

**GNR.1738 of 19 December 1997: Regulations relating to the minimum requirements of an agreement between the member of the executive council and the owner of a private property on which a public school is provided**

DEPARTMENT OF EDUCATION

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with the Council of Education Ministers, and with organisations representing the owners of private properties on which public schools are provided, hereby make the regulations in the Schedule in terms of sections 14 (6), read with section 61, of the South African Schools Act, 1996, relating to the minimum requirements of an agreement contemplated in section 14.

S.M.E. BENGU  
Minister of Education

November 1997.

**SCHEDULE**

ARRANGEMENT OF REGULATIONS

1. Definitions
  2. The nature and status of the agreement
  3. Provision of education and performance of the normal functions of a public school
  4. Governance of the public school
  5. Access by all interested parties to the school
  6. Security of occupation and use of the property by the school
  7. Maintenance and improvement of the school buildings and property and supply of the necessary services
  8. Protection of owner's rights
  9. Breach of agreement and dispute resolution
  10. Determination of responsibilities
- Annexure 1 *Pro forma* agreement

**1. Definitions.**—In these regulations any word or expression to which a meaning has been assigned by the Act, shall have the same meaning assigned to it in the Act, and unless the context indicates otherwise—

**"agreement"** means the agreement between the Member of the Executive Council and the owner as contemplated in section 14 of the Act and all amendments thereto;

**"owner"** means the owner of a private property on which a public school is or will be situated;

**"property"** means that portion, of the private property on which a public school is or will be situated which is referred to in regulation 5 (1);

**"the Act"** means the South African Schools Act, 1996 (Act No. 84 of 1996), and/or regulations promulgated in terms of the Act.

**2. The nature and status of the agreement.**—(1) In terms of section 14 (1) of the Act a public school may be provided on private property only in terms of an agreement.

(2) An agreement between the State and the owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and may be amended by agreement between the Member of the Executive Council and the owner.

(3) The Member of the Executive Council must invite the governing body to make a written submission on the terms of the proposed agreement, and the Member of the Executive Council and the owner must take the views of the governing body into account before concluding the agreement.

(4) An agreement must be reached before a new public school is established on private property in which case the provision of subclause (3) will not apply.

(5) An agreement and all amendments thereto must be in writing and signed by both the Member of the Executive Council and the owner.

(6) An agreement remains valid as long as the public school exists. A school can only be closed in terms of section 33 of the Act after prior consultation between the owner and the Member of the Executive Council.

(7) The governing body must make a copy of the agreement available on request, and must inform its members and learners, educators, parents and workers at the school, of the content of the agreement and any amendments thereto.

(8) A learner, educator, parent and worker at the school, member of the governing body, an official and a member of the public who has an interest in the educational activities of the school must honour the agreement.

(9) A *pro forma* agreement, ANNEXURE 1, is given as a guideline to assist the parties to the agreement.

**3. Provision of education and performance of the normal functions of a public school.**—(1) Education must be provided in accordance with the prescribed curriculum for public schools and the applicable administrative directives and as otherwise provided for in the agreement.

(2) The owner may not interfere with the normal educational activities of the public school.

**4. Governance of the public school.**—(1) A public school situated on the property must be governed in accordance with the Act and any agreement contemplated in subsection 14 (1) of the Act or these regulations.

(2) The governing body must enter into an agreement with the owner if, in exercising any of its functions in terms of the Act, a right of the owner regarding the immovable or movable property of the owner or the religious character of the school is affected.

(3) If a religious organisation exercises its rights as contemplated in section 57 of the Act, the agreement between the Member of the Executive Council and the religious organisation must record the recognised distinctive religious character of the school and the manner in which such distinctive character will be maintained. The recognised distinctive religious character of the school and the manner in which it will be maintained, must be consistent with the provisions of the Act.

(4) Subject to the agreement contemplated in subregulation (3) the governing body must enter into an agreement with the religious organisation to ensure the preservation of the distinctive religious character of such a public school.

