



Verwysing: 20170613-2045  
3/3/2/4/13  
Navrae: Inbelsentrum

Omsendbrief: 0030/2017

Vervaldatum: Geen

Aan: Hoofdirekteure, Direkteure (Hoofkantoor en distrikskantore), Kringbestuurders, Prinsipale en Voorsitters van beheerliggame

*Kort opsomming: Riglyne oor die nakoming van die vereistes van artikel 38 en 38A van die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996).*

**Onderwerp: Nakoming van die bepalings van artikel 38A van die Suid-Afrikaanse Skolewet, 1996 (Wet 84 van 1996)**

1. Die Wes-Kaap Onderwysdepartement (WKOD) wil graag die aandag van alle openbare skole op die bepalings van artikel 38 en 38A van die Suid-Afrikaanse Skolewet (SASW), 1996 (Wet 84 van 1996), vestig.

2. Artikel 38 van die SASW lees soos volg:

*“38(1) 'n Beheerliggaam van 'n openbare skool moet elke jaar 'n begroting voorberei in ooreenstemming met voorskrifte soos bepaal deur die Lid van die Uitvoerende Raad in 'n Provinsiale Koerant, wat die beraamde inkomste en uitgawe van die skool vir die volgende boekjaar uiteensit.*

*(2) Voordat 'n begroting bedoel in subartikel (1) deur die beheerliggaam goedgekeur word, moet dit aan 'n vergadering van ouers wat met minstens 30 dae kennisgewing belê is, voorgelê word vir oorweging en goedkeuring deur 'n meerderheid van ouers teenwoordig wat stem.*

*(3) Die kennisgewing in subartikel (2) beoog moet ook die ouers inlig dat die begroting minstens 14 dae voor die vergadering by die skool ter insae sal wees.”*

3. Wat artikel 38A betref, let asseblief daarop dat hierdie omsendbrief alle vorige omsendbriewe in hierdie opsig vervang en alle vorige omsendbriewe word dus as verval gereken. Die prosedure vir wanneer om artikel 38A aansoek gedoen word, word verder in hierdie omsendbrief en **Die Aansoekprosedure** (hierby aangeheg) uiteengesit.

4. Die indiening van **volledig ingevulde** artikel 38A-aansoeke vir 2018 sal vanaf **01 Augustus 2017** aanvaar word. Daarna moet aansoeke jaarliks vanaf 01 Augustus ingedien word.
5. Volledig ingevulde aansoeke sal binne vier weke ná ontvangs gefinaliseer word en onvolledige aansoeke sal met redes terugbesorg word, waarna dit slegs as 'n nuut ingediende aansoek heroorweeg sal word wanneer 'n **volledig ingevulde** aansoek ingedien word.
6. Skoolbegrotings en begrotingvergaderingnotules **is nie** nodig nie en sal nie as deel van artikel 38A-aansoeke gebruik word nie.
7. Beheerliggame word ingevolge artikel 38A(8) van die SASW versoek om seker te maak dat die uitgawe ten opsigte van artikel 38A duidelik gemerk word as 'n item op die goedgekeurde begroting wat by die distrikskantoor ingedien word.
8. Daar word van beheerliggame verwag om **slegs** van die aangehegte **Bylae A1, A2 en A3**, soos deur die WKOD verskaf, gebruik te maak. Bylaes op skoolbriefhoofde of enige ander gewysigde bylaes **sal nie** aanvaar word nie en sodanige aansoeke sal as onvolledig gereken word. Bylaes A1, A2 en A3 moet deur die voorsitter van die beheerliggaam, soos aangedui op die aangehegte vorms, geteken word; ongetekende bylaes sal as onvolledig gereken word.
9. Die beheerliggame se aandag word ook spesifiek gevestig op subparagraaf 1.4 van **Die Aansoekprosedure** (aangeheg) wat die prosedure wat gevolg moet word wanneer daar aansoek gedoen word om addisionele vergoeding vir nuut aangestelde WKOD-werknemers wat deur die loop van die jaar, ná goedkeuring van die aanvanklike artikel 38A-aansoek, aangestel word.
10. Nienakoming van die prosedure, soos in hierdie omsendbrief uiteengesit, en **Die Aansoekprosedure** sal tot 'n moontlike weiering van die aansoek lei.
11. Bring asseblief die inhoud van hierdie omsendbrief onder die aandag van alle betrokke rolspelers.

**GETEKEN:** BK SCHREUDER

**HOOF: ONDERWYS**

**DATUM:** 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:

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)**

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>
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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: