

# **SOUTH AFRICAN SCHOOLS ACT, 84 of 1996 – REGULATIONS**

## **1. REGULATIONS RELATING TO BEHAVIOUR BY LEARNERS IN PUBLIC SCHOOLS**

**1.1 PROVINCIAL NOTICE NO. 32 OF 1999**

**[DATED: 25 JUNE, 1999]**

**as amended by**

Provincial Notice No. 60 of 2002

Provincial Notice No. 10 of 2003

### **GENERAL NOTE**

**The Schedule published in Provincial Notice No. 32 of 1999 is substituted by Provincial Notice No. 60 of 2002.**

### **REGULATIONS**

The Member of the Executive Council responsible for Education in the Province of the Eastern Cape acting in terms of section 9 (3) of the South African Schools Act, 1996 (Act No. 84 of 1996), hereby determines the behaviour by a learner at a public school which may constitute serious misconduct, disciplinary proceedings to be followed in such cases and provisions of due process safe-guarding the interests of the learners and any other party involved in disciplinary proceedings set out in the Schedule.

### **SCHEDULE**

#### **ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Behaviour by learners which constitute serious misconduct
3. Disciplinary proceedings to be followed
4. Due process

## 5. Short title

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

“**code**” means the code of conduct of a school;

“**disciplinary committee**” means a disciplinary committee established by the governing body of a school in terms of section 30 (1) (a) of the Act;

“**investigator**” means the principal or an educator appointed by the principal to collect and present evidence against a learner;

“**learner**” means any person receiving education or obliged to receive education in terms of the Act;

“**representative**” means any person representing a learner during a misconduct hearing;

“**serious misconduct**” means conduct contemplated in regulation 2 which may lead to the suspension of a learner from attending school as a correctional measure, or the expulsion of a learner from a school; and

“**the Act**” means the South African Schools Act, 1996 (Act No. 84 of 1996).

## **2. Behaviour by learners which constitute serious misconduct.**

### *Serious misconduct*

A learner at a school who—

- (a) has been convicted by a court of a criminal offence;
- (b) used or had in his or her possession intoxicating liquor or drugs during a school activity;

- (c) is guilty of assault, theft, gross insubordination or immoral conduct;
- (d) has been repeatedly absent without leave from school and/or classes;
- (e) intentionally and without just excuse—
  - seriously threatens, disrupts or frustrates teaching or learning in a class;
  - engages in a conspiracy to disrupt the proper functioning of the school;
  - insults the dignity of a staff member;
  - cheats in a test or examination;
  - distributes any test or examination material that may enable another person or himself or herself to gain an unfair advantage;
  - sexually harasses another person;
- (vii) is found in possession of or distributes pornographic material;
- (viii) supplies false information or falsifies documentation to gain an unfair advantage at school;
  - is in possession of a dangerous weapon or uses it to threaten any person;
  - engages in any act of public indecency;
- (f) endangers the safety and violates the rights of others;
- (g) fights, swears, or falsely identifies himself or herself;
- (h) threatens fellow learners or educators;
- (i) uses hate speech, makes himself or herself guilty of racism or applies harmful graffiti;
- (j) vandalises, destroys or defaces school property;
- (k) repeatedly violates school rules or the code of conduct;

- (l) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner; or
  - (m) is guilty of offensive or oppressive behaviour;
- may be found guilty of serious misconduct.

[R. 2 amended by P.N. No. 10 of 2003.]

### **3. Disciplinary proceedings to be followed.**

#### *Preliminary investigation*

(1) If a learner is accused of serious misconduct the principal may appoint a person as an investigator. The investigator must collect evidence to enable the principal to determine whether there are grounds for a disciplinary hearing. The investigator must submit a written report to the principal. The principal must decide whether the transgression warrants a disciplinary hearing.

#### *Disciplinary hearing in a case of serious misconduct*

(2) The investigator must draw up a charge setting out all the particulars of the transgression. The charge must be accompanied by a written notice calling on the learner and his or her parents to attend a disciplinary hearing. The date, place and time of the hearing must be stipulated in the notice. This must be determined in consultation with the disciplinary committee. The notice must contain sufficient particulars of the date and nature of the alleged misconduct to enable the learner to identify the incident and to respond to it. At least five school days must be allowed between the handing over of the notice and the hearing. The investigator must also notify all witnesses to be present at the hearing.

#### *Hearing by disciplinary committee*

(3) (a) The governing body of the school concerned must appoint a disciplinary committee to conduct the hearing.

(b) The majority of members of the disciplinary committee must be members of the school governing body.

(c) In a secondary school one member of the disciplinary committee must be a learner selected by the accused learner.

