

**DIRECTORATE RURAL EDUCATION**

**GUIDELINES FOR THE RATIONALISATION  
OF SMALL OR NON-VIABLE SCHOOLS**

**JULY 2009**



**education**

Department:  
Education  
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## PREFACE

In June 2005, the Ministerial Committee on Rural Education published a report entitled *A New Vision for Rural Schooling*. The report highlighted the urgent need for redress in rural schooling, and suggested 82 specific recommendations to address these challenges. The development of Guidelines for the Rationalisation of Small and/or Non-Viable Schools is advocated within the recommendations made in the Report of the Ministerial Committee for Rural Education.

The Department of Education established a Rural Education Directorate in 2007 that commenced with the drafting of National Guidelines for the Rationalisation of Small and/or Non-Viable Schools supported by Provincial Rural Education Coordinators. The Guidelines address the following key issues:

- a) The implementation of agreements with land owners in terms of Section 14 of the South African Schools Act, 1996 (Act No 84 of 1996); and
- b) The Merger and Closure of Rural and Farm schools.

Many public schools in the farm and rural areas are on private property. The finalisation of Section 14 Agreements between the parties concerned will promote access for learners, parents and educators to these schools. The Guidelines for the implementation of Section 14 Agreements aims to speed up the process of managing the conclusion of agreements effectively and efficiently.

Larger and better resourced schools will contribute to development and poverty alleviation in rural areas. The Guidelines for the Merger and Closure of Rural and Farm schools embrace this important concept and describes the process for merger and closure at rural and farm schools.

The National Guidelines for the Rationalisation of Small and/or Non-Viable Schools will contribute to our collective effort to improve the quality of education, to expedite the resourcing of schools, to promote access to schools and to ensure the retention of learners and educators in rural and farm schools.



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**DIRECTORATE RURAL EDUCATION**

**Guidelines for the merger and closure of Rural  
and Farm schools**



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## ACRONYMS

<b>EMIS</b>	Education Management and Information Systems
<b>FET</b>	Further Education and Training
<b>GET</b>	General Education and Training
<b>MEC</b>	Member of the Executive Council
<b>NEIMS</b>	National Education Infrastructure Management System
<b>NGOs</b>	Non Governmental Organisations
<b>SASA</b>	The South African Schools Act
<b>SGBs</b>	School Governing Bodies



## 1. LEGISLATIVE FRAMEWORK

- a) The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- b) National Education Policy Act, 1996 (Act No. 27 of 1996)
- c) The South African Schools Act, 1996 (Act No. 84 of 1996)
  - Section 6 – Language policy of public schools
  - Section 7 – Freedom of conscience and religion at public schools
  - Section 12 A – Merger of public schools
  - Section 33 – Closure of public schools
  - Section 37 – School funds and assets of public schools
  - Section 58 A – Alienation of assets of public schools
- d) Labour Relations Act, 1995 (Act No. 66 of 1995)
- e) Employment Of Educators Act, 1998 (Act No. 76 of 1998)
- f) Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)
- g) Norms and Standards for School Funding
- h) Education White Paper 6, July 2001
- i) Provincial education policies and acts

## 2. BACKGROUND

The report of the Ministerial Committee on Rural Education (2005) proposes that the Department of Education provide guidelines for the rationalization of small rural and farm schools including closures, mergers and expropriations. The South African Schools Act, 1996 (Act No. 84 of 1996) (the SASA) in Section 12 A provides for the merger and Section 33 for the closure of public schools.

The purpose of the *Guidelines for the Merger and Closure of Rural and Farm Schools* document is to provide a framework which will assist provincial departments of education to expedite the merging and closing of farm and rural schools by 2012. The merger and closure of schools are not limited to rural and farming communities and may occur in urban communities as well. This document however describes the process for merger and closure at rural and farm schools and embraces the important contribution larger, better resourced schools can play in development and poverty alleviation in rural areas.

The document must be read in conjunction with the document entitled: *“Guidelines for the implementation of the regulations relating to the minimum requirements for an agreement between the Member of the Executive Council and the owner of the private property on which a public school is situated.”* This document highlights:

- a) The criteria for entering into a Section 14 Agreement;
- b) The role of the provincial rural education coordinator;
- c) The role of the district director/ manager;
- d) The role of the district team dealing with Section 14 Agreements;
- e) Governance of public schools on private property;
- f) Access to schools on private property;
- g) Security of occupation and use of private property by the school;

- h) Maintenance and improvement of the school buildings and property as well as the supply of basic services to the school;
- i) The protection of the land owners rights; and
- j) What to do in the case of the breach of an agreement and guidelines for resolving disputes.
- k) Expropriation of Land

### 3. PROBLEM STATEMENT

Rural and farm schools exist in a complex environment with much diversity. After more than 12 years of democracy the situation at many farm and rural schools remains desperate. Many of the challenges of farm and rural schools can be resolved through mergers and closures. The process of merging and closing rural and farm schools therefore requires urgent finalization. The following have been identified as the main reasons for the merger or closure of rural and farm schools:

#### a) Number of learners

A decline in the admission of learners at rural or farm schools challenges the cost effectiveness of maintaining such schools. State contributions (including personnel costs) are calculated based on learner numbers. A reduction in learner numbers often contributes to problems around staff establishment and curriculum provisioning. This means educators are sometimes forced to teach many grades across phases in one classroom. The guidelines do not prescribe what constitutes a small or large school but recognise that provincial contexts are different and that provinces may therefore use different norms to determine school size.

#### b) Curriculum considerations

A low learner enrolment results in schools being unable to provide adequate curriculum choices. The few educators available on the staff establishment are often required to teach multi-grade classes that extend across phases at times. It is important that instances be avoided where one educator teaches several grades in one classroom across Phases.

#### c) Accessibility of schools

The state or non-existence of access roads to schools in rural areas and the distances traveled by learners to school are important criteria to consider when contemplating the merger or closure of rural and farm schools. Many learners are forced to walk long distances to and from schools. The proximity of a public school on private property may complicate access to the school by educators, learners, parents, government officials, contractors and other service providers.

#### d) School infrastructure

Many rural and farm schools do not function properly due to the lack of adequate facilities such as, no water in the school yard, no proper functional toilets and dilapidated buildings. According to the National Education Infrastructure Management System (NEIMS), the infrastructure conditions of 11% of 28786 'operational' school sites assessed are very poor and 15 % of 28786 'operational' school sites assessed are poor.

In some cases schools with adequate facilities are under-utilised, for example where classrooms stand empty.

Many public schools in rural and farming communities are located on private property which makes the maintenance and/or improvement of the infrastructure of these schools difficult, due to legislation that prohibits the expenditure of public funds on private property.

### **e) The retention of learners**

The proximity and size of rural and farm schools do not always support the smooth progression of learners from the General Education and Training (GET) phase to the Further Education and Training (FET) phase. This requires careful planning by provinces in order to ensure that when schools are merged or closed in rural and farming communities it does not impede learner progress beyond Grade 7. Small schools in close proximity of each other should be merged into one entity which provide for infrastructure in addition to classrooms such as libraries, laboratories, workshops for practical subjects, sports fields, etc. Learners who are forced to travel long distances must be accommodated in hostels. Safe transport must be provided to transport learners from their homes to the hostel on a weekly, monthly or quarterly basis.

### **f) Attracting and retaining educators**

Small rural and farm schools do not provide for large staff establishments which detract from the departmental vision to attract and retain educators in rural areas. The broad implementation plan for the merger and closure of schools should include educator accommodation as educators often travel long distances on a daily basis to reach schools.

### **g) Public schools on private property**

In some cases the process of signing Section 14 agreements are prolonged or does not render a positive outcome which may warrant the merger or closure of a school. It is recommended to gauge the attitude of land owners as some of them may be willing to donate land that may accommodate merged schools.

For various reasons land owners resist the signing of Section 14 agreements which may compel the province to close the school, to merge it with another school in the area or to embark on a land expropriation process.

## **4. THE AIM OF THE MERGER AND CLOSURE OF RURAL AND FARM SCHOOLS**

The merger and closure of rural and farm schools aim to improve the quality of education, to expedite the resourcing of schools, to promote access to schools and to ensure the retention of learners and educators in rural and farm schools.

