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3/3/2/4/13  
Enquiries: Call Centre

Circular: 0030/2017

Expiry date: None

To: Chief Directors, Directors (Head Office and district offices), Circuit Managers, Principals and Chairpersons of governing bodies

Short summary: *Guidelines on compliance with the requirements of sections 38 and 38A of the South African Schools Act, 1996 (Act 84 of 1996).*

**Subject: Compliance with the prescripts of sections 38 and 38A of the South African Schools Act, 1996 (Act 84 of 1996)**

1. The Western Cape Education Department (WCED) wishes to draw the attention of all public schools to the prescripts of sections 38 and 38A of the South African Schools Act (SASA), 1996 (Act 84 of 1996), respectively.

2. Section 38 of SASA, reads as follows:

*38(1) A governing body of a public school must prepare a budget each year according to the prescriptions determined by the Member of the Executive Council in a Provincial Gazette, which shows the estimated income and expenditure of the school for the following financial year.*

*(2) Before a budget referred to in subsection (1) is approved by the governing body, it must be presented to a general meeting of parents convened on at least 30 days' notice, for consideration and approval by a majority of parents present and voting.*

*(3) The notice contemplated in subsection (2) must also inform the parents that the budget will be available for inspection at the school at least 14 days prior to the meeting.*

3. In respect of section 38A, please note that this circular replaces all previous circulars in this regard and all previous circulars are therefore considered expired. The procedure when applying for section 38A is set out further in this circular and the attached

**Application Procedure.**

4. The submission of **fully completed** section 38A applications for 2018 will be accepted from **01 August 2017**. Thereafter applications must be submitted from 01 August annually.
5. Fully completed applications will be finalised within 4 weeks after receipt and incomplete applications will be returned with reasons, whereupon it will only be reconsidered as a newly submitted application when a **fully completed** application is submitted.
6. School budgets and budget meeting minutes **will not** be required or utilised as part of section 38A applications.
7. Governing bodies are requested in terms of section 38A(8) of SASA to ensure that the expenditure in respect of section 38A is clearly marked as an item on the approved budget which is submitted to the district office.
8. Governing bodies are expected to **only** make use of the attached **Annexures A1, A2 and A3** as provided by WCED. Annexures on school letterheads or any other altered annexures **will not** be accepted and such applications will be regarded as incomplete. Annexures A1, A2 and A3 must be signed by the chairperson of the governing body as indicated on the forms attached; unsigned annexures will be regarded as incomplete.
9. The governing bodies' attention is also specifically drawn to subparagraph 1.4 of the **Application Procedure** (attached) with regard to the procedure that must be followed when applying for additional remuneration for newly appointed WCED employees who are appointed during the course of the year after approval of the initial section 38A application has been given.
10. Failure to adhere to the procedure as set out in this circular and the **Application Procedure** will result in a possible refusal of the application.
11. Kindly bring the contents of this circular to the attention of all relevant role players.

**SIGNED:** BK SCHREUDER  
**HEAD: EDUCATION**  
**DATE:** 2017-09-06

## 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 2018 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:

- A covering letter (optional);
- The information requested by the HOD as detailed in **Annexure A1 & A2;**
- A written application from each individual state employee/s to the Employer requesting the Employer's approval to receive such additional remuneration (full description of duties) given. This application must be submitted in the format detailed in **Annexure A3;**
- A description of additional duties to be performed by state employees **(Rubric);** and
- A completed and signed Checklist of all documents to be submitted.

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

3.4 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);

3.5 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

3.6 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 and budget meeting minutes** is not required or will be utilised as part of the Section 38A application but in terms of subsection (8) of Section

38A, the expenditure of additional remuneration for **state employees** must be clearly marked as an item on the approved budget which is submitted to the District Office.

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. A comprehensive list of duties which is required to be performed must be listed as well as the annual amount which is to be remunerated must be indicated. 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.

.....

**CHAIRPERSON OF GOVERNING BODY**

.....

**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	Gross 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?

{Insert signature, and printed name of Chairperson of SGB}

DATE:





INSERT ADDRESS OF STATE EMPLOYEE

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**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: \_\_\_\_\_ Peral 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 the following services are rendered by me outside of my official hours while employed by the Western Cape Education Department (WCED):

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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}**

**Date:**

**KEY TO SECTION 38A PAYMENTS MADE TO WCED STAFF BY THE SCHOOL GOVERNING BODY (SGB)**

School Name: .....

