



DIE VERANDERING IN ONDERWYS  
THE CHANGE IN EDUCATION

REGSDIENSTE | LEGAL SERVICES



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## Regsdienste Nuusbrief | Legal Services Newsletter

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### BENUTTING VAN OPENBARE SKOOLFASILITEITE

### THE UTILIZATION OF PUBLIC SCHOOLS

#### Waarom die huidige situasie?

Nadat 'n nasionale ramptoestand aangekondig is in *Staatskoerant* No. 43096 op 15 Maart 2020, ingevolge Die Wet op Rampbestuur, 2002, het die Minister van die Departement van Samewerkende Regering en Traditionele Sake op 20 Maart 2020 Regulasies uitgereik in terme van Artikel 27(2) van die Wet.

#### Waarom die huidige situasie?

Following upon the declaration of a National State of Disaster in Gazette No. 43096 on 15 March 2020 in accordance with the Disaster Management Act, 2002, the Minister of Cooperative Governance and Traditional Affairs published further Regulations in terms of Section 27(2) of the Disaster Management Act on 20 March 2020.

#### Wie het die bevoegdheid in terme van die Regulasie om te bepaal watter plekke of instansie benut kan word vir kwarantyn en afsondering?

Die Minister van Openbare Werke en Infrastruktuur moet, waar nodig, terreine identifiseer en beskikbaar stel vir gebruik as afsondering en kwarantynfasiliteite. Die Lede van

#### Who has the discretion, in terms of the Regulations, to decide which places can be utilized for quarantine and isolation?

The Minister of Public Works and Infrastructure must, where necessary, identify facilities and make them available for use as isolation and quarantine facilities. The Members of the

<p>die Uitvoerende Raad verantwoordelik vir Openbare Werke moet, waar nodig, terreine identifiseer en beskikbaar stel vir gebruik as afsondering en kwarantyn fasiliteite in elke provinsie. Hierdie proses sluit ook ander Ministers in, waar van toepassing.</p> <p>Die Departement van Samewerkende Regering en Tradisionele Sake het in Regulasie 6 van die Staatskoerant no 43148 van 25 Maart 2020 hierdie bevoegdhede verder afgewentel tot die Lid van die Provinciale Uitvoerende Raad van Openbare Werke om beschikbare fasiliteite te identifiseer vir die gebruik van afsondering en kwarantyn fasiliteite.</p> <p>Geen van die bogenoemde sluit 'n openbare skool of 'n koshuis langs of naby 'n skool in, of uit nie. Dus kan aangeneem word dat die relevante autoriteite geregtig is om sodanige plekke as afsondering en kwarantyn fasiliteite aan te wys.</p>	<p>Executive Council responsible for Public Works must, where necessary, identify facilities in each province and make them available for use as isolation and quarantine facilities. This process also includes other Ministers where applicable.</p> <p>Regulation 6 of Gazette 43148 published on 25 March 2020 by the Department of Co-operative Governance and Traditional Affairs, further devolves the responsibility to a Member of the Provincial Executive Council for Public Works to identify available sites to be used for isolation and quarantine facilities.</p> <p>None of the above includes or excludes a public school or a hostel next to or near a school, and one assumes that the relevant authority is entitled to identify or designate such places.</p>
<p><b><u>Wat behels kwarantyn en afsondering?</u></b></p> <p>“<b>kwarantyn</b>” is die skeiding van asimptomatiese individue, moontlik blootgestel aan 'n siekte, van nie blootgestelde individue, op so 'n wyse dat die moontlike verspreiding van infeksie of besmetting voorkom word;</p> <p>“<b>afsondering</b>” is die skeiding van 'n siek persoon of 'n persoon wat met 'n oordraagbare siekte besmet is, van gesonde individue wat nie daardie oordraagbare siekte het nie, op so 'n wyse dat die verspreiding van infeksie of besmetting voorkom word.</p>	<p><b><u>What is Quarantine and Isolation?</u></b></p> <p>“<b>quarantine</b>” is the separation of asymptomatic individuals, who have possibly been exposed to an illness, from unexposed individuals, in such a manner that the possible spread of the infection is prevented;</p> <p>“<b>isolation</b>” is the separation of sick individuals or someone infected with a communicable disease, from healthy individuals, in such a manner as to prevent the spread of the infection or disease.</p>
<p><b><u>Beperking van fundamentele regte</u></b></p>	<p><b><u>Limitation of fundamental rights</u></b></p>