## **5. THE MERGER AND CLOSURE PROCESS**

The merger and closure processes must be approached as a provincial project, which must be completed within a set timeframe. Before the merger and closure processes commence the province must identify the schools eligible for merger and closure. The following research actions must be considered:

- a) The provincial department must ensure that they have a clear indication of present and predicted settlement patterns and/or population trends in the area;
- b) The provincial department must ensure that they have a clear indication of present and planned local municipality development programmes;
- c) Determine the attitude of land owners as some of them may be willing to donate land that may accommodate merged schools;
- d) Explore ways to attract and retain learners in rural and farm schools especially to ensure transition from the GET phase to the FET phase;
- e) Determine the support required by learners and educators moving from small rural and farm schools to larger merged schools.

### 5.1 The process to merge public schools

Section 12A of the SASA sets out the merger process of two or more public schools. Before merging two or more public schools the Member of the Executive Council (MEC) must:

#### Step 1

Give written notice to the schools in question of the intention to merge them. When merging public schools on private property it is also important to:

- a) Notify the owner of the private property of the MEC's intention to merge the schools in question;
- b) Consider the MEC's contractual obligations in terms of the agreement contemplated in section 14;
- c) Renegotiate the MEC's obligations in terms of the existing agreement if necessary; and
- d) Negotiate a new agreement in terms of section 14 if the single school is to be situated on private property.

#### Step 2

Publish a notice inviting comments from the public and giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated.

#### Step 3

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 step 2.

#### Step 4

Consider the representations received from school governing bodies and any other interested persons.

#### Step 5

Hear possible appeals against the decision. Section 12A (7) of the SASA makes provision for the governing body of a public school to be merged, to appeal to the Minister against the decision.

### Step 6

Ensure compliance with all obligations applicable to labour law. At this point consideration must be given for the position of principal, other school management positions and the allocation of teaching positions. Competencies and training received must be considered when placing educators.

### Step 7

The employee assistance programme of the province must support educators moving from small rural or farm schools into larger merged schools. This support must be extended to professional support by district offices regarding the management of larger classroom sizes, assessment approaches and other potential curriculum challenges.

District offices must ensure additional support for learners and the parents of the learners moving from small rural or farm schools into larger merged schools. Educators must also accommodate the different learning needs of learners that move from smaller schools into larger merged schools.

### Step 8

Ensure that the now unutilised school is deregistered. Sections 12A, 37 and 58 provides the procedures to follow regarding the management of all assets, liabilities, rights and obligations of the schools that are merged.

**(12A)** (5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school.

**(37)** (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

**(58A)** (2) No person may dispose of any assets owned by a *public school* to another person or body without the written approval of the *Member of the Executive Council*.

### Step 9

Monitor and evaluate the outcome of the merger process. Make additional recommendations to the provincial coordinating team. Ensure that an interim SGB is elected.

### Step 10

Publish the merger of the two or more public schools by notice in the Provincial Gazette.

## 5.2 The process to close public schools

Section 33 of the SASA sets out the process for the closure of public schools. Before closing public schools the Member of the Executive Council must:

### Step 1

Inform the governing body and the broader school community of the intention to close the school and the reasons thereof.

### Step 2

Grant the governing body and broader school community a reasonable opportunity to make representations to the MEC.

### Step 3

Conduct a public hearing (give reasonable notice for the public hearing) to enable the community to make representations to the MEC.

### Step 4

Consider the representations received from the School Governing Body and/or community representations.

### Step 5

Ensure that the now unutilised school is deregistered. Sections 12A, 37 and 58 provides the procedures to follow regarding the management of all assets, liabilities, rights and obligations of the schools that are merged. Section 33(3) provides that all assets and liabilities devolve on the State.

**(12A)** (5) All assets, liabilities, rights and obligations of the schools that are merged, must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), vest in the single school.

**(33)** (3) If a public school is closed in terms of subsection (1) all assets and liabilities of such school must, subject to the conditions of any donation, bequest or trust contemplated in section 37(4), devolve on the State unless otherwise agreed between the Member of the Executive Council and the governing body of the school.

**(37)** (4) Money or other goods donated or bequeathed to or received in trust by a public school must be applied in accordance with the conditions of such donation, bequest or trust.

**(58A)** (2) No person may dispose of any assets owned by a *public school* to another person or body without the written approval of the *Member of the Executive Council*.