(5) A written record must be kept of all meetings between the governing body and the owner, and must be signed by the owner and the authorised signatory of the governing body.

**5. Access by all interested parties to the school.**—(1) An accurate description of the property and all access roads to the school must be provided for in the agreement.

(2) Clear road signs giving directions to the public school must be erected on access roads to the school where access to the school is by way of private roads.

(3) The owner may not limit access to the school by a learner, educator, parent, worker at the school, member of the governing body, officer or member of the public who has a reasonable interest in the activities of the school.

(4) The owner has the right of access to the property.

**6. Security of occupation and use of the property by the school.**—(1) The public school may not be deprived of the occupation or use of the property for purposes related to the Act.

(2) The property and access roads to the school must be adequately fenced.

**7. Maintenance and improvement of the school buildings and property and supply of the necessary services.**—(1) Potable water and toilets must be provided and secured.

(2) The supply of electricity to the school must comply with national safety standards.

(3) The erection of new buildings and improvements to existing buildings may only be undertaken in terms of an agreement between the owner and the education department, or the governing body, if the governing body has been allocated such function in terms of section 21 (1) (a) of the Act.

(4) The agreement must provide for the maintenance of the property.

(5) Provision must be made in the agreement for compensation for improvements to the immovable property, if any, when a public school is closed.

**8. Protection of owner's rights.**—(1) If payment is due to the owner by the education department or the governing body for the use of the property or services supplied to the school, the agreement must provide for the terms and conditions of such payment.

(2) The governing body may enter into an agreement with the owner to perform its functions with respect to the Act after consultation with the owner.

**9. Breach of agreement and dispute resolution.**—(1) The agreement must provide for the procedure to be followed in the case of a breach of the agreement.

(2) The agreement must provide for a mechanism to resolve a dispute arising from a breach of the agreement or from any act or omission by any person who incurs a responsibility or obligation in terms of the agreement.

**10. Determination of responsibilities.**—The agreement must specify which person, body or authority is responsible for any function or obligation contemplated in these regulations.

**Annexure 1**  
*PRO FORMA AGREEMENT*

AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN:

The Member of the Executive Council (hereinafter referred to as "the MEC") of

(name of Province) herein represented by  
(name and rank), duly authorised by the MEC

AND

(name of owner, hereafter referred to as "the Owner")

Postal address:

Physical address:

ID Number

Telephone

**PREAMBLE**

WHEREAS

is the Owner of the immovable property on which  
(name of school, hereafter referred to as "the school") is situated

Postal address:

Physical address:

Telephone

WHEREAS the school is a public school offering education from grade to grade ; and

WHEREAS the MEC and the Owner have agreed to enter into this agreement pursuant to sections 14 (1) and 57 of the South African Schools Act (Act No. 84 of 1996) (hereafter referred to as "the Act"), whereby the school is established/deemed to be established as a public school on private property.

**IT IS HEREBY AGREED THAT:**

**Definitions**

1. In this agreement any word or expression to which a meaning has been assigned by the Act or 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 (hereafter referred to as "the Regulations"), has the same meaning assigned to it in the Act or Regulations, unless the context indicates otherwise.

**The status and description of the school**

2. The school is a public school on private property in terms of section 52 (1) of the Act or established in terms of section of (Provincial Education Law).
3. A description of the site and buildings and access roads to the school is as set out in Schedule 1.

**Proprietary rights held by the school**

4. The Owner declares himself or herself willing to give the right of use of the property referred to in paragraph 2 for the sole purpose of education in a public school on the property.
5. The Owner gives the right of use to the school free of charge.

**OR**

The Owner lets the property referred to in paragraph 2 to the MEC for the amount of R per month/year which payment must be paid into the Owner's bank account No. (Bank) (Town) not later than the first day of each month/first day of January each year.