(d) The disciplinary committee must be chaired by a member of the school governing body who is not an employee or member of staff of the school concerned.

(e) For the purposes of ensuring a fair hearing and that due process takes place—

(i) no person who has anything to do with the investigation of the charge of misconduct, including the principal, may serve on the disciplinary committee or be present at the meeting of the school governing body when the report or recommendations of the disciplinary committee are discussed and decision is taken on punishment; and

(ii) no person who is a relative of the accused learner or has a personal interest in the hearing may serve on the disciplinary committee or be present when the school governing body discusses the report of the disciplinary committee.

#### *Procedure at disciplinary hearing*

(4) (a) The investigator must adduce evidence and arguments in support of the charge. He or she must also put questions to any person who has given evidence in rebuttal of the charge.

(b) At a hearing a learner must have the right to be present, to be represented by a representative, to give evidence and—

(i) to be heard;

(ii) to call witnesses;

(iii) to put questions to any person called as a witness in support of a charge;

and

(iv) to inspect documents submitted in evidence.

(c) If a learner or his or her parents fail to attend the proceedings without just cause, the hearing may be conducted in their absence.

(d) No person other than the learner, his or her representative, his or her parents and the members of the disciplinary committee may be present at the hearing.

(e) At the conclusion of the hearing the disciplinary committee must submit the record of the hearing to the governing body together with its findings with regard to the learner's guilt or not and where appropriate recommendations as to corrective measures to be imposed, including suspension or suspension with a view to expulsion, and consequent expulsion.

(f) The governing body must, after considering the findings and recommendations of the disciplinary committee, impose a penalty of summary suspension if it considers it appropriate, or make recommendations to the Head of Department on the appropriate action to be taken in terms of paragraph (d).

(g) A proper record must be kept of the proceedings.

#### *Suspension as a correctional measure*

(5) Where the governing body imposes a penalty of summary suspension as a correctional measure, it must, within five days, in writing inform the learner and his or her parents of the period of suspension, which period must not exceed five school days. In the case of a hotel inmate, the suspended learner must vacate the hostel premises during the period of suspension. The disciplinary committee must advise the district manager of the suspension in writing.

[Editorial Note: Wording as per original *Gazette*.]

#### *Suspension with a view to expulsion*

(6) (a) Where the governing body suspends a learner with a view to expulsion by the Head of Department, it must in writing inform the learner and his or her parents—

- (i) of the suspension from attending school;
- (ii) of the reason for the suspension and that the matter has been referred to the Head of Department with a recommendation that the learner be expelled;
- (iii) that the suspension takes immediate effect and will last until the Head of Department has decided whether or not to expel the learner; and
- (iv) that they have the right to make written representations to the Head of Department concerning the findings of the disciplinary committee.

(b) Upon suspension with a view to expulsion, learners who are boarders in a hostel must be removed by their parents.

(c) The principal must within three school days submit to the Head of Department, via the district office, a report which must include the following:

- (i) the full particulars of the learner;
- (ii) the record of the proceedings;
- (iii) the learner's past disciplinary record;
- (iv) a copy of the school's rules and disciplinary code;
- (v) proof that the disciplinary committee complied with the provisions of paragraph (4); and
- (vi) reasons why expulsion is the appropriate punishment in the circumstances.

(d) After considering the report in sub-paragraph (c) and any other representations made by the learner, his or her representative, or his or her parents, the Head of Department must—

approve the recommendation of expulsion made in terms of sub-paragraph (a) (i); or find that the transgression of the learner does not warrant expulsion and if deemed

appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such transgression; or

find the learner not guilty and acquit him or her, and notify the governing body, the learner, his or her representative and his or her parents accordingly.

[Editorial Note: Numbering as per original *Gazette*.]

(e) A learner, or his or her parents, who wishes to appeal must submit a notice to this effect to the principal of the school. The principal must in turn submit a notice to this effect to the principal of the school. The principal must in turn submit it to the Head of Department who must submit it to the MEC. The parents must submit the notice to the principal within five school days after being notified of the decision of the Head of Department. The principal must submit the notice to the Head of Department within two school days after receipt thereof from the parents of the learner concerned. The Head of Department must submit the notice to the MEC within five school days after receipt thereof from the principal. The notice must be accompanied by the record of the disciplinary proceedings.

(f) The lodging of an appeal must suspend the penalty imposed by the Head of Department until the MEC has decided the appeal. This will mean that the learner will be allowed back at the school pending the appeal.

(g) The MEC may convene an appeal hearing within ten school days of receipt of the notice of appeal. The learner and his or her parent are entitled to address the MEC at the appeal hearing.

