



Verwysing: 2/3/B

GBS No. 20151204-5936 Navrae: DJ Moonsamy

Omsendbrief: 0003/2016 Vervaldatum: Geen

Aan: Adjunk-direkteurs-generaal, Hoofdirekteure, Direkteure (Hoofkantoor en distrikskantore), IBB-hoofde, IBB-bestuurders, Kringspanbestuurders,

Kurrikulumadviseurs en Hoofde van alle onderwysinrigtings

Kort opsomming: Delegasie van bevoegdhede van die Lid van die Uitvoerende Raad

(LUR) van die Wes-Kaap Onderwysdepartement.

Onderwerp: Delegasie van bevoegdhede ten opsigte van die Suid Afrikaanse Skolewet, 1996 (Wet 84 van 1996)

- 1. Aangeheg is die delegasie van bevoegdhede wat berus by die Lid van die Uitvoerende Raad (LUR) verantwoordelik vir onderwys ingevolge die bogenoemde wetgewing.
- 2. Aangesien omsendbriewe, minute en die bylaes daarvan in e-posformaat uitgestuur word, word amptenare versoek om hulle eie afskrifte van hierdie delegasies vanaf hul e-pos te druk, indien hulle 'n drukstuk verlang.
- 3. Bring asseblief die inhoud van hierdie omsendbrief onder die aandag van alle betrokkenes.

GETEKEN: P A VINJEVOLD HOOF: ONDERWYS

DATUM: 2015-12-17

DELEGATIONS IN RESPECT OF THE SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT 84 OF 1996), AS AMENDED BY THE EDUCATION LAWS AMENDMENT ACTS

Under the power vested in me by section 62(1) of the South African Schools Act, 1996 (Act 84 of 1996), I, DEBBIE SCHÄFER, Member of the Executive Council responsible for Education, hereby delegate the powers vested in me by the aforementioned Act as published in Government Gazette 17579 dated 15 November 1996, as set out hereunder to the holders of the posts as indicated opposite each power. When an official acts in a higher post, the rule applies that the powers attached to the higher post, are entrusted to him or her.

	Statutory provision	Subject/Nature of Power	MEC	Head of Department	Deputy Director-General	Chief Director	Director	Dep. Director	Circuit Team Manager	IMG Head	Ass. Director	Admin Officer	Chief Admin Clerk	Snr Admin Clerk
No.	Section of Act													
1.	3(3)	<u>Compulsory attendance</u> Ensure that there are enough school places (accommodation).	х	x										
2.	3(4)	In the event of non- compliance with section 3(3) [provision of sufficient accommodation due to lack of capacity], the MEC shall take steps to remedy such lack of capacity, and further report, annually, to the Minister on progress made to remedy the situation.	х	Х										
3.	5(9)	Admission to public schools Decide on an appeal against refusal of admission of a learner to a public school.	х											
4.	9(3)	Suspension and expulsion from public school Determine by notice in the Provincial Gazette - (a) the behaviour of a learner at a public school which may constitute serious misconduct. (b) disciplinary proceedings to be followed in such cases; and (c) provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.	x											

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5.	9(4)	Decide an Appeal, within 14 days of the decision of the HOD to expel a learner from a public school.	Х											
6.	11(2)	Representative council of learners Subject to a Policy Determination made in terms of Section 3(4) (g) of the National Education Policy Act, 27 of 1996 determine the functions and the procedures for the establishment and election of Representative Councils of Learners, by Notice in the Provincial Gazette	х											
7.	11(3)	Where it is not practically possible to establish an RCL, to grant an exemption to LSEN – schools, by a Notice in the Provincial Gazette.	х											
8.	12(1)	Provision of public schools Provide public schools out of funds appropriated for this purpose by the provincial legislature for the education of learners.	х	х	х	х								
9.	12(4)	Provide education, where reasonably practicable, for learners with special education needs at ordinary public schools as well as relevant educational support services for such learners.	х	Х	х	х	X D:SES							
10.	12(5)	Take reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons.		Х	х	X (HDI)								

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11.	12A 12A(1)	Merger of public schools To merge two or more public schools into a single school, by notice in the Provincial Gazette.	х											
	12A (2)(a) to (e)	Before merging two or more public schools, the MEC must:	х											
		(a) give a written notice of the intention to merge them to the schools in question;	х											
		(b) publish the notice, giving reasons for the proposed merger in one or more newspapers circulating in the area where schools are	х											
		(c) give the governing bodies of the schools in question and any other interested persons, an opportunity to make representations within a period of not less than 90 days from the date of the notice referred to in para. (b) [above].	x											
		(d) consider such representations; and	x											
		(e) be satisfied that the employers of staff at the public school have complied with their obligations in terms of applicable labour law.	Х											

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12.	12A (3)(a) to (d)	If one or more of the schools that are to be merged in terms of section 12A (1) are public schools on private property, the MEC must (also): (a) notify the owner of the private property of his/her intention to merge the schools in question; (b) consider his/her contractual obligations in terms of the agreement contemplated in section 14; (c) renegotiate his/her obligations in terms of the existing agreement if necessary; (d) negotiate a new agreement in terms of section 14 if the single school contemplated in subsection (1) is to be situated on private property.	x	x	x x	x x	x x	X D/O X D/O						
13.	13(3)(a)	Public schools on State property Restricting the right of a public school which occupies immovable property owned by the State to, for the duration of the school's existence, occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.	х											
14.	13(4)(a)	Give notice to the governing body of a public school of the MEC's intention to restrict such school's right in terms of section 13(3) and the reasons therefor.	х											

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15.	13(4)(b)	Grant a reasonable opportunity to the governing body of a public school to make representations relating to the restriction in terms of section 13(3), of such school's right.	Х	х	Х	Х								
16.	13(4)(c)	Give due consideration of any representations received relating to the restriction, in terms of section 13(3), of a school's right.	Х											
17.	13(6)	 (a) Alienating immovable property owned by the State and occupied by a public school. (b) Conclude an agreement between the MEC and the prospective owner of the immovable property. 	x											
18.	14(1)	Public schools on private property Conclude an agreement with the owner of a private property for the provision of a public school on private property in line with the Constitution and Section 58 of SASA, and/or real right to use the property on which the public school is situated.	х	х										
19.	14(5)(a)	Lodge an application to the Registrar of Deeds to make an endorsement on the Title Deed of the affected property.	х	Х	Х									
20.	14(5)(b)	Take an oath stating that an agreement has been concluded.	х	х	Х									

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21.	14(7)	Where the MEC has acted in terms of Section 33 [Closure of a public School], the MEC may, where the owner of the private property seeks cancellation of an endorsement made in terms of subsection (5), provide an affidavit to that effect (that a school has been closed).	X	X	X	X	X Head Office							
22.	17(1)	Governing body serving two or more schools Determine that the governance of two or more public schools must vest in a single governing body if it is in the best interests of education at the schools concerned.	х											
23.	17(2)(a)	Notice in Provincial Gazette of MEC's intention to act as contemplated in section 17(1).	Х											
24.	17(2)(b)	Grant an opportunity to interested parties to make written submissions within a period of not less than 30 days.	Х											
25.	17(2)(c)	Consider all such submissions made in terms of section 17(2) (b).	Х											
26.	18(1), 18(2)(a) to (e)	Constitution of governing body Determine the Minimum requirements to be met by the Constitution of the School Governing Body, consistent with subsection (2)(a) to (e), by Notice in the Provincial Gazette.	х											
27.	18A(1)	Code of conduct of governing body Determine a code of conduct for the members of a governing body of a public school after consultation with associations of governing bodies in that province, if applicable, by notice in the Provincial Gazette.	х											

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28.	18A(6)	Decide an appeal against the decision of the Head of Department regarding the suspension or termination of the membership of a member of the governing body as a governing body member.	Х											
29.	20(1)(m)	Functions of all governing bodies Determine other functions, consistent with SASA, of the governing body, by Notice in the Provincial Gazette.	x											
30.	21(5)	Allocated functions of governing bodies Decide an Appeal by the governing body against the refusal of an application to be allocated the powers and functions stated in section 21(1) (a) to (e).	х											
31.	21(6)	Determine by Notice in the Provincial Gazette, the transfer of powers and functions listed in section 21(1) (a) to (e), to some governing bodies without the application contemplated in section 21(1) (a) to (e).	Х											
32.	22(5)	Withdrawal of functions from governing bodies Decide an appeal against the withdrawal of a function of a governing body.	х											
33.	24(2)	Membership of governing body of public school for learners with special education needs Promulgate regulations (determinations) relating to governing bodies of LSEN-schools, by notice in the Provincial Gazette.	х											
34.	24(4)	Consider all submissions, and amendment of notice contemplated in section 24(2), if need be.	Х											

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35.	28	Election of members of governing body Promulgate regulations (determinations) relating to governing bodies of ordinary public schools, by notice in the Provincial Gazette.	х											
36.	33(1)	Closure of public schools Close a public school, by notice in the Provincial Gazette.	х											
37.	33(2)(a)	Notice to the governing body of a public school of the MEC's intention to close such school and the reasons therefor.	Х											
38.	33(2)(b)	Grant reasonable opportunity to the governing body of such school to make representations in relation to such action contemplated in section 33(1).	Х											
39.	33(2)(c)	Conduct a public hearing on reasonable notice, to enable the community to make representations to the MEC relating to actions contemplated in terms of section 33(1).	х	х	Х	х	х							
40.	33(2)(d)	Due consideration of any such representation received.	Х											
41.	33(3)	Conclude an agreement between the MEC and the governing body relating to assets and liabilities of a public school which has been closed.	Х	Х	Х	х								
42.	36(2)	Responsibility of governing body Written approval to a governing body of a public school for the entering into any loan or overdraft agreement so as to supplement the school fund.		х	х	х	X DMA							
43.	37(3)	School funds and assets of public schools Grant approval to a governing body of a public school to invest surplus money in another account.	х	x	x	х	X DMA							

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44.	38(1)	Annual budget of public school Determine prescriptions, in a Provincial Gazette, in accordance with which a governing body of a public school must prepare the annual budget, to show the estimated income and expenditure of the school for the following year.												
45.	38A(10)	Prohibition of payment of unauthorised remuneration, or giving of financial benefit or benefit in kind to certain employees Decision by MEC over an appeal by a governing body against-	x											
	38A(10)(a)	the refusal by the employer of an application contemplated in section 38A(2); or	x											
	38A(10)(b)	the failure of the employer to provide a decision on an application contemplated in section 38A (2) within three months after the lodging of the application in the office of the employer.												

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46.	39(9)	School fees at public schools Identify and draw up a list of all schools in the province that may not charge school fees for publication, as determined annually by the Minister, in the Gazette, in the determination of National Quintiles for public schools or part of such quintiles.	х											
	39(13)	The MEC may, after consultation with the relevant governing bodies, identify annually by notice in the Provincial Gazette, additional public schools in the province who may not charge school fees, although they have not been included in the list of schools contemplated in section 39(10) (c).	x											
47.	42(b)	Financial records and statements of public schools Determine guidelines in accordance with which a governing body of a public school must draw up the financial records and statements of such school.	х	х	х	х	X DIM							
48.	43(2)(b)	Audit or examination of financial records and statements Grant approval for the appointment of a person by the governing body of a public school to examine and report on the records and financial statements of such a school.		х	x	х	x	X DM A						
49.	43(4)	Address a request to the Auditor-General to undertake an audit of the records and financial statements of a public school, where it is deemed necessary, provided the MEC is notified immediately of such a request.	х	Х	х	X CD:FM								

