



**OFFICE OF THE HEAD OF DEPARTMENT**

Private Bag X9137, PIETERMARITZBURG, 3200

**LEGAL SERVICES**

247 Burger Street, Anton Lembede House, PIETERMARITZBURG, 3201

Tel: 033 3921123 / 1124/1125

**Enquiries:** Ms Ntokozo Maphumulo **Email:** Ntokozo.Maphumulo@kzndoe.gov.za /Hazel.Francis@kzndoe.gov.za/NtoksM@gmail.com

**TO: DEPUTY DIRECTORS GENERAL**  
**CHIEF DIRECTORS: DISTRICT OPERATIONS MANAGEMENT**  
**DISTRICT DIRECTORS**  
**CESs: CIRCUIT MANAGEMENT**  
**CIRCUIT MANAGERS**  
**PRINCIPALS OF PUBLIC SCHOOLS**  
**CHAIRPERSONS OF SCHOOL GOVERNING BODIES**

**KZN CIRCULAR NO. 09 OF 2026**

**SIGNING OF CONTRACTS BY SGBs AND SCHOOL PRINCIPALS**

1. This circular is intended to provide guidance to school principals and governing bodies on the conclusion of contracts by schools and to highlight the legal position and the imposition of consequence management by the Department for failure to adhere to the prescripts of the South African School's Act No.84 of 1996 (SASA) and this circular. In this circular, reference to a school includes the school principal and the governing body.
2. Over the past few financial years, the Department has noted an increase in claims against the Member of the Executive Council (MEC), schools and governing bodies resulting from contracts / agreements entered into by the governing body.
3. Schools have become the target of service providers who entice schools into entering into agreements that are to their detriment. According to the trends analysis in respect of claims against the Department, it has been noted from the instructions provided by schools that the favourable 'sales pitch' used by service providers is not what is eventually included in the contracts which are drafted in extremely fine print. Schools enter into agreements without reading or understanding the fine print.
4. In terms of Section 60 of the SASA, the state is liable for any delictual or contractual damage or loss caused as a result of any act or omission in connection with any school activity conducted by a public school and for which such public school would have been liable but for the provisions of this section.



5. As a result of Section 60 of the SASA, there has been an increasing number of claims against the MEC resulting from the breach of contracts by schools. The claims against the MEC are usually in exorbitant amounts thereby significantly increasing the Department's contingent liabilities.
6. It is noted that schools do not engage in affordability assessments before entering into contracts. Often, they are unable to afford the monthly instalments and due to this, they stop payment thereby breaching the agreement. The inability to afford the monthly instalments does not constitute a defence against a claim and the Department therefore has no option but to settle the matter.
7. In terms of Section 36(2) of the SASA which was amended by the Basic Education Laws Amendment Act No.32 of 2024 (BELA), a governing body may not without the written approval of the Head of Department enter into any loan, lease or overdraft agreement for any purpose.
8. The definition of a loan in terms of the SASA means any financial obligation based on agreement, which obligation renders a school liable for making payment, in one or more instalments, in favour of any person, but does not include the payment of staff appointed by the governing body in terms of Section 20(4) or (5), or operational costs as determined in the annual budget contemplated in Section 38.
9. The amendment to Section 36(2) of the SASA is to prevent a school from entering into any lease agreement, financial or operational agreement without the written approval of the Head of Department. This includes lease agreements for the hire of equipment. In terms of the trends analysis of claims for breach of contracts by the school, it is noted that most of these claims emanates from breach in respect of contracts entered into for the lease of photocopying machines, camera and surveillance equipment, telephone and switchboard equipment, laptops and other similar equipment.
10. In terms of Section 16A(2), the school principal must in undertaking the professional management of a public school inform the governing body about policy and legislation.
11. Principals must in terms of Section 16A(2)(h) assist the governing body with the management of the school funds which assistance must *inter alia* include the giving of advice to the governing body on the financial implications of decisions relating to the financial matters of the school. In terms of 16(A)(2)(j), the principal must be a member of a finance committee or delegation of the governing body in order to manage any matter that has financial implications for the school.

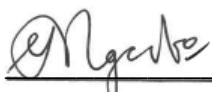


12. In terms of the aforementioned section, principals are expected to advise governing bodies and to be an integral part of any decision relating to contracts that are concluded by the schools.
13. In view of Section 36, school principals who allow governing bodies to enter into agreements without the written approval of the Head of Department will be acting contrary to the prescripts of the SASA.
14. School principals are required to ensure that there are sufficient funds available to pay for any contract entered into and the submission to the Head of Department or his/her delegate must motivate the need for the contract, the affordability and the ability of the school to honour the contract. A copy of the draft agreement together with the expectation or understanding of the school in terms of what is actually being contracted for must also be included in the submission.
15. A copy of the governing body minute which includes the decision of the meeting consenting to the lease of equipment and a resolution taken on the signatory must also be included in the submission to the Head of Department. Principals and governing bodies are cautioned against signing a suretyship agreement where the principal or member of the governing body signs as surety or co-principal debtor.
16. It would be prudent for schools to request the service providers to provide copies of agreements in a reasonable size font which is clearly legible and this must be included with the submission to the Head of Department.
17. Upon consideration of the content of the submission, the Head of Department or his/her representative will take a decision on whether or not to approve the school entering into a contract.
18. Principals are required to closely monitor the performance of the service provider in terms of the contract and should the service provider be in breach of the contract, the principal must bring the breach to the attention of the service provider and request that they remedy the breach in terms of the contract.
19. Principals are cautioned against stopping the payment to service providers without bringing the breach to the knowledge of the service provider and affording them an opportunity to remedy the breach. A paper trail of all communication with the service provider must be maintained.
20. Principals are also requested to ensure that all contracts entered into by the school are maintained in a file and brought to the knowledge of a new governing body that is constituted. They are also required to caution a newly constituted governing body against stopping payments to the service provider as a result of



their disapproval with the contract. A governing body that has concerns about an agreement concluded by their predecessors should be advised to seek legal advice from a lawyer before taking any decision.

21. The Department will consider implementing consequence management against any official who acts contrary to the provisions of the SASA and this circular.
22. All principals must ensure that this circular is brought to the attention of the governing body of their school.



**MR. GN NGCOBO**  
**HEAD OF DEPARTMENT: EDUCATION**  
**DATE: 17/01/2026**