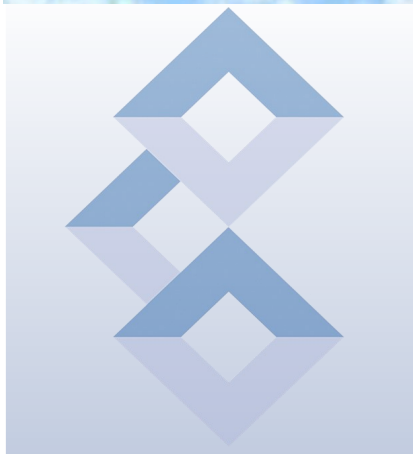


The thought leader in
cooperative school governance

**THE BEST INTERESTS
OF THE CHILD ARE
OF PARAMOUNT
IMPORTANCE**



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SGB DELEGATIONS AND AUTHORISATIONS TO THE PRINCIPAL AND OTHER STAFF MEMBERS

At this time of the year when staff duties have been assigned by the principal and job descriptions are being signed off it would be advisable to check that all the duties are being performed with the necessary authority. Sometimes the duty is one that the SGB has delegated and authorised (an SGB function) and sometimes it is the principal who has delegated and authorised it (professional management function).

In this *Undercurrents* we remind SGB and SMT members how delegations and authorities work. We focus particularly on what the principal should not do without the necessary authority and make suggestions about what SGB functions could be delegated in writing to certain staff to avoid contestation at a later stage about who had authority to do what.

WHERE DOES THE AUTHORITY TO EXERCISE POWERS AND PERFORM FUNCTIONS AT SCHOOLS COME FROM?

SGB powers, functions and responsibilities

The SGB is assigned powers, functions and responsibilities in the South African Schools Act (SASA). Although it is a juristic person, the SGB may only do what SASA enables it to do. These powers and functions must be performed in the manner and in terms of any restrictions stated in SASA, for example, the school funds must be administered in accordance with directions of the Head of Department (HOD) in the province. The SGB, in the execution of its functions, must also adhere to a vast amount of other national and provincial legislation, such as the Labour Relations Act (LRA) and the South African Council for Educators (SACE) Act.

The principal

The principal is assigned onerous functions and responsibilities in SASA both for the professional management of the school under the authority of the HOD and for ensuring responsible and lawful governance of the school by advising the SGB on all matters.

Staff members

The principal and other educators may perform all the duties in their job descriptions as provided in the Employment of Educators Act (EEA) (PED educators), performance agreements (PED public servants), or as provided by the school (school employees). How some of these are performed is determined by numerous school policies which the SGB has adopted as well instructions in various forms from the HOD or principal. They may not do anything outside the scope of their authority such as signing on behalf of the principal or SGB chairperson.

Why is it important to know under what authority a person acts?

Any act performed by an SGB member or school staff member without the necessary authority is potentially invalid. For example, termination of an employment contract by a school finance officer would be invalid if the finance officer had not been authorised, in writing, to perform that function, or had not been specifically delegated by the quorate SGB to do so and this decision had been minuted.

Persons performing any actions, including signing any document, on behalf of the school/SGB must have the authority to do so.

SGB delegations

The SGB may choose to delegate some of its functions to school staff and even employ people to perform these functions. However, these delegations must be performed in terms of school policies and SGB meeting decisions. They must be performed under the authority of the SGB (as a whole—not the Chairperson acting as an individual) and the day-to-day operational supervision of the principal. Some delegations would be “permanent” until revoked, whereas others will be for a specific single action only. Delegations must be in writing and reviewed from time-to-time, especially if the SGB makes changes in its policies.

A person to whom a function is formally delegated is *authorised* to perform the action within the scope of the authorisation, *responsible* for the action, and *accountable* to the SGB and principal for doing it properly *in terms of the policy and scope of the authority*.

Cautions for principals

It has come to our attention in the last year or so that principals and other staff members are performing SGB functions without the necessary formal authorisation to do so. Newly elected SGB members have correctly been querying actions of the principals or other staff members who appear to be performing some of the SGB functions independently without the knowledge of the SGB.

