraged to assist with the investigation process to ensure it progresses as promptly as possible to minimise any disruption to the students and staff at the school. If your school is under investigation and you would like information about potential timeframes you can contact the Secretariat for the Committee at NGS-Compliance@det.nsw.edu.au.

What are the possible outcomes of an investigation?

At the end of an investigation, the Committee may recommend that the school is declared for-profit or non-compliant, or that no further action is needed.

If a non-compliance recommendation is made by the Committee to the Minister, it may also be recommended that the funding paid to your school is reduced, suspended or made subject to conditions. Once a recommendation is made, schools, proprietors or other people affected by a recommendation have rights to have that recommendation reviewed.

Will there be any costs associated with being under investigation?

Your school may be directed to have an audit under s831(1)(a) of the Act. The Minister may direct your school or the proprietor to pay for the reasonable costs of the audit (under s831(3) of the Act). Not all schools will be required to pay for the audit. The Minister will consider the complexity of the audit before making a decision whether recovering costs is appropriate.

Is my funding likely to be affected?

During the conduct of an investigation, the Minister may defer all or part of the funding paid to the school. In the case where a school's funding is deferred, the school and its proprietor will be notified prior to the deferral of any funding.

Who can I contact if I need further information?

If you have any questions or require assistance you can contact the Secretariat at: NGS-Compliance@det.nsw.edu.au.