### Step 6

The employee assistance programme of the province must support educators moving from small rural or farm schools into new schools. This support must be extended to professional support by district offices regarding the management of larger classroom sizes, assessment approaches and other potential curriculum challenges.

District offices must ensure additional support for learners and their parents moving from small rural or farm schools into new schools. Educators must also accommodate the different learning needs of learners that move from smaller schools into new schools.

**Step 7**

Monitor and evaluate the outcome of the closure process. Make additional recommendations to the provincial coordinating team.

**Step 8**

Publish the closure of the public school by notice in the Provincial Gazette.

## 6. THE PROVINCIAL COORDINATING TEAM

A provincial coordinating team must be established to guide the merger and closure process. The team must consist of key stakeholders within the provincial department of education dealing with for example the provincial rural education coordinator, human resources, finance, legal services, physical planning, curriculum, scholar transport, school nutrition, etc.

### The role of the provincial coordinating team

- a) Establish a provincial database of all public schools in farm and rural areas. The database should include interalia, the demographic, topographic, infrastructural, as well as, legal ownership of the property.
- b) Publish notices inviting comments from the public and giving the reasons for the proposed merger in one or more newspapers circulating in the area where the schools in question are situated.
- c) Receive representations from the governing bodies of the schools in question and any other interested persons (within 90 days of the placement of the notice).
- d) Consider and respond to the representations received from school governing bodies and any other interested persons in consultation with the district implementation team.
- e) Hear possible appeals against the decision together with the district implementation team.
- f) Ensure compliance with all obligations applicable to labour law.
- g) Monitor and support districts.
- h) Eliminate hinderances that impede the process of concluding agreements ensuring a prompt and efficient delivery of service.
- i) Provide legal assistance to the district during the merger and closure process.
- j) Provide bi-monthly reports to the Head of Department regarding with the merger and closure process in the province.

## 7. THE DISTRICT IMPLEMENTATION TEAM

The district should establish a transversal task team constituted in terms of relevant skills required for the process e.g. physical planner, circuit manager, legal advisor and any other official with the required expertise. The district implementation team ensures the role out of the merger and closure process. The team must develop an implementation plan taking into consideration school infrastructure, the availability of transport, funding, the school nutrition programme, accommodation, staffing, human resource development, furniture, learner support materials, school grounds, etc. The approach taken by the team

should be assertive yet, respectful to all parties involved. The language of communication should take local needs into consideration to allay unnecessary misinterpretation. Written communications must be in any of the eleven official languages easily understood by all parties concerned.

### The role of the District Director/ Manager

- a) Establish the district transversal task team.
- b) Expedite all processes efficiently and effectively, and ensure that the merger and closure process completes within the set time frame.
- c) Ensure that all parties adhere to their obligations in terms of infrastructure and other resources.
- d) Provide monthly reports to the provincial coordinating team regarding progress with the merger and closure process at schools in the district.

### The role of the district implementation team

- a) Establish a district database of all public schools in farm and rural areas. The database should include interalia, the demographic, topographic, infrastructural, as well as, legal ownership of the property.
- b) Consult with local municipalities in order to ensure that the closure and mergers of schools are aligned with municipal integrated development plans.
- c) Support the governing body of the school throughout the merger or closure process.
- d) Provide written notice to the schools in question of the intention to merge or close them.
- e) Consider and make recommendations regarding the position of the principal, other school management positions and the allocation of teaching positions. This must be done in line with the requirements of labour law.
- f) Ensure employee assistance and professional support for educators moving from small rural or farm schools into larger merged schools.
- g) Ensure additional support for learners and their parents moving from small rural or farm schools into new schools.
- h) Ensure the deregistration of the unutilised school building.
- i) Manage all assets, liabilities, rights and obligations of merged or closed schools according to the procedures stipulated in Sections 12A, 37 and 58 of the SASA.
- j) Keep written records of all processes regarding the merger and/or closure of schools.
- k) Monitor and evaluate the outcome of the merger and closure process and make additional recommendations to the provincial coordinating team.

## 8. MERGING 'FEE-SCHOOLS' WITH 'NO-FEE SCHOOLS'

In some instances farm schools may merge with village schools which may result in learners from a 'no-fee school' entering a school that charge monthly school fees. In this case the guidelines document recommends that the learners inherited from the farm or rural no-fee school be given automatic exemption and their allocation from the Provincial Education Department be transferred to the new or merged school. Provincial Education Departments must review the poverty score of the new or merged school to determine its new ranking. If the new ranking places the school in a fee-charging quintile then the fee exemption policy will apply according to Section 39 of the SASA. If the school is placed in a no-fee quintile then the no-fee policy will apply to all learners in the school.



## 9. CONSULTATION

Consultation with educators at schools earmarked for mergers and closures will ensure the smooth implementation of the amalgamation of rural and farm school process. The consultation process must also extend to parents, NGO's, traditional leaders, broader communities, farmer unions, teacher unions and school governance structures. Teachers Unions must be engaged in the various bargaining councils.

The continuous dissemination of information between land owners, traditional authorities and the provincial departments of education will enhance relationships and assist cooperation. This can take the form of a periodic newsletter stating current developments and future plans for education in the province.

## 10. SCHOOL GOVERNING BODIES (SGBS)

The SASA in Section 12A provides the procedures to follow regarding the SGBs of the schools that are merged:

- (12A)** (6)(a) The governing bodies of the schools that are merged must have a meeting before the merger to constitute a single interim governing body comprising of all the members of the governing bodies concerned.
- (b) The interim governing body must decide on the budget and differences in codes of conduct and school fees, as well as any issue that is relevant to the merger or which is prescribed, until a new governing body is constituted in terms of sections 23 and 28.

## 11. LANGUAGE, RELIGION AND CULTURAL CONSIDERATIONS

The SASA in Section 6 outlines the language policy for public schools:

- (6)** (2) The governing body of a public school may determine the language policy of the school subject to the Constitution, this Act and any applicable provincial law.
- (3) No form of racial discrimination may be practised in implementing policy determined under this section.
- (4) A recognised Sign Language has the status of an official language for purposes of learning at a public school.

Language should be considered during the process of merging and closing schools. The medium of instruction in the Foundation Phase should reflect the primary language or home language of the learners.

The merger and closure process should respect and take into consideration the diverse religious community of South Africa. The SASA in Section 7 addresses freedom of conscience and religion in public schools:

- (7) Subject to the Constitution and any applicable provincial law, religious observances may be conducted at a public school under rules issued by the governing body if such observances are conducted on an equitable basis and attendance at them by learners and members of staff is free and voluntary.

In the same way the merger and closure process should respect and take into consideration different cultural or traditional practices sometimes associated with schools. This becomes important when for example a school was named after a local traditional leader and may have to be merged with another school named after another traditional leader.



**DIRECTORATE RURAL EDUCATION**

**Guidelines for the Implementation of Section 14  
Agreements**



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## 1. BACKGROUND

In terms of section 29 of the Constitution of the Republic of South Africa, 1996 all children have a right to basic education irrespective of their geographical location. The 2005 Ministerial Committee Report on Rural Education alludes to the poor quality of education in public schools on private property (PSOPP) particularly, schools in the farm and rural areas. The quality of education is compromised by the protracted process in concluding Section 14 Agreements as envisaged in South African Schools Act (SASA). Furthermore, the findings of the Ministerial Committee endorse the idea of more effective and creative implementation of Section 14 to enhance the delivery of quality public education.

In line with effective delivery of quality education, the following guidelines are envisaged to speed up the process of managing the conclusion of Section 14 Agreements effectively and efficiently.

## 2. LEGISLATIVE FRAMEWORK

- 2.2 The Constitution of South Africa, 1996
- 2.3 South African School Act, 1996 (Act No. 84 Section 14 and 58 of 1996)
- 2.4 South African Schools Act: Public Schools on private property - Regulations relating to the minimum requirements for an agreement between the member of the executive council and the owner of the private property on which a public school is situated (Government Gazette No. 18566 Vol.390)
- 2.5 Education Laws Amendment Act No. 100 of 1997 (Government Gazette No. 18480 Vol. 389)
- 2.6 Education Laws Amendment Act No. 53 of 2000 (Government Gazette No. 21783 Vol. 425)

## 3. CRITERIA FOR ENTERING INTO A SASA, SECTION 14 AGREEMENT

The logistical situation will determine the viability of having to enter into an agreement with a landowner. Where practically possible it would be expedient to minimize the scenario of public schools on private property.

