



9 JANUARIE 2019

NUUSBRIEF 1/2019

**ONBEPLANDE TOELATING VAN LEERDERS
ADVIES AAN SKOOLHOOFDE**

Dit het onder ons aandag gekom dat daar weereens ernstige druk op sommige skoolhoofde geplaas word om die onbeplande toelating van leerders te akkommodeer. Hierdie aansoeke om toelating kan voortspruit uit die onverwagse opdaag van leerders by skole of spesifieke opdragte van die departement van onderwys. In die proses word skoolhoofde dikwels in 'n onbenydenswaardige posisie geplaas omdat sulke insidente meestal gepaardgaan gaan met onbillike eise uit verskeie oorde.

Wat is die advies wat voorlopig aan skoolhoofde voorsien word ten opsigte van die hantering van onbeplande toelatings?

- i. Die skoolhoof moet bewus wees dat toelatings primêr die verantwoordelikheid van die skoolbeheerliggaam (SBL) is. Die verantwoordelikheid spruit voort uit die bepalings van die Suid-Afrikaanse Skolewet (Art 5(5)) sowel as die skool se eie toelatingsbeleid wat opgestel is in terme van gemelde Wet.
- ii. In die geval van 'n spesifieke departementele opdrag moet die skoolhoof so spoedig doenlik skriftelik ontvangs teenoor die departement erken aangesien dit geag kan word 'n formele opdrag van die werkgewer te wees om leerders tot die skool toe te laat. Waar moontlik moet redes vir die opdrag om leerders toe te laat op skrif verkry word.
- iii. In gevalle waar leerders in groot getalle sonder vooraf kennisgewing bloot by die skool opdaag en op toelating aandring, moet die plaaslike departementele kantoor dadelik telefonies en skriftelik ingelig word. Dit is veral belangrik as die skool nie oor die kapasiteit beskik om die leerders te kan akkommodeer nie. 'n Vraag wat dan opduik, is hoe die leerders in die interim hanteer moet word. Die skoolhoof moet sy professionele diskresie uitoefen na oorlegpleging met die SBL, en die leerders in 'n gesikhte area laat wag tot verdere handelinge uitgevoer kan word.
- iv. Ongeag of die aansoeke om toelating uit 'n opdrag van die departement of onverwagse versoeke voortspruit, moet die voorsitter van die SBL dadelik ingelig word. Sy/haar teenwoordigheid, saam met ten minste een ander lid van die SBL, op die skoolterrein moet ook versoek word.
- v. Die vestiging van 'n volledige papierspoor is belangrik teen die agtergrond van die polemiek wat al voortgespruit het uit vorige voorvalle van komplekse eise om skooltoelating. Daarom die advies dat alle kommunikasie met alle partye skriftelik moet wees. Telefoniese gesprekke asook die besluite wat daartydens geneem word, moet agterna skriftelik bevestig word. Dit is noodsaaklik dat in die hantering van die aangeleentheid die SBL bewus moet wees van die objektief vasgestelde kapasiteit van die skool asook dié van ander skole in die omgewing of distrik.
- vi. Die SBL moet beheer van die situasie neem. Waar moontlik, word dit aanbeveel dat die skoolhoof 'n skrywe van die SBL ontvang waarvolgens die SBL aandui dat die skoolhoof uit die proses verwyder word synde dit 'n statutêre verantwoordelikheid van die SBL is.

- vii. Die skoolbeheerliggaamorganisasie waarvan die SBL lid is, moet uiteraard ook so spoedig doenlik gekontak word vir bystand en advies aan die SBL.
- viii. Die skoolhoof moet ook so spoedig doenlik die SAOU inlig om hom/haar as werknemer van die provinsiale onderwysdepartement by te staan en te adviseer uit 'n arbeidsregtelike oogpunt. Dit is belangrik aangesien daar nie uit die oog verloor moet word dat die skoolhoof as werknemer van die provinsiale onderwysdepartement onder gesag van die onderwyshoof is nie. Die skoolhoof moet die SBL in die uitvoering van die SBL se werksaamhede en verantwoordelikhede bystaan, maar sodanige bystand mag nie strydig wees met opdragte van die onderwyshoof, wetgewing, beleid of 'n verpligting wat hy teenoor die onderwyshoof, die LUR of die Minister het nie. Daar rus dus 'n regsplig op die skoolhoof om die SBL in te lig sodat korrekte prosedures gevolg kan word om onnodige ontwrigting of konflik te vermy.
- ix. Konfronterende gesprekke, redenasies of onderhandelings met die ouers/groep wat onverwags opdaag by die skool moet deur die skoolhoof vermy word. Dit is die verantwoordelikheid van die SBL om dit te voer. Die ideaal is dat alle kommunikasie slegs via die plaaslike departementele kantoor gevoer word.
- x. Alle versoeke van die media om kommentaar te lewer moet deur die skoolhoof vermy word. Na gelang van die aard van die versoek, moet dit na die departement of die voorsitter van die SBL verwys word.

Daar moet ingedagte gehou word dat bogemelde advies algemene advies is, en dat ontvouende omstandighede op grondvlak 'n ander benadering kan noodsaak. Die SAOU se Regsafdeling is op bystand om deurlopend advies te lewer.



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NEWS LETTER 1/2019

**UNPLANNED ADMISSION OF LEARNERS TO SCHOOLS IN 2019
ADVICE TO SCHOOL PRINCIPALS**

It came under our attention that there is a repeat of serious pressure on school principals to accommodate the unplanned admission of learners. These applications for admission can be the result of unexpected arrivals of learners at schools or specific instructions by the department of education. In the process school principals find themselves in the unenviable position to manage these incidents that are usually accompanied with various unfair demands.

We provide principals with the following advice regarding the management of unplanned admissions

- i. The school principal must be aware that the admission of learners is the primary responsibility of the school governing body (SGB). These responsibilities arise from the provisions made in the South African Schools Act 84 of 1996, section 5 (5), as well as the school's own admission policy drafted in terms of this act.
- ii. In the case of a specific departmental instruction the principal must as soon as possible confirm receipt of the instruction to the department as this can be regarded as a formal instruction by his/her employer to admit learners to the school. Where possible the principal must request in writing the reasons for the instruction.
- iii. In cases where learners arrive in large numbers at the school without giving any prior notice and demand admission, the department must be informed telephonically and in writing. This is vitally important in those cases where the school does not have the capacity to accommodate these learners. The question that may arise is the manner in which these learners ought to be managed in the interim. The school principal must, after consultation with the governing body, use his/her professional discretion to identify a safe area for the learners while attending to this matter.
- iv. Irrespective if the applications for admission come from the department by means of an instruction or in terms of an unexpected demand by learners for admission, the chairperson of the SGB body must be informed immediately. The principal must request the presence of the chairperson at the school as well as at least one other member of the SGB.
- v. It is important to establish a "paper trail" as experience has taught that similar past incidents can easily become controversial and complex. This is why it is advisable that all communication must be confirmed in writing. It is important that in managing the issue the SGB must be aware of the objectively determined capacity of the school as well as the surrounding schools in the area.
- vi. The SGB must take control of the situation. If possible, the principal is advised to request a

letter from the SGB wherein it is stated explicitly that the principal is excluded from the process due to the fact that it is the statutory responsibility of the SGB.

- vii. The SGB organisation that the SGB is affiliated to must be contacted as soon as possible for support and advice.
- viii. The principal must as soon as possible inform the SAOU to request support and advice from a labour perspective as he/ she is an employee of the department. In this regard it is important to remember that the principal as an employee of the provincial department of education functions under the authority of the head of department, i.e. the employer. The principal must assist the SGB in the execution of their duties and responsibilities, but such assistance cannot be in contravention with the instructions of the head of department, legislation, policy or a duty he/she has to the head of department, the MEC or the Minister. This places a legal duty on the school principal to inform the SGB body of the correct procedures to be followed to avoid any conflict or disruptive situations.
- ix. Confrontational conversations, arguments or negotiations with parents/groups that arrive unexpectedly at the school must be avoided at all times by the principal. This is the responsibility of the SGB. It is in the best interest of all parties that the communication should be directed to each other via the department of education.
- x. All requests from the media to probe for comments must be avoided by the principal. The nature of the request will determine if the request will be channelled to the chairperson SGB or to the department.

It is important to note that the above advice is general advice and that unfolding developments regarding admissions on ground level may require a different approach. The SAOU's legal department is there to provide continuous advice.