On the other hand, principals have the duty in terms of SASA to ensure adherence by the SGB to all relevant legislation and policy. Sometimes SGBs want to act beyond their authority or to ignore some inconvenient processes and so principals must act to prevent wrongful conduct of the SGB.

It is worth looking at some of the actions principals must not perform. They include areas where principals must not act outside the scope of legitimate authority as well as actions they must not allow their SGB to take. The list below is not exclusive but includes the ones that have come to our attention. Some of the don'ts include the principal or SGB exercising their lawful powers but in an unlawful manner (exceeding the scope of statutory authority or contrary to HOD instructions) and consequently these actions would also be invalid.

The principal must **NEVER exercise any of the following functions (even if the SGB authorises it):**

- ♦ sign “pp” (*per procuracionem*) for the SGB chairperson.
- ♦ sign a blank order form or any other form without the details filled in.
- ♦ make decisions about the languages taught at the school.
- ♦ admit learners outside the scope of the school admission policy without first referring the matter to the SGB, even if it is an instruction from the district.
- ♦ force anyone to attend an assembly that has a religious component (refer to the school’s religious observances policy).
- ♦ make changes to the Code of Conduct for Learners without consultation and adoption by the SGB.
- ♦ allow inclusion of items in the Code that are not necessary for “establishing a disciplined and purposeful learning environment” or infringe learners’ Constitutional rights (the SGB cannot do this either).
- ♦ suspend a learner as a precaution before a hearing without first allowing the learner to state his/her case, and after that discussing the matter with the SGB (the SGB chairperson (if stated in provincial regulations) or a delegated person on the SGB).
- ♦ expel a learner without HOD approval (the SGB cannot do this either).
- ♦ tell a learner who committed an offence to pack his/her bags and leave the school and not come back (the SGB cannot do this either).
- ♦ abandon the disciplinary issue if the parent removes the learner from the school before the hearing (the SGB cannot do this either). Prepare the charge sheet and collect the evidence. Keep these records in case the learner returns to the school and the disciplinary process must be continued.
- ♦ tell a parent that if he/she voluntarily removes the learner from the school that the school will drop the charges against the learner (the SGB cannot do this either).
- ♦ be a member of the SGB disciplinary panel in a hearing and participate as a panel member. The principal may *present* the school’s case. The principal may not be present when the panel considers its findings or decides on sanctions.
- ♦ turn a blind eye to any initiation practices conducted by staff, sports and cultural teams, or senior learners.
- ♦ allow any form of punishment that may be deemed “corporal punishment” (this term is widely interpreted to include any action that inflicts pain or physical discomfort, even if slight, or restricts a learner’s movement by “containing” them).
- ♦ approve alterations and additions to the school property without MEC approval (the SGB cannot do this either).
- ♦ be intimidated to hand over school records. (They may be inspected at the school. Information may be given in terms of SASA s. 59.) (The SGB cannot do this either.)
- ♦ terminate employment contracts.
- ♦ hire or fire staff without following correct labour law processes (the SGB cannot do this either).
- ♦ employ educators not registered with SACE (the SGB cannot do this either).
- ♦ close the school for the day (the SGB cannot do this either).
- ♦ give a staff member the day off (except in terms of official leave provisions). (The SGB cannot do this either.)
- ♦ give a loan to anyone (even in hardship cases). (The SGB cannot do this either.)
- ♦ make changes to the school uniform, including adding items such as sports uniform.
- ♦ take action independently if the PED does not respond to applications for permissions, for example, SASA section 38A applications for additional remuneration. Do not pay anyone extra remuneration without receiving written permission, or if the work for which payment was claimed has not been completed.
- ♦ allow a school excursion to take place without the PED authorisation for it. (The SGB cannot do this either.)