<p>Art 36 van die SA Grondwet maak voorsiening van sodanige inperking van regte wat ‘n gespesifieerde substantiewe uitkoms moet hê, naamlik ‘n uitkoms wat regverdigbaar is in ‘n oop en demokratiese samelewing, gebaseer op menswaardigheid, gelykheid en vryheid.</p>	<p>Section 36 of the SA Constitution provides for the limitation of rights which limitation needs to have a substantive outcome, namely an outcome that is justifiable in an open and democratic society based on human dignity, equality and freedom.</p>
<p><u><b>Met dit as vertrekpunt moet die posisie van die skool en sy beheerliggaam oorweeg word indien die skool genader word om fasiliteite beskikbaar te stel</b></u></p>	<p><u><b>With this as a starting point, it becomes necessary to consider the position of the School Governing Body if a school is approached to make available such facilities</b></u></p>
<p>Daar is ‘n opinie dat die Skolewet (SASA) voorsiening maak dat die skoolbeheerliggaam van so ‘n skool die besluit moet neem – maar dit is aanvegbaar vanweë die feit dat die grond waarop die strukture gebou is aan die Staat behoort. Dit is ook moeilik om te sien waarom ‘n hof die Staat sal keer as die gebruik van die fasiliteite omsigtig, redelik en noodsaaklik is, soos duidelik uiteengesit in die Regulasie.</p>	<p>There is an opinion that the Schools Act (SASA) makes provision that such a decision is to be made by the School Governing Body – this is tenuous considering that the State is the landowner on which these structures stand. It is also difficult to see why a court will disallow such use if it is prudent, reasonable or essential, as is clearly stipulated in the Regulations</p>
<p><u><b>Wat is die posisie van inwonende personeel</b></u></p>	<p><u><b>What is the position of residing staff?</b></u></p>
<p>Waar daar inwonende personeel in ‘n koshuis is en die Staat ‘n bewese behoefté het aan die benutting van die fasiliteit, veral gegewe die nie-beskikbaarheid van alternatiewe geriewe, sal die bepalings van Artikel 36 van die SA Grondwet (die beperkingsklousule) van toepassing wees, dit wil sê ‘n uitkoms wat regverdigbaar is in ‘n oop en demokratiese samelewing, gebaseer op menswaardigheid, gelykheid en vryheid.</p> <p>Dit is ook ongetwyfeld dat die gebruik van enige fasiliteit ook met ‘n behoorlik saamgestelde dekontaminasieplan gepaard sal gaan.</p>	<p>Where there is staff residing in a hostel and the state has a proven need to use the facilities, especially given the unavailability of alternative facilities, section 36 of the Constitution (the limitation clause) will be applicable. That is to say an outcome that is justifiable in an open and democratic society based on human dignity, equality and freedom.</p> <p>It goes without saying that a proper plan for the decontamination of any such facilities that are used, is absolutely essential.</p>

<u>Beste belang van die kind</u>	<u>Best interest of the child</u>
<p>Laastens moet daar nie uit die oog verloor word nie dat daar te alle tye in die beste belang van die kind gehandel moet word, wat sy of haar reg op basiese onderwys insluit.</p> <p>Dis dus onwaarskynlik dat daar buite hierdie raamwerke opgetree sal kan word – dit word duidelik gereflekteer in die nie-besikbaarstelling van koshuise vir alternatiewe huisvesting van haweloze persone in Gauteng.</p>	<p>Lastly, it should not be forgotten that the best interest of the child, with special reference to the child's right to education, is of paramount importance when dealing with any matter concerning the child.</p> <p>It is therefore unlikely that action will be taken outside of this framework – it is clearly reflected in the refusal to avail hostels as alternative housing for the homeless in Gauteng.</p>
<u>Ons gee om!</u>	<u>We care!</u>
<p>Die SAOU ondersteun die inisiatiewe van die regering om die noodtoestand ten beste te bestuur maar onderneem ook om te alle tye in die beste belang van lede te handel, ongeag omstandighede wat mag ontstaan.</p>	<p>The SAOU supports the initiatives from government to manage the State of Disaster but the Union also undertakes to act in the best interest of its members at all times, irrespective the situation that might occur.</p>
<p>Enige navrae in hierdie verband kan gerig word aan <a href="mailto:regsdienste@saou.co.za">regsdienste@saou.co.za</a></p>	<p>Any queries regarding this matter can be directed to <a href="mailto:regsdienste@saou.co.za">regsdienste@saou.co.za</a></p>



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