6. An agreement between the State and the Owner which existed prior to the commencement of the Act remains in force to the extent that it is consistent with the Act, and is only amended to the extent that it is in conflict with this agreement, in which case this agreement prevails.
7. The agreement is valid as long as the school exists. The school can only be closed in terms of section 33 of the Act and after a reasonable period of notice has been given to the Owner by the MEC. A lease agreement, if it is in existence, terminates on the date on which the school is closed. All the improvements to the immovable property will become the property of the Owner free of charge

**OR**

after payment by the Owner to the State of an agreed sum of money calculated on the day of the closure of the school.

8. All reasonable maintenance, including insurance and security to the buildings and fixed assets and improvements, is done by [if such maintenance is the responsibility of the school an agreement must be entered into between the school and the Owner on the date such allocated function in terms of section 21 (1) of the Act is allocated to such school.] The extent of such maintenance is set out in Schedule 2.

**General**

9. The MEC undertakes to provide a copy of this agreement to the school and ensure that the school makes it available to the parents, learners and any third person if requested by them as contemplated in Regulation 2 (7).
10. must erect clear road signs giving directions to the public School on access roads to the school where access to the school is by way of private roads.
11. The curriculum offered at such public school is in accordance with the prescribed curriculum for public schools and the applicable administrative directives.
12. must ensure that a fresh drinking water supply is available at all times at such school.
13. may erect new buildings or effect improvements to the existing buildings. Such new buildings or improvements may only be effected after a separate agreement is concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes concluded between the parties and stipulating the cost to be incurred and who carries the responsibility for effecting such changes.
14. must ensure that the supply of electricity to the school complies with the national safety standards.
15. must ensure that the property on which the school is situated and all access roads are safe for school purposes and all dangerous areas on the, property referred to in paragraph 2 are safeguarded.
16. The Owner guarantees access to the school by the public, school community and officials referred to in Regulation 5 (3) in relation to educational purposes.
17. The State indemnifies the Owner for any damage or loss claimed against such Owner as a result of the property being owned by the Owner and provided that such claim is related to any educational activity conducted by the school for which the Owner would have been liable.

**Recognition of the religious character**

18. This clause is applicable only in respect of an owner of private property who has exercised his or her rights as contemplated in Section 57 of the Act.
  - 18.1 The Member of the Executive Council recognises the distinctive religious character of the School as
  - 18.2 The recognised distinctive religious character of the school referred to in subclause 18.1 will be maintained in the following manner:

**Dispute**

19. Any dispute arising under this agreement must, as a first step, be resolved amicably through conciliation between the MEC and the Owner, or by any other manner mutually agreed upon by them.
20. If any dispute arises (including a breach of contract), the aggrieved party must notify in writing the other party and any other party affected by the dispute, within 14 school days, stating the nature and extent of his or her complaint.
21. A conciliation meeting between the parties to the dispute must take place within 7 school days of the notice referred to in paragraph 20.
22. If a dispute is referred to a Magistrate's court then the applicable cost structures must be agreed to.

**Selling of the immovable property**

23. If the Owner sells the property on which the school is situated, he or she must notify—
  - (a) the buyer of the existence of such school in writing before entering into an agreement with such buyer; and
  - (b) the school and the MEC of such sale and attach the letter referred to in subparagraph (a) within 7 days of such sale.

**Amendments**

- 24. This agreement comprises the agreement and all amendments and annexures thereto.
- 25. This agreement may only be amended, varied or changed if both parties agree to such amendment, variation or change in writing and it is signed by both parties.

**Domicilium**

- 26. The Owner chooses the following address as his or her *domicilium citandi et executandi* and for the purpose of serving any notice or any other correspondence according to this agreement:

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20

OWNER

AS WITNESSES:

1

2

Thus done and signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20

MEC FOR EDUCATION OF \_\_\_\_\_ (PROVINCE) or

DELEGATE OF THE MEC

AS WITNESSES:

1

2

Schedule 1

DESCRIPTION OF THE SITE, BUILDINGS AND ACCESS ROADS TO THE SCHOOLS

To be provided by the Owner in terms of paragraph 3 of the Agreement.

Schedule 2

DESCRIPTION OF MAINTENANCE

In terms of paragraph 8 of the Agreement.