Some of the criteria to consider before entering into an agreement with a private land owner are:

- 3.1 Evidence of legal ownership must be provided by the land/property owner ( for example, proof of identity; title deed; affidavit where necessary)
- 3.2 The land owner is willing to enter into an agreement and does not perpetually harass the learners or teaching staff.
- 3.3 The school environment is potentially conducive to teaching and learning, that is, adequate infrastructure, sanitation and other amenities are available or can be availed.
- 3.4 Viability in terms of consistency in the enrolment of learners over a period of three or more years.
- 3.5 Majority of the learners reside on the land or within reasonable distances from the school; preferably the school closest in proximity to where the learner resides, hence the learner does not have to pass the school and go to another which is further away.

- 3.6 Learners attend the school in question as there are no other public schools in the vicinity where they can access education.
- 3.7 The safety and security of the school community is not at risk.
- 3.8 SASA No. 84 Section 58 of 1996 (expropriation of land) will apply as a last resort if 3.2 do not work, and there is a dire need for utilization of the property for educational purposes.

**NOTE**

- a. In the event that the land owner is belligerent and / or unwilling to enter into an agreement, alternate arrangements may need to be made to accommodate the learners and teachers or expropriation of the land as a solution should be considered if the school is viable and there is a need for its continued existence.
- b. Low learner enrolments present a multitude of challenges that generally compromises quality education; hence agreements must be entered into with discretion. However, if development of settlement is envisaged and the school in question would service the community, it would be expedient to enter into an agreement despite the present dwindling learner enrolment.

**4. ROLE OF THE PROVINCIAL RURAL EDUCATION COORDINATOR.**

- 4.1 Establish a provincial database of all public schools on private property in farm and rural areas. The database should include interalia, the demographic, topographic, as well as, legal ownership of the property.
- 4.2 Monitor and support districts in the process of concluding the SASA, section 14 agreements to ensure legal compliance.
- 4.3 Eliminate hindrances that impede the process of concluding agreements ensuring a prompt and efficient delivery of service.
- 4.4 Facilitate provision of legal assistance for the district with regard to the conclusion of agreements.
- 4.5 Facilitate conclusion of agreements on land donations (see 3.1)
- 4.6 Maintain a provincial database of all agreements.
- 4.7 Develop tools to monitor contractual obligation within the framework of guidelines and lease agreement.

**5. ROLE OF THE DISTRICT DIRECTOR (DD) / MANAGER (DM)**

- 5.1 Establish a transversal team constituted in terms of relevant skills required for the process e.g. physical planner, circuit manager, legal advisor and any other official with the required expertise.

- 5.2 Expedite all processes efficiently and effectively to eliminate unnecessary delays and alienation of potential donors by putting together a project team, who will manage the process within a specific timeframe.
- 5.3 Take all reasonably practical measures to assist the parties in honouring their obligations in terms of infrastructure and other resources. All parties involved should act in the best interest of the child.
- 5.4 Submit District report on PSOPP matters as requested by the provincial office, this may include payments, viability, functionality and other contractual obligations.

## 6. ROLE OF THE DISTRICT TEAM DEALING WITH SECTION 14 AGREEMENTS

- 6.1 Establish a district database of all public schools on private property (PSOPP) in farm and rural areas. The database should include inter alia, the demographic, topographic, as well as, legal ownership of the property.
- 6.2 Keep written records of meetings and agreements
- 6.3 Determine the status of agreements at the schools.
- 6.4 Examine the title deeds of the property and verify that provision is made for the school in the event that the property changes ownership, either through a process of sale, ill health or demise of the owner.
- 6.5 Verify compliance with, Section 14 of the SASA where agreements have been concluded.
- 6.6 Effect amendments to the agreement where there is a lack of consistency in terms of the provisions of the Act. There may be a need to begin the process afresh.
- 6.7 Inform and involve the SGB in the process of determining the feasibility of entering into an agreement with the land owner, where agreements have not been signed. The views of the governing body on the proposed agreement must be taken into consideration.
- 6.8 Negotiate in good faith and strive for the best deal (e.g. land donation, non rental contract) especially where there is low learner enrolment.
- 6.9 Negotiate for a possible donation of land, especially where land owners give indications of lack of time to meet their obligations towards the school.
- 6.10 Make copies of the signed agreement available to the owner, district office and school governing body (SGB). The SGB, in turn, must inform all internal stakeholders and whosoever may be affected by the agreement or amendments thereto to ensure that obligations are met.
- 6.11 The approach taken by the project team should be assertive yet, respectful to all parties involved.
- 6.12 The language of communication should be taken into consideration to allay unnecessary misinterpretation.
- 6.13 The proposed agreement must be in any of the eleven official languages easily understood by all parties concerned.