Year: .....

1. The School Governing Body of *(insert School name)* remunerates or reimburses state-employed staff at the school who at the behest of the SGB, manage, participate in or undertake the following actions or activities on its behalf.
2. Such payments are made at *(insert monthly or quarterly or annual)* intervals: these payments are non-pensionable, nor are they subject to a '13<sup>th</sup> cheque' bonus.
3. They normally escalate at a rate similar to annual salary increments unless duties and/or responsibilities are significantly altered from one year/period/season to the next.
4. The SGB hereby provides an assurance to the Western Cape Education Department that these actions or activities:
  - Do not interfere with the normal service delivery of the employees, but rather enhance it;
  - Do not include services/activities/actions already paid for by the state; and
  - Are supportive of the core educational activities of the school, such as teaching and learning, extra-curricular activity, generation of standing or funding, management, administration and community liaison.

ACTIVITIES OR ACTIONS FOR WHICH SECTION 38A REMUNERATION OR REIMBURSEMENT TO STATE-EMPLOYED STAFF OCCURS		
Key Indicator no	SPECIFIC PERFORMANCE AREAS	SPECIFIC PERFORMANCE OUTCOMES
	The activities or circumstances for which staff are remunerated	How the core activities/functions of the school are supported by the additional services rendered
1	Management and guidance of SGB staff.	<ul style="list-style-type: none"> <li>• Enhanced managerial, administrative and academic functionality of the school.</li> </ul>
2	Work on behalf of the SGB in connection with SGB initiatives which lie beyond the scope of the normal expectations of the Employer.	<ul style="list-style-type: none"> <li>• Enhanced scope of school activities available to learners</li> <li>• Enhanced output in respect of relevant school activities.</li> </ul>
3	Administering SGB activities beyond the scope of the normal expectations of the Employer.	<ul style="list-style-type: none"> <li>• Enhanced managerial and administrative functionality.</li> </ul>
4	Supervision beyond the scope of the normal expectations of the Employer, undertaken during or in respect of SGB-initiated activities such as camps, excursions, tours, tournaments, performances etc.	<ul style="list-style-type: none"> <li>• Enhanced safety, exposure, learning, performance and well-being of learners and enhanced efficiency of the school.</li> </ul>
5	Additional and after-hours tutoring and pastoral activities to the benefit of learners occasioned by SGB expectations/requirements.	<ul style="list-style-type: none"> <li>• Enhanced learning, performance and well-being of learners, and enhanced efficiency of the school.</li> </ul>
6	Additional and after-hours sports coaching and management occasioned by SGB expectations/requirements.	<ul style="list-style-type: none"> <li>• Enhanced delivery of school sports for all learners, irrespective of ability, in an age and grade appropriate way.</li> </ul>
7	Additional and after-hours cultural and service activities and management occasioned by SGB expectations/requirements.	<ul style="list-style-type: none"> <li>• Enhanced delivery of cultural and service for all learners, irrespective of ability, in an age and grade appropriate way.</li> </ul>
8	SGB initiated community liaison, beyond the scope of the normal expectations of the Employer, including: <ul style="list-style-type: none"> <li>8.1 fund-raising activities</li> <li>8.2 initiatives enhancing community goodwill</li> <li>8.3 activities which enhance the standing of the school</li> <li>8.4 activities of benefit to the community from which the school draws its learners</li> </ul>	<ul style="list-style-type: none"> <li>• Enhanced funding, community participation, understanding, standing and benefit vis-à-vis the school and community.</li> </ul>

**KEY TO SECTION 38A PAYMENTS MADE TO WCED STAFF BY THE SCHOOL GOVERNING BODY (SGB)**

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Year: .....

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  - Do not interfere with the normal service delivery of the employees, but rather enhance it;
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NAME OF SCHOOL: ..... YEAR: .....

SECTION 38A CHECK LIST :

	DOCUMENTS IN RESPECT OF SECTION 38A APPLICATION FOR ....., ATTACHED	ATTACHED YES OR NO
1.	Annexure A1 Form (Completed, signed & dated)	
2.	Annexure A2 Form(s) (Completed, signed & dated)	
3.	Annexure A3 (Form(s) (Completed, signed & dated)	
4.	Description of Additional Duties (Rubric)	
5.	Covering letter (optional)	

Name (printed & signed):

Chairperson of SGB

Date: