

1. **THE APPLICATION PROCEDURE**

1.1 Section 38A was published as law on 26 April 2004. The department has aligned the application procedure detailed in section 38A with the annual budgetary cycle of schools.

1.1.1 The purpose of Section 38A is to regulate payments made by school governing bodies (SGB) to state employees at public ordinary schools.

1.2 **Section 38A of the South African Schools Act**

Section 38A reads as follows:

Prohibition of payment of unauthorised remuneration, or giving of financial benefit of benefit in kind to certain employees

38A. (1) Subject to subsection (2), a governing body may not pay or give to a state employee in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994), any unauthorised-

- (a) remuneration;
- (b) other financial benefit; or
- (c) benefit in kind.

(2) A governing body may apply to the employer for approval to pay a state employee any payment contemplated in subsection (1).

(3) Such application must be lodged in writing in the office of the employer and must state-

- (a) Full details of the nature and extent of the payment;
- (b) The process and resources that will be used to compensate or remunerate the state employees; and
- (c) The extent of compliance with section 20(5) to (9).

(4) The governing body must make the application contemplated in subsection (2) at least four months prior to the finalisation of the school's budget.

(5) Despite subsection (1), a governing body may pay travel and subsistence expenses relating to official school activities but such expenses may not be greater than those that would be payable to a public servant in similar circumstances.

(6) An employer must not unreasonably refuse an application contemplated in subsection (2).

(7) In considering the application, the employer must take into account-

- (a) The implications for the employer in terms of the employment contract and labour law;
- (b) Whether the service concerned in the application will interfere with the normal service delivery of the employee;
- (c) Whether the service concerned in the application has already been paid for by the employer; and
- (d) Whether the additional remuneration, other benefits or benefits in kind support the core activities and functions of the school.

(8) The payment contemplated in subsection (1) must be reflected in the school's budget, as presented to the general meeting of parents as contemplated in section 38(2).

(9) If a governing body pays remuneration or gives any financial benefit or benefit in kind contemplated in subsection (1) to an employee without prior approval of the employer, the amount of money paid or benefit given must be recovered by the employer on behalf of the

school from members of the governing body who took that decision, excluding a member of the governing body who is a minor.

- (10) A governing body may appeal to the Member of the Executing Council against-
- (a) The refusal by the employer of an application contemplated in subsection (2); or
 - (b) The failure of the employer to provide a decision on an application contemplated in subsection (2) within three months after the lodging of the application in the office of the employer.

1.3 **Section 38A application(s) for 2017 and each year thereafter**

The School Governing Bodies (SGB) must apply to the Department (WCED) for approval to pay additional remuneration to state employees in the manner and form determined by the Head of Department (HOD).

The application from the SGB will comprise of the following:

- The information requested by the HOD as detailed in **Annexure A1 & A2;**
- A copy of the school's approved budget by a general meeting of parents reflecting the annual allocations for additional remuneration and how such allocation is intended to be disbursed to the respective state employee(s). If the approved budget is not available when making application for any financial year, the SGB's application must be supported by attaching the approved budget for the current financial year with a projection for the next financial year, until such time as the budget is approved; and
- A written application from the individual state employee/s to the employer requesting the employer's approval to receive such additional remuneration. This application must be submitted in the format detailed in **Annexure A3.**

1.4 **Appointment of new WCED employees during the course of the year**

- The SGB will be required to submit a new Section 38A application within any year for additional remuneration for all new WCED employees appointed during the course of the year, who will be required to perform additional duties in terms of Section 38A.
- These applications will be submitted as mentioned above and does not form part of the initial application for that particular year, but will be considered as an additional application(s) for that particular year.
- The application(s) for additional remuneration in respect of newly appointed WCED employees must form part of the initial amount budgeted for as mentioned in subsection(8)of Section 38A, above.

1.5 **Appeals to the Member of the Executive Council**

The SGB may appeal to the Member of the Executive Council (MEC) within one (1) month of receipt of the HOD's decision or within three (3) months after lodging the application in the office of the employer, if the employer has failed to take a decision on the application.

SCHOOL GOVERNING BODY APPLICATION IN TERMS OF SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT 84 OF 1996 TO PAY ADDITIONAL REMUNERATION TO STATE EMPLOYEES

1. Particulars of School

Name of School: _____

Address: _____

Telephone No.: _____

Fax No.: _____

Name of Chairperson of Governing Body: _____

2. Funding the additional remuneration, other financial benefit or benefit in kind

2.1 How will the payments for additional remuneration for the next year be funded? (Tick applicable box)

School fees Donations Investments

Bequests from Trusts Other income (specify)

2.2 The total allocated budget to be spent on additional remuneration for 20...: R

3. The information required in respect of each state employee in support of this application is contained in the attached 'Annexure A2'.

3.1 Employee(s) names(s), persal number(s) or Identity number of new state employee;

3.2 The rank(s) of the employee(s);

3.3 The additional duties and/or activities and/or responsibilities for which the school governing body will remunerate the state employee(s) or which are attached to the post;

3.4 The annual value of the additional service rendered by the state employee(s) or allocation to the post;

3.5 The exact nature of the payment. (Please specify whether it is 'remuneration', 'other financial benefit' or 'benefit in kind' or a combination of these benefits);

3.6 if the payment is 'remuneration', its annual value and when payment is to be effected;

- 3.7 If the payment is 'other financial benefit', full details of this benefit must be provided, including the value of the benefit, how and when payment is effected; and
- 3.8 If the payment is a 'benefit in kind', full details of this benefit must be provided, including the value of the benefit, how and when such benefit will be provided.
- 4. A copy of the **school's budget**, approved by a general meeting of parents, reflecting the annual allocation for additional remuneration and how such allocation is intended to be disbursed to the respective state employee(s) is attached as required.
- 5. **The written application(s) from the state employee(s)** to the employer requesting approval to receive the additional remuneration is/are attached as required. Please submit this application in the format provided as contained in '**Annexure A3**'.

I, the undersigned, certify that to the best of my knowledge and belief:

- 1. **The information provided in this application together with the relevant annexures is correct;**
- 2. **The additional service will not interfere with the normal responsibilities and duties of the state employee; and**
- 3. **The service(s) being rendered has/have NOT been paid for by the employer.**

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CHAIRPERSON OF GOVERNING BODY

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DATE:

WESTERN CAPE EDUCATION DEPARTMENT

APPLICATION TO REMUNERATE STATE EMPLOYEES IN TERMS OF SECTION 38A OF ACT 84 OF 1996

Note:

1. The School Governing Body must attach a copy of the school's budget, approved by a general meeting of parents reflecting the annual allocation for additional remuneration and how such allocation is intended to be disbursed to the respective state employees; and
2. The written application(s), **{Annexure(s) A3}** from the state employee(s) requesting approval from the employer to receive the additional remuneration must be attached to this annexure.

No.	Name of employee	Persal Number	Rank of Employee	Additional duties/activities/responsibilities of employee or post	Annual value of the additional service rendered or allocated to the post	Exact nature of payment. (Specify 'remuneration', 'other financial benefit' or 'benefit in kind' or a combination)	State annual value of 'remuneration' and when payment is to be effected	If payment is 'other financial benefit' provide full details of this benefit, including the value of the benefit, how and when payment is effected	If payment is 'benefit in kind', provide full details of this benefit, including value of the benefit, how and when the benefit will be provided.	How does the additional service support the core activities and/or functions of the school?

ANNEXURE A3

INSERT ADDRESS OF STATE EMPLOYEE

THE HEAD: EDUCATION

Western Cape Education Department
Private Bag X9114
CAPE TOWN
8000

STATE EMPLOYEE APPLICATION TO RECEIVE ADDITIONAL REMUNERATION FROM THE SCHOOL GOVERNING BODY FOR THE YEAR

Name of employee: _____ **Persal Number:** _____

Rank of employee: _____ **Name of School:** _____

I kindly request approval to receive the additional remuneration allocated to me in the annual amount of **{insert annual amount}** as motivated by the School Governing Body's application in terms of Section 38A of the South African Schools Act 84 of 1996.

I confirm that my service to the School Governing Body for which this application is made will not interfere with, nor hinder, the performance of my primary responsibilities and duties to my employer.

{Insert signature and printed name of state employee}