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Circular: 0039/2018
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 (SASA), 1996 (Act 84 of 1996).*

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

1. The Western Cape Education Department (WCED) wishes to bring to the attention of all public schools that Circular 0030/2017, dated 06 September 2017, is still applicable but with the amendments below which are to be noted and applied:
 - 1.1 The **Annexure A3** has been amended and all public schools are required to use the amended **Annexure A3** with their applications.
 - 1.2 All public schools are required to utilise the rubric to ensure uniformity and to avoid any unnecessary delays in the administration of their applications.
2. All public schools are requested to familiarise themselves with the attached **application procedure** when applying for section 38A to ensure that their applications are submitted correctly.
3. 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 annually in December.
4. All public schools are reminded that section 38A applications must be submitted from 01 August annually, as stipulated in Circular 0030/2017.

5. As all public schools are encouraged to submit additional applications for new staff members throughout the year, there is no closing date but governing bodies are reminded to ensure that adequate funds have been budgeted to make allowance for additional applications, as indicated in paragraph 3 above.
6. Governing bodies are reminded to **only** make use of the attached **Annexures A1, A2 and A3** as provided by the 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.
7. 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.
8. Kindly bring the contents of this circular to the attention of all relevant role players.

SIGNED: BK SCHREUDER

HEAD: EDUCATION

DATE: 2018-10-13

1. **THE APPLICATION PROCEDURE**

1.1 Section 38A of the South African Schools Act (SASA), 1996 (Act 84 of 1996) was published as law on 26 April 2004. The Western Cape Education Department (WCED) 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 governing bodies to state employees at public ordinary schools.

1.2 **Section 38A of the South African Schools Act (SASA)**

Section 38A reads as follows:

Prohibition of payment of unauthorised remuneration, or giving of financial benefit or 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 financial 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 every year thereafter**

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

KEY TO SECTION 38A PAYMENTS MADE TO WESTERN CAPE EDUCATION DEPARTMENT STAFF BY THE GOVERNING BODY

School name:

Year:

1. The Governing Body of *(insert school name)* remunerates or reimburses state-employed staff at the school that at the behest of the governing body manages, 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 "13th 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 Governing Body hereby provides an assurance to the Western Cape Education Department (WCED) 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 members are remunerated	How the core activities/functions of the school are supported by the additional services rendered
1.	Management and guidance of governing body staff.	<ul style="list-style-type: none"> • Enhanced managerial, administrative and academic functionality of the school.
2.	Work on behalf of the governing body in connection with governing body initiatives which lie beyond the scope of the normal expectations of the Employer.	<ul style="list-style-type: none"> • Enhanced scope of school activities available to learners. • Enhanced output in respect of relevant school activities.
3.	Administering governing body activities beyond the scope of the normal expectations of the Employer.	<ul style="list-style-type: none"> • Enhanced managerial and administrative functionality.
4.	Supervision beyond the scope of the normal expectations of the Employer, undertaken during or in respect of governing body-initiated activities such as camps, excursions, tours, tournaments, performances, etc.	<ul style="list-style-type: none"> • Enhanced safety, exposure, learning, performance and well-being of learners and enhanced efficiency of the school.
5.	Additional and after-hours tutoring and pastoral activities to the benefit of learners occasioned by the governing body's expectations/requirements.	<ul style="list-style-type: none"> • Enhanced learning, performance and well-being of learners and enhanced efficiency of the school.
6.	Additional and after-hours sports coaching and management occasioned by the governing body's expectations/requirements.	<ul style="list-style-type: none"> • Enhanced delivery of school sports for all learners, irrespective of ability, in an age and grade appropriate way.
7.	Additional and after-hours cultural and service activities and management occasioned by the governing body's expectations/requirements.	<ul style="list-style-type: none"> • Enhanced delivery of cultural and service activities for all learners, irrespective of ability, in an age and grade appropriate way.
8.	Governing body initiated community liaison, beyond the scope of the normal expectations of the Employer, including: 8.1 fundraising activities; 8.2 initiatives enhancing community goodwill; 8.3 activities which enhance the standing of the school; and/or 8.4 activities of benefit to the community from which the school draws its learners.	<ul style="list-style-type: none"> • Enhanced funding, community participation, understanding, standing and benefit with regard to the school and community.

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 Governing Body

Date:

SCHOOL GOVERNING BODY APPLICATION IN TERMS OF SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT (SASA), 1996 (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 and 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 are 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.

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CHAIRPERSON OF GOVERNING BODY

.....

DATE:

DATE:



{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 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 Governing Body's application in terms of section 38A of the South African Schools Act (SASA), 1996 (Act 84 of 1996).

I confirm that my service to the 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.

I also confirm that I will be performing tasks as described in the rubric as indicated below:

{Grid numbers from Rubric to be indicated}

{Insert signature and printed name of state employee}

Date:

{Insert signature and printed name of chairperson of governing body}

Date: