



## basic education

Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA

Private Bag X895, Pretoria, 0001, Sol Plaatje House, 222 Struben Street, Pretoria, 0002 South Africa, Tel: (012) 357 3000, Fax (012) 323 0601, [www.education.gov.za](http://www.education.gov.za)

Ref no:64719/1

Enquiries: Adv Z Ntshwanti

Tel: 012 357 3719

Email: [Ntshwanti.Z@dbe.gov.za](mailto:Ntshwanti.Z@dbe.gov.za)

Mrs J van der Merwe  
Deputy Chief Executive Officer  
FEDSAS  
PO Box 31963  
Fichardpark  
**BLOEMFONTEIN**  
9317

Dear Mrs van der Merwe

### **FOLLOW UP LETTER REGARDING NATIONAL ENERGY CERTIFICATE TO BE DISPLAYED BY SCHOOLS BY DECEMBER 2025**

The above-mentioned matter and your letter dated 1 September 2023, in part, refers.

FEDSAS requested assistance from the Department of Basic Education (DBE) pertaining the following concerns:

The applicability of regulation 4(1) to public schools, particularly the implementation of the Regulations for the Mandatory Display and Submission of Energy Performance Certificates for Building (Amendment Regulations) in public schools.

In the said letter, FEDSAS requested assistance on the following information and input from DBE:

- *"FEDSAS would like to enquire if and to what extent the Department of Mineral Resources and Energy had sought the input of the Department of Basic Education.*
- *Furthermore, they request that the Department of Basic Education scrutinize the Regulations and amendments and provide their opinion on whether the amendments alleviate the financial burden these regulations have on our schools.*
- *Lastly, we kindly request feedback on any steps taken by the department since our previous correspondence concerning these Regulations. An update on the progress made in addressing our concerns would be greatly appreciated."*

The concerns raised by FEDSAS are individually addressed as follows:

### **Input made by the DBE to the Department of Mineral Resources and Energy on the matter**

The engagements between the two departments ensued and the DBE proposed the exclusion or exemption of public schools from the provisions of regulation 4 of the Amendment Regulations.

### **Scrutiny of the Amendment Regulations**

In view of the above-mentioned concerns, the DBE sourced a legal opinion on the subject from the Office of the Chief State Law Advisor (OCSLA), to which, OCSLA in their legal opinion concluded as follows:

"10...It is important to note from regulation 2 read with regulation 4 of the Amendment Regulations that although the primary obligation to comply with regulation 4(1) of the Amendment Regulation is imposed on the organ of state or the owner of the building, **the responsibility to ensure compliance thereof in so far as an organ of state is concern rest on the accounting officer of that organ of state. Evidently, and crucial to this opinion, it is apparent that regulation 4 of the Amended Regulations is intended to only apply to organs of state that has accounting officers contemplated in the Amended Regulations. Clearly, from the above, it is evident that regulation 4 of the Amended Regulations is not intended to apply to all organs of state, but only to certain organs of state.**". (sic) (our emphasis)

In view of the preceding argument, OCSLA remarked that although schools are organs of state as defined in section 239 (b) (ii) of the Constitution of the Republic of South Africa, 1996, regulation 4 does not apply to them since schools do not have an Accounting Officer defined in regulation 1(c) of the Amendment Regulations read with sections 1, 36 and 49 of the Public Finance Management Act, 1999 (Act 1 of 1999).

In conclusion, OCSLA held a view that public schools would not be able to comply with the dictates of regulation 4 of the Amendment Regulations, a view we hold as DBE.

### **Update on the progress made in addressing the concerns**

As mentioned above, the DBE sourced OCSLA's legal interpretation on this matter.

I trust you shall find the above in order.



**MR HM MWELI**  
**DIRECTOR-GENERAL**  
**DATE:** [26/01/2024](#)