

DEPARTMENT OF BASIC EDUCATION

NO. 7796

6 August 2026

SOUTH AFRICAN SCHOOLS ACT, 1996**REGULATIONS ON THE PROHIBITION OF THE PAYMENT OF
UNAUTHORISED REMUNERATION OR THE GIVING OF OTHER
FINANCIAL BENEFITS, OR BENEFITS IN KIND TO CERTAIN
EMPLOYEES, 2026**

The Minister of Basic Education intends, in terms of section 61(1)(aC) of the South African Schools Act, 1996 (Act No. 84 of 1996) to make the Regulations set out in the Schedule.

Any person who wishes to submit written comments or representations on the draft Regulations is invited to do so within 30 days from the date of publication of this Regulations by—

- (a) posting such comments to the following address:

Private Bag X895
PRETORIA
0001;

- (b) delivering such comments by hand at the following address:

The Department of Basic Education
222 Struben Street
Pretoria
0001; or

- (c) e-mailing such comments to the following address:

Section38A@dbe.gov.za



SIVIWE GWARUBE, MP
MINISTER OF BASIC EDUCATION
DATE: 5 August 2026

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the National Education Policy Act, 1996 (Act No. 27 of 1996), and the South African Schools Act, 1996 (Act No. 84 of 1996), bears the meaning so assigned, unless the context otherwise indicates –

"Act" means the South African Schools Act, 1996 (Act No. 84 of 1996);

"additional work" means any activity which qualifies for additional remuneration as contemplated in section 38A of the Act and which is not remunerated in terms of the employment agreement prescribed by the Employment of Educators Act, 1998 (Act No. 76 of 1998) and the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"agreement" means an agreement in writing between a state employee and the governing body of a public school, which–

- (a) clearly outlines duties, duration not exceeding the academic year, payment structure and obligations;
- (b) states that the agreement does not create a secondary employer relationship;
- (c) provides that state employment obligations take precedence; and
- (d) confirms that all payments or benefits are subject to applicable taxation;

"authorised remuneration" means any remuneration, benefit in kind or other financial benefit payable or otherwise transferable to a state employee for additional work where the payment of such remuneration, benefit in kind or other

financial benefit is not in terms of the employment agreement prescribed by the Employment of Educators Act, 1998 (Act No. 76 of 1998) and the Public Service Act, 1994 (Proclamation No. 103 of 1994), and for which prior approval has been obtained by the governing body concerned in terms of section 38A(2) of the Act and these Regulations; and

"state employee" means a person who is in the employ of the State 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).

Application and scope

2. (1) These Regulations apply to all public schools and state employees.

(2) These Regulations do not apply to employees of a governing body of a public school.

Governing body's policy

3. The governing body of a public school must develop and adopt a financial policy which includes the circumstances whereunder, and the terms and conditions on which it may pay or otherwise transfer authorised remuneration to state employees for additional work, provided such policy complies with section 38A of the Act and these Regulations.

Application by governing body

4. (1) The governing body of a public school may apply to the Head of Department in the relevant province, or a duly authorised delegate,

for authorisation for remunerating a state employee for additional work undertaken on instruction of that governing body for the benefit of the school.

(2) All applications contemplated in subregulation (1) must be in the form of Form 1, provided for in Annexure 1.

(3) The governing body of the public school must attach, to its application, a written notice by the state employee confirming his or her willingness to do the additional work.

(4) The application must be accompanied by the school's section 38A policy.

Approval and appeals

5. (1) The Head of Department in the relevant province may not unreasonably refuse the application of the governing body of a public school.

(2) The Head of Department in the relevant province must, in writing, and within three (3) months of receiving the application, approve or reject the application and provide written reasons if the application is rejected.

(3) In the event where the application is not approved, or no reasons are provided for the decision on an application, the governing body of the public school has the right to appeal to the Member of the Executive Council responsible for education in the province against this decision.

(4) The appeal must be in writing and must contain all the details prescribed in subregulation (2) and any other information relevant to the matter.

(5) The Member of the Executive Council must consider the appeal within 14 days of receipt of the appeal and must communicate his or her decision to the governing body of the public school and the Head of Department in the relevant province.

(6) If the appeal is unsuccessful, the Member of the Executive Council must provide written reasons therefor.

Duration

6. The governing body of a public school may not enter into an agreement with a state employee for a period longer than a school's financial year.

Record-Keeping for work undertaken by state employees

7. (1) The governing body of a public school must keep an accurate record of the actual time additionally worked by the state employee for which the state employee will receive authorised remuneration from the governing body if the state employee is remunerated on an hourly basis.

(2) The governing body of a public school must keep a written record of the additional responsibilities for which a state employee will receive authorised remuneration from the governing body and each state employee must submit a quarterly report detailing the additional responsibilities to the governing body.

Remuneration of state employee

8. The authorised remuneration that the governing body pays the employee for the actual time, additional work or additional responsibility will

be determined by the school's Section 38A policy and set out in the agreement with the employee.

Agreement between the state employee and governing body

9. (1) The governing body of a public school must enter into a written agreement with each state employee for which permission is granted in terms of regulation 5(2), which must comply with the provisions of section 38A of the Act and these Regulations.

(2) The state employee must be given a copy of the signed agreement.

(3) Disputes relating to the agreement between the state employee and the governing body must be referred to the employer of the state employee for mediation within seven (7) days of the dispute and the employer must have 14 days to mediate the dispute. If the dispute is not resolved within 14 days after referral for mediation, then the matter must be taken to relevant courts.

Prohibition of certain categories of remuneration

10. An application for authorisation for remunerating of a state employee for additional work may not deal with remuneration related to—

- (a) any service that has already been paid for by the State;
- (b) any benefit in kind, unless a monetary value is attached thereto;
- (c) the payment of gratuities;
- (d) the payment of bonuses; and
- (e) the exemption from the payment of school fees, excluding a formal application in terms of the Regulations for the exemption of parents from the payment of school fees.

Proof of additional work done by a state employee

11. (1) The record contemplated in regulation 7 must be made available for inspection to the Head of Department in the relevant province or his or her delegate.

(2) The Head of Department in the relevant province or a duly authorised delegate may, quarterly, verify the additional work done as contemplated in these Regulations.

Short title and commencement

12. These Regulations are called the Regulations on the Prohibition of the Payment of Unauthorised Remuneration or the Giving of Other Financial Benefits or Benefits in Kind to Certain Employees, 2026, and come into operation on the date of publication in the Gazette.

ANNEXURE 1**FORM 1****PART A****APPLICATION FORM IN TERMS OF SECTION 38A OF THE SOUTH AFRICAN SCHOOLS ACT, 1996 (Act No. 84 of 1996) BY THE SCHOOL GOVERNING BODY (SGB)****(To be filled by the SGB)****ACADEMIC YEAR 01 JANUARY ____ TO 31 DECEMBER ____****1. Details of the school**

1.1	District	
1.2	Name of school	
1.3	School EMIS number	

2. Details of the State Employee

2.1 Surname	
2.2 First Names	
2.3 PERSAL number	
2.4 Rank	

3. Give the nature of the service/activity/activities to be rendered by state employee to be paid the additional remuneration or benefits:

(For time spent more than 1800 hours p.a with school extra-curricular activities and/or additional responsibilities).

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4. The nature/type of the proposed remuneration/benefit:

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5. The amount proposed to be remunerated or nature of benefit:

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**6. Give full details of the extent of such payment to the state employee.
(Attach any additional information that will assist in determining this)**

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7. When will the remuneration be paid?

Monthly	☐	Quarterly	☐	Once off	☐
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8. Confirmation that school funds, other than NNSSF, will be used to remunerate the state employee.

Yes		No	
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9. Confirmation of compliance in terms of Section 20 (5) – (9) of SASA with regard to additional staff employed by the SGB.

Yes		No	
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10. Confirmation that the SGB has budgeted for this section 38A expenditure (including taxes) and has calculated the reasonable monetary value of any benefit.

Yes		No	
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UNDERTAKING BY SCHOOL GOVERNING BODY
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We, the School Governing Body (SGB) of _____ hereby declare and undertake to ensure compliance with the provisions of Section 38A of the South African Schools Act, 1996 (Act No. 84 of 1996) (the Act).

1. We have applied to contract the services of _____ for additional duties and responsibilities at the school in terms of the school's policy on section 38A of the Act.
2. We confirm that section 38A application served at the structures of the SGB and that the SGB approved the application for the next financial year.
3. The additional duties and responsibilities will not interfere with the contractual obligations/duties of the state employee as contained and provided for in the Employment of Educators Act, 1998 (Act No. 76 of 1998) and/or the Public Service Act, 1994 (Proclamation No. 103 of 1994) and Personnel Administration Measures (PAM), with special reference to such duties, workloads and responsibilities as contained therein and apply to the relevant state employee.
4. We are fully versed with and have taken cognisance of the relevant Acts and Regulations (including legislation about income tax) that impact on and have consequences for the contractual relationships created by Section 38A of the Act.

5. The Department will not be held liable, vicariously or otherwise and in respect of any dispute that may arise from such contractual relationship as envisaged in terms of section 38A of the Act.
6. We affirm and undertake to disclose such full details as to the nature and extent of such payments as required by Section 38A of the Act.
7. We have complied with the provisions of Sections 20(5) to (9) of the Act.
8. The school is financially able and willing to make such payments and declare that its assets will exceed its liabilities when making such payments and or award any benefit in kind.
9. We affirm that we are fully aware of and understand the consequences of any fraudulent and corrupt practices that such payments may give rise to and possible prosecution of such persons as provided for in terms of section 4(1) the Prevention and Combatting of Corrupt Activities Act, 2004 (Act No. 12 of 2004) and the recovery of such unauthorised payments under section 38A (9) of the Act.

Chairperson: SGB
Finance Committee

Chairperson:

Signed at _____ **on** _____

PART B

**APPLICATION FORM IN TERMS OF SECTION 33 OF THE EMPLOYMENT OF
EDUCATORS ACT, 1998 (ACT NO. 76 OF 1998) OR SECTION 30 OF THE PUBLIC
SERVICE ACT, 1994 (PROCLAMATION NO. 103 OF 1994)**

**TO BE FILLED BY THE STATE EMPLOYEE
ACADEMIC YEAR JANUARY _____ TO 31 DECEMBER _____**

DESCRIPTION OF ACTIVITIES APPLIED FOR

1. Application for (please tick one of the following);

(a) Remuneration	☐	(b) Other Financial Benefits	☐	(c) Benefit in kind	☐
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2. Types of activities: (Please tick relevant activity/ies)

2.1

Sporting related activities	☐	Curriculum related activities	☐	Arts and Culture related activities	☐	Tours and excursion related activities	☐	Other	
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2.2 Give a brief description of the activities chosen above: (Not more than 30 words):

Coaching, workshops, weekends and school holiday activities.

3. Time Expended on activity/ies**3.1**

After hours	☐	Weekend	☐	School holidays	☐	Other	
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3.2 If other give a short description of the time expended on activity or activities:

(Not more than 20 words):

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4. Please indicate cost: (Tick)

Monthly	☐	Quarterly	☐	Once off	☐	Per hour	☐
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NB: Should you tick more than one activity, indicate the cost for each activity separately.

4.1 Amount

- Monthly:
- Quarterly:
- Once-off:
- Per hour:

4.2 Total maximum amount for the year:

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Undertaking by the Educator/Public Service Employee

I, _____ (PERSAL number) _____ the undersigned,
employed in the service of the _____ Department of Education and
stationed at _____

1. Confirm that I have read and understood the provisions of Section 38A of the South African Schools Act as well as the conditions of my employment contract with the Department as provided for in terms of the Employment of Educators Act, 1998 (Act No.76 of 1998) and/or the Public Service Act, 1994 (Proclamation No. 103 of 1994), Personnel Administration Measures (PAM), with special reference to such duties, workloads and responsibilities as contained therein and apply to state employees.

2. I am fully versed with and have taken cognisance of the relevant Acts and Regulations (including legislation pertaining to Income Tax) that impact on and have consequences for the additional remuneration for additional work done in terms of section 38A.

3. I confirm that the Department will not be held liable in respect of any dispute that may arise from such a contractual relationship as envisaged in terms of Section 38A.

4. I will not breach my contractual duties and obligations to my employer nor undertake such additional duties and obligations that may adversely impact on my ability to perform my functions as Educator/Administrative Support Staff.

5. I affirm that I am fully aware of the consequences of any fraudulent and corrupt practices that such payments may give rise to, and the possible prosecution of such people as provided for in terms of section 3(1) of the Prevention and Combatting of Corrupt Activities Act, 2004 (Act No. 12 of 2004) and the recovery of such unauthorised payments under Section 38A(9) of the South African School Act, 1996 (Act No. 84 of 1996).

SIGNATURE OF THE EMPLOYEE

DATE