The principal **must not do** the following **UNLESS he/she has the authorisation of the SGB, in writing, and then must do so subject to all relevant legislation and school policies**. Principals should be authorised to perform these functions with limitations specified in school policies which determine the extent of the authorisation and any specific process to be followed:

- ♦ authorise payments from the school fund (bank signatories are appointed at an SGB meeting).
- ♦ allow the use of school property without SGB approval, and, if it is for business purposes, without MEC approval.
- ♦ appoint staff.
- ♦ determine salary of staff.
- ♦ change the official starting and ending times of the school day.
- ♦ sign leases, contracts etc.

The principal **must not allow the SGB** to do the following:

- ♦ act outside their authority or in conflict with legislation. Advise the SGB and if they do not listen, the principal must report the situation to the district.
- ♦ conduct SGB meetings or finance committee meetings as well as any committee meetings that deal with a matter that has financial implications without the principal being present.
- ♦ appoint SGB members to supervise staff (or issue instructions unofficially).
- ♦ conduct the business of the SGB behind closed doors by a select few SGB members such as the Executive Committee or the Finance Committee.
- ♦ hide the provision for parents to apply for fee exemptions and make the exemption application process too difficult for parents to handle.
- ♦ pay PED staff additional remuneration without PED approval.
- ♦ use school funds for any purposes not permitted in terms of SASA.

SGB delegations to other staff members

The SGB cannot do all the day-to-day work associated with their SASA assigned functions so school staff, other than the principal, may also be delegated responsibilities. It will be necessary for the SGB to give many of its operational financial responsibilities to the school finance officer and other staff who work with finance. Each of these staff members must be given, in writing, a list of their delegated responsibilities. These staff members must sign acknowledgement and thereafter perform these functions in a responsible and accountable manner. Finance staff would be accountable to the principal and the school finance committee which would report to the full SGB on their management of the school fund and other financial matters.

It is important that with delegation must go some training in how to do the job. Functions cannot be allocated to someone who does not understand how to do what he/she has been given authority to do.

Obviously all these delegations must be exercised in compliance with relevant legislation and school and PED policy and instructions.

Letters of delegations and authorisations

At an SGB meeting all delegations that are not currently valid and in writing should be tabled for the SGB's approval.

Staff members who are delegated to perform certain SGB functions must be provided with a letter authorising them to perform these functions. The letter should list the delegations and any school policies in terms of which they may exercise the functions. For example, the school finance policy would provide detail about what is expected of finance staff members and would also limit the scope of the authorisation.

The letter should state for how long the authorisation will be valid, for example, for one year or indefinitely until a new letter is given (because of a policy change or rotation of staff duties).

The SGB must issue the dated letter on a school letterhead, with the SGB chairperson signing it on behalf of the SGB. Each staff member should sign his/her letter acknowledging receipt of the letter and stating that the contents are understood. If the staff member has an issue with any of the delegations because of lack of knowledge or job overload, the matter should be raised at this stage. If an employee refuses to accept the delegations without good reason and they are within the person's capacity and the range of work for which the person was employed, for example, administrative assistant or finance clerk, the SGB might have to institute a disciplinary process (for PED staff use the PED progressive discipline measures and for school-paid staff use the school's disciplinary policy for employees.) A copy of the signed accepted delegation should be filed in the staff member's employee file and the employee should keep the original.

NB: The delegation of authority is *not an employment contract* and the SGB can change the delegations unilaterally unless the job description in terms of which the person signed his/her employment contract specified the exact duties (the delegations). In the case of the latter, the SGB and staff member would have to come to a new agreement.

TERM 1 SGB CAPACITY-BUILDING SEMINAR **"MAKING THE MOST OF MEETINGS" - EFFECTIVE GOVERNANCE THROUGH EFFECTIVE MEETINGS** **What will the seminar deal with?**

- ♦ What ought to happen before, during and after SGB meetings and SGB committee meetings
- ♦ Meeting procedures and etiquette
- ♦ Effective chairing
- ♦ Which committees an SGB ought to have
- ♦ Composition and officer-bearers of committees in general
- ♦ Roles/jobs of office-bearers
- ♦ Mandates and powers of committees
- ♦ Relationships and commitment to confidentiality and collective responsibility
- ♦ Avoiding conflict of interest
- ♦ Keeping records