## 7. GOVERNANCE OF A PUBLIC SCHOOL ON PRIVATE PROPERTY

- 7.1 All reasonable maintenance, including insurance, security to the buildings and immovable assets and improvements is the responsibility of the owner in terms of the provisions of the Deeds Registeries Act, 1937 (Act No. 47 of 1937). However, if such maintenance is the responsibility of the school, a separate agreement must be entered into between the school and the Owner stipulating the extent of the maintenance. Such an agreement may be entered into between the school and Owner only if the SGB has been allocated section 21(1) function in terms of SASA
- 7.2 In the spirit of quality education and the interest of maintaining the school buildings and other physical amenities, regular meetings between the land owner and the SGB are necessary.
- 7.3 The land owner must be provided with the constitution of the SGB and the South African Schools Act (refer to legislative framework above) to facilitate the awareness of obligations, roles and responsibilities of school governing bodies.
- 7.4 In order to facilitate the process of obtaining permission for employees to attend the capacity building programme for the school governing bodies, the land owner must be provided with a copy of the training schedule.
- 7.5 In the case of an agreement being reached between a religious organization and the MEC, the SGB must develop a policy on religious observances as contemplated in the Policy on Religion and Education, 2003 (Government Gazette No 25459 of 2003).
- 7.6 Minutes of these meetings must be signed by both parties.

## 8. ACCESS TO SCHOOLS ON PRIVATE PROPERTY

- 8.1 The land owner may exercise his/her right of access to the property if such a right does not violate the best interest of the learner.
- 8.2 The Department of Education in collaboration with Department of Public Works must ensure erection of clear road signage giving directions to the school.
- 8.3 An access road to the school must also be facilitated through negotiations with the local municipality and the Departments of Education, Transport and Public Works.

## 9. SECURITY OF OCCUPATION AND USE OF THE PROPERTY BY THE SCHOOL

- 9.1 The land owner may not deprive the school the right to occupation or use of the property for activities related to education.
- 9.2 A separate agreement must be concluded for the accommodation of educators, establishment of food gardens and hostels, where the need arises.
- 9.3 The demarcation of the land is the responsibility of the land owner.
- 9.4 The agreement must make provision for the fencing of the demarcated area and for the access roads.

## 10. MAINTENANCE AND IMPROVEMENT OF THE SCHOOL BUILDINGS AND PROPERTY AND SUPPLY OF THE NECESSARY SERVICE.

- 10.1 Additions to the existing building should be done in accordance with the terms of agreement between the land owner and the MEC for Education. If the agreement does not stipulate such a proviso, it must be amended to provide for the additions to the existing building.
- 10.2 The agreement must also make provision for compensation of additional improvement made to immovable assets in the event of a merger (section 12 A of SASA) or closure (section 33 of SASA).
- 10.3 Parties to the agreement must honour their obligations in terms of the maintenance of the property.

## 11. PROTECTION OF OWNER'S RIGHTS

- 11.1 All issues pertinent to rentals and leases must be clearly specified in the agreement.
- 11.2 Undue delay of payments should be avoided as it is often the cause of grievances resulting into disputes.

## 12. BREACH OF AGREEMENT AND DISPUTE RESOLUTIONS

- 12.1 Should there be a breach of agreement by either of the parties, and the appeal is disregarded or reaches a deadlock, the responsible official must rely on the assistance of legal services. Legal services must facilitate the amicable resolution of disputes resulting from non-compliance with the agreement.
- 12.2 Legal services must ensure that all disputes emanating from non compliance with the agreement are resolved amicably.

## 13. LAND DONATIONS

If the District Task Team has successfully negotiated a land donation, the provincial office must facilitate the conclusion of the agreement. However, prior to entering such an agreement the provincial office will request the Department of Local and Provincial Government (DPLG) to complete a geo-tech report. The DPLG will only conduct a geo-tech audit if it deems it feasible. This property will not be accepted nor registered without a geo-tech report. The geo-tech report is an audit of the land which appraises the land in terms of availability of water, dolomitic conditions, etc. and is a costly process. In essence, the provincial office will not accept a donation of any sort that will incur unreasonable expenses or be a burden to the State in any way, especially financially.

The Provincial Department of Education must facilitate the process of transfer of land, and all legal documentation must be signed and copies properly filed.

It tends to be a long and tedious process. The district task team must make continuous follow ups and keep the donor informed of proceedings. There is a tendency of losing out on a good preposition simply because of delays but mostly owing to lack of communication.

## 14. EXPROPRIATION OF LAND

The report of the Ministerial Committee on Rural Education (2005) proposes that the Department of Education provide guidelines for the rationalisation of small rural and farm schools including closures, mergers and expropriations. The South African Schools Act, 1996 (Act No. 84 of 1996), Section 58, provides for the expropriation of land or a real right in or over land for any purpose relating to school education in a province.

The Expropriation of land for purposes relating to school education should be considered as a last resort and with the aim to improve the quality of education, to expedite the resourcing of schools, to promote access to schools and to ensure the retention of learners and educators in rural and farm schools.

14.1 The expropriation of land process must be approached as a provincial project, which must be completed within a set timeframe. Before the expropriation of land process commences, a provincial audit must be performed to identify the public schools on private property where the expropriation of land is appropriate.

14.2 Section 58 of the SASA sets out the process to follow for the expropriation of land or a real right in or over land for any purpose relating to school education in a province.

58 (1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land or a real right in or over land for any purpose relating to school education in a province.

14.3 Before the expropriation process begins the Member of the Executive Council (MEC) for Education must:

### Step 1

Give notice in the Provincial Gazette of his or her intention to expropriate in terms of Section 58 (1) of the SASA. The notice in the Provincial Gazette must:

- a) identify the land or any real right in or over the land;
- b) give interested parties an opportunity to make written submissions regarding the expropriation within a period of not less than 30 days; and
- c) Invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Member of the Executive Council in that regard, and draw attention to the provisions of Section 58 (5) of the SASA which states:

58 (5) Any expropriation contemplated takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

### Step 2

The Member of the Executive Council may, after considering all the written submissions, expropriate the land or any real right in or over the land by notice in the Provincial Gazette.

### Step 3

The expropriation takes effect immediately even though compensation payable in respect of such land or real right in or over such land has not been finally determined or paid.

### Step 4

If the Member of the Executive Council 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. Section 58 (7 - 9) of the SASA describes the role of the arbitrator:

- a) The arbitrator determines the time, venue and procedures which apply in the arbitration.
- b) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.
- c) The arbitrator may not make an award of costs.

### Step 5

The arbitrator is paid, out of moneys appropriated for this purpose by the provincial legislature, such fees and allowances as the Member of the Executive Council may determine, with the concurrence of the Member of the Executive Council responsible for finance.

### Step 6

Any transfer duty, stamp duty, other fees or costs payable as a result of any transfer of land or a real right may be paid in full or in part from funds appropriated by the provincial legislature for that purpose.

### Step 7

Any claim to compensation arising from the expropriation must be determined as contemplated in the Constitution and Section 58 of the SASA.

## GLOSSARY

<b>Expropriation</b>	<b>Expropriation</b> is the act of taking possession of an item of <b>property</b> from its owner in exchange for little or no compensation and irrespective of the wishes of the original owner. The term is used to both refer to acts by a <b>government</b> or by any group of people. (Wikipedia)
<b>A real right</b>	<b>A real right</b> means any right to use or occupy real property.
<b>District</b>	Refers to the tier in the province that is at the forefront in dealing with the schools. Owing to difference in nomenclature, in some provinces it is referred to as the region.
<b>Deeds Registeries Act, 1937 (Act No. 47 of 1937).</b>	This Act regulates agreements between landlord / landowner and tenant .







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