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50.	46(2)	Registration of independent school Determine grounds by MEC, by notice in the Provincial Gazette, on which the registration of an independent school may be granted or withdrawn by the Head of Department.	x											
51.	47(2)	Withdrawal of registration of independent school Decide an appeal by owner against the withdrawal of the registration of an independent school.	х											
52.	48(2)	Subsidies to registered independent schools Grant a subsidy to an independent school.	x											
53.	48(5)	Decide an appeal by owner against the termination or reduction of a subsidy to an independent school.	Х											
54.	49(1)	Declaration of independent school as public school Conclude an agreement between MEC, with the concurrence of the MEC for Finance, with the owner of an independent school in terms whereof such independent school is declared to be a public school.	х											
55.	49(2)	Publish notice of change of status of independent school in Provincial Gazette	Х											
56.	50(1)	Duties of MEC relating to independent schools Determine, by Notice in the Provincial Gazette, requirements for admission of learners, keeping of registers and other documents by independent schools.	х											
57.	50(3)	Allow a reasonable period to the affected parties to comment on any requirement that the MEC intends to determine in terms of section 50(1).	Х											

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58.	51(5)	Registration of learner for education at home Decide an appeal by a parent against the withdrawal of the registration or refusal to register a learner for education at home.	х											
59.	55(9)	Transitional provisions relating to immovable property of certain schools Grant approval in writing, to a public school to let, sell or otherwise alienate its immovable property, or grant to any person any real right or servitude thereon.	х											
60.	56	Transitional provisions relating to public schools on private property Take reasonable measures to conclude an agreement within six months of the commencement of the SA Schools Act, 1996 (Act 84 of 1996).		х	x	х	X D:OS U							
61.	58(1)	Expropriation Expropriate land and real rights in or over land for any purpose relating to education in schools, if it is in the public interest to do so.	х											
62.	58(2)	Notice in the Provincial Gazette, of MEC's intention to expropriate in terms of section 58(1).	х											
63.	58(3)(c)	Negotiation between MEC and any person claiming compensation as a result of the expropriation.	Х											
64.	58(4)	Expropriate, by notice in the Provincial Gazette, the land and any real right in or over the land referred to in section 58(3), after considering all such written submissions.	х											

		13												
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65.	58(6)	If the <i>Member of the Executive Council</i> and an owner of the land or real right fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.	x											
66.	58(10)	Determine fees and allowances, with the concurrence of the MEC for Finance payable to the arbitrator.	х											
67.	58A(2)	Alienation of assets of public school Give written approval for the alienation of any assets owned by a public school	х											
68.	58A(3)	(a) determine that certain categories of assets below a certain value may be alienated without his or her written approval (b) determine and publish the value contemplated in paragraph (a) by notice in the Provincial Gazette	Х											
69.	58B(7)	Identification of underperforming public schools Report to the Minister of Education, within three months after the end of a school year on the action taken by the HOD in regard to an underperforming public school.	х											
70.	58C(1)	Compliance with norms and standards (a)to (c) Ensure compliance with the Norms and Standards i.t.o. Section 5A,6(1),20(11),35 and 48(1) of SASA	х	x										

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71.	58C(2)	Ensure that policy determined by a governing body complies with Norms and Standards i.to. Section 5(5) and 6(2) of SASA	х	х										
72.	58C(3)	Report to Minister of Education on compliance with Norms and Standards i.t.o. SASA	х											
73	58C(4)	Handling of disputes in respect of non-compliance with Norms and Standards between Minister of Education and MEC for Education	Х											

APPROVED: SIGNED: D. SCHÄFER

MEMBER OF THE EXECUTIVE COUNCIL RESPONSIBLE FOR EDUCATION: WESTERN CAPE

DATE: 2015-11-27