(h) After considering the appeal the MEC must—

dismiss the appeal and confirm the expulsion; or

find that the transgression of the learner does not warrant expulsion and if deemed appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such trans-gression; or

find the learner not guilty and acquit him or her.

The decision of the MEC is final.

[R.3 amended by P.N. No. 10 of 2003.]

**4. Due process.**—(1) The procedure to be followed at the hearing must be in accordance with the provisions set out in this paragraph. The procedure may be adapted to suit the needs of a particular school. The essential safeguards in order to ensure due process must, however, be complied with.

(2) The Chairperson must upon the commencement of the disciplinary hearing—

- (a) welcome everybody to the meeting;
- (b) explain the reason for meeting;
- (c) ask the investigator to read the charge;
- (d) ask the learner to react to the charge (plead);
- (e) if the learner pleads guilty—

ensure that the learner knows what he or she pleads guilty to and that it is not a stratagem just to get the matter over and done with;

ask the learner, his or her representative or his or her parents whether they wish to say something before a penalty is imposed;

ask the learner, his or her representative, his or her parents and any other parties, except the members of the disciplinary committee, to leave the room while the committee decides on a suitable punishment;

decide on an appropriate sentence, keeping in mind the object of correcting the behaviour and what the learner and parents said in (ii). This will ensure that the committee applies its mind to the matter;

call the excused parties in and inform them of the punishment;

remind the parents and learner of his or her right to appeal and the procedure therefore. If the punishment is suspension they must be informed that they can appeal to the Head of Department.

[Editorial Note: Numbering as per original *Gazette*.]

(f) If the learner pleads not guilty—

the chairperson requests the investigation to submit evidence – calling of complainant and/or witnesses;

after each witness has stated his or her case the learner or his or her parent must be given the opportunity to put questions to the witness. The purpose is to give him or her the opportunity to refute the evidence. This is not cross-questioning. Chairperson and committee members may also ask questions to get clarification on uncertainties;

ask the learner if he or she wishes to say something – this is an opportunity to state his or her case;

the investigator can ask questions;

the chairperson and committee members may also ask questions to clarify uncertainties;

excuse the parents, learner and his or her representative while the committee reviews the evidence and decides on a verdict;

(vii) call parents and learner in and inform them about the committee's decision;

(viii) if the committee finds the learner guilty, ask him or her or his or her representative or the parents whether they wish to say something before a decision is made on appropriate punishment;

decide on an appropriate sentence, keeping in mind the object of correcting the behaviour and what the learner and parents said in (viii). This will indicate that the committee applied its mind to the matter;

call the learner, his or her representative and his or her parents and inform them of the punishment.

remind the parents and learner of the learner's right to appeal and if the punishment is suspension that they can appeal to the head of Department.

[R.4 amended by P.N. No. 10 of 2003]

**5. Short title.**—This is called the Regulations relating to the Behaviour by Learners in Public Schools.

**1.2 PROVINCIAL NOTICE NO. 60 OF 2002]**  
**[DATED: 2 December 2002]**

SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO.84 OF 1986): AMENDMENT OF  
PROVINCIAL NOTICE NO.32 OF 1999

The Member of the Executive Council responsible for Education in the Province of the Eastern Cape, acting in terms of section ((3) of the South African Schools Act, 1996 (Act No.84 of 1996), hereby amends Regulations Relating to behaviour by learners in public schools which may constitute serious misconduct, the Disciplinary Proceedings to be followed and Provisions of due process safeguarding interests of the learner and any other party involved in disciplinary proceedings, determined by him in Provincial Notice No.32 and published in the Provincial Gazette extraordinary of 25 June 1999 by the substitution for the Schedule thereto of the Schedule hereto.

STONE SIZANI  
MEMBER OF THE EXECUTIVE COUNCIL  
RESPONSIBLE FOR EDUCATION

SCHEDULE  
GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

**1. Definitions**

In these regulations any word or any expression to which a meaning has been assigned in the Act, bears the meaning assigned to it, and unless the context indicates otherwise-

"**code**" means the code of conduct of a school;

**"disciplinary committee"** means a disciplinary committee established by the governing body of a school in terms of section 30(1)(a) of the Act;

**"investigator"** means the principal or an educator appointed by the principal to collect and present evidence against a learner;

**"learner"** means any person receiving education or obliged to receive education in terms of the Act;

**"representative"** means any person representing a learner during a misconduct hearing;

**"serious misconduct"** means conduct contemplated in regulation 2 which may lead to the suspension of a learner from attending school as a correctional measure, or the expulsion of a learner from a school; and

**"the Act"** means the South African Schools Act, 1996 (Act No.84 of 1996).

## **2. Regulations relating to behaviour by learners which constitute**

### **Serious misconduct**

Serious Misconduct

A learner at a school who -

- (a) has been convicted by a court of a criminal offence;
- (b) used or had in his or her possession intoxicating liquor or drugs during a school activity;
- (c) is guilty of assault, theft, gross insubordination or immoral conduct;
- (d) has been repeatedly absent without leave from school and/or immoral conduct;
- (e) intentionally and without just excuse -
  - (i) seriously threatens, disrupts or frustrates teaching or learning in a class
  - (ii) engages in a conspiracy to disrupt the proper functioning of the school;
  - (iii) insults the dignity of a staff member;

- (iv) cheats in a test or examination;
- (v) distributes any test or examination material that may enable another person or herself to gain an unfair advantage;
- (vi) sexually harasses another person;
- (vii) is found in possession of displays or distributes pornographic material;
- (viii) supplies false information or falsifies documentation to gain an unfair advantage at school;
- (ix) is in possession of a dangerous weapon or uses it to threaten any person;
- (x) engages in any act of public indecency;
- (f) endangers the safety and violates the rights of others;
- (g) fight, swears or falsely identifies himself or herself,
- (h) threatens fellow learners or educators;
- (i) uses hate speech, makes himself or herself guilty of racism or applies harmful graffiti;
- (j) vandalizes, destroys or defaces school property;
- (k) repeatedly violates school rules or the code of conduct;
- (l) conducts himself or herself , in the opinion of the governing body, in a disgraceful, improper or unbecoming manner; or
- (m) is guilty of offensive or oppressive behavior, may be found guilty of serious misconduct.

### **3. Disciplinary proceedings to be followed**

#### **Preliminary investigation**

(1) If a learner is accused of serious misconduct the principal may appoint a person as an investigator. The investigator will *must* collect evidence to enable the principal to determine whether there are grounds for a disciplinary hearing. The investigator will *must* submit a written report to the principal. The principal will *must* decide whether the transgression warrants a disciplinary hearing.

### **2. Disciplinary hearing in a case of serious misconduct**

#### **Preliminary investigation**

(2) The investigator will/*must* draw up a charge setting out all the particulars of the transgression. The charge must be accompanied by a written notice calling on the learner and his or her parents to attend a disciplinary hearing. The date, place and time of the hearing must be stipulated in the notice. This must be determined in consultation with the disciplinary committee. The notice must contain sufficient particulars of the date and nature of the alleged misconduct to enable the learner to identify the incident and to respond to it. At least five school days must be allowed between the handing over of the notice and the hearing.

The investigator must also notify all witnesses to be present at the hearing.

### **Hearing by disciplinary committee**

(3) The governing body will appoint a disciplinary committee. The committee will consist of five members and shall comprise-

- (i) two parent members of the governing body in a secondary school and three parent members of the governing body in a primary school;
- (ii) one educator member of the governing body;
- (iii) one learner member of the governing body in a secondary school and the principal of the school concerned.

The committee will be presided over by a chairperson. The chairperson must be a parent member of the governing body. The learner accused of misconduct has the right to appoint two of the aforesaid five members of the disciplinary committee. The learner does not have the right to appoint the chairperson of the disciplinary committee.

*(a) The governing body of the school concerned must appoint a disciplinary committee to conduct the hearing;*

*(b) The majority of members of the disciplinary committee must be members of the school governing body;*

*(c) In a secondary school one member of the disciplinary committee must be a learner selected by the accused learner.*

*(d) The disciplinary committee must be chaired by a member of the school governing body who is not an employee or member of staff of the school concerned.*

*(d) For the purposes of ensuring a fair hearing and that due process takes place -*

*(i) no person who has anything to do with the investigation of the charge of misconduct, including the principal, may serve on the disciplinary committee or be present at the meeting of the school governing body when the report or recommendations of the disciplinary committee are discussed and decision is taken on punishment; and*

*(ii) no person who is a relative of the accused learner or has a personal interest in the hearing may serve on the disciplinary committee or be present when the school governing body discusses the report of the disciplinary committee.*

### **Procedure at disciplinary hearing**

(4) (1) (a) The investigator will *must* adduce evidence and arguments in support of the charge. He or she will *must* also put questions to any person who has given evidence in rebuttal of the charge.

(2) (b) At a hearing a learner will *must* have the right to be present, to be represented by a representative, to give evidence and -

(a) *(i)* to be heard;

(b) *(ii)* to call witnesses;

(c) *(iii)* to put questions to any person called as a witness in support of a charge; and

(d) *(iv)* to inspect documents submitted in evidence.

(3) (c) If a learner or his or her parents fail to attend the proceedings without just cause, the hearing may be conducted in their absence.

(4) (d) No person other than the learner, his or her representative, his or her parents *and* the members of the disciplinary committee and the investigator may be present at the hearing.

(5) (e) At the conclusion of the hearing the disciplinary committee will *must* submit the record of the hearing to the governing body together with its findings with regard to the learner's guilt or not and where appropriate recommendations as to corrective measure to be imposed, including suspension or suspension with a view to expulsion, and consequent expulsion.

(6) (f) The governing body shall *must*, after considering the findings and recommendations of the disciplinary committee, impose a penalty of summary suspension if it considers it appropriate, or make recommendations to the head of Department on the appropriate action to be taken in terms of regulation *paragraph* 3(6)(4) (d)

(7) (g) A proper record must be kept of the proceedings.

### **Suspension as a correctional measure**

(5) Where the governing body imposes a penalty of summary suspension as a correctional measure, it must, within five days, in writing inform the learner and his or her parents of the period of suspension, which period shall *must* not exceed five school days. In the case of a hostel inmate, the suspended learner shall *must* vacate the hostel premises during the period of suspension.

### **Suspension with a view to expulsion**

(6) (1) (a) Where the governing body suspends a learner with a view to expulsion by the head of Department, it must in writing inform the learner and his or her parents -

(a) (i) of the suspension from attending school;

(b) *(ii)* of the reason for the suspension and that the matter has been referred to the head of Department with a recommendation that the learner be expelled;

(c) *(iii)* that the suspension takes immediate effect and will last until the head of Department has decided whether or not to expel the learner; and

(d) *(iv)* that they have the right to make written representations to the head of Department concerning the findings of the disciplinary committee.

(2) *(b)* Upon suspension with a view to expulsion, learners who are boarders in a hostel must be removed by their parents.

(3) *(c)* The principal must within three days submit to the head of Department, via the district office, a report which must include the following:

(a) *(i)* The full particulars of the learner;

(b) *(ii)* The record of the proceedings;

(c) *(iii)* The learner's past disciplinary record;

(d) *(iv)* A copy of the schools rules and disciplinary code;

(e) *(v)* Proof that the disciplinary committee complied with the provisions of sub-paragraph 3.6(1) (4); and

(f) *(vi)* Reasons why expulsion is the appropriate punishment in the circumstances.

(4) *(d)* After considering the report in regulation 3.6.(3) *sub paragraph (c)* and any other representations made by the learner, his or her representative, or his or her parents, the head of Department must -

(a) approve the recommendation of expulsion made in terms of regulation 3.6. (1) *(b) sub-paragraph (a) (i)*; or

(b) find that the transgression of the learner does not warrant expulsion and if deemed appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such transgression; or

(c) find the learner not guilty and acquit him or her, and notify the governing body, the learner, his or her representative and his or her parents accordingly.

(5) *(e)* A learner, or his parents, who wishes to appeal must submit a notice to this effect to the principal of the school.

The principal must in turn submit it to the head of Department who must submit it to the NEC. The parents must submit the notice to the principal within five school days after being notified of the decision of the head of Department. The principal must submit the notice to the head of Department within two school days after receipt thereof from the parents of the learner concerned. The head of Department must submit the notice to the WC within the five school days after receipt thereof from the principal. The notice must be accompanied by the record of the disciplinary proceedings.

(6) (f) The lodging of an appeal will *must* suspend the penalty imposed by the head of Department until the NEC has decided the appeal. This will mean that learner will be allowed back at the school pending the appeal.

(7) (g) The NEC may convene an appeal hearing within ten school days of receipt of the notice of appeal. The learner and his or her parent and the investigator are entitled to address the NEC at the appeal hearing.

(8) (h) After considering the appeal the MEC must -

(a) dismiss the appeal and confirm the expulsion; or

(b) find that the transgression of the learner does not warrant expulsion and if deemed appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such transgression; or

(c) find the learner not guilty and acquit him or her

(9) The decision of the MEC is final.

### **Due process**

4. (1) The procedure to be followed at the hearing will must be in accordance with the provisions set out in this paragraph. The procedure may be adapted to suit the needs of a particular school. The procedure may be adapted to suit the needs of a particular

school. The essential safeguards in order to ensure due process must, however, be complied with.

(2) The Chairperson shall *must* upon the commencement of the disciplinary hearing -

(a) welcome everybody to the meeting;

(b) explain the reason for meeting;

(c) ask the investigator to read the charge;

(d) ask the learner to react to the charge (plead);

(e) if the learner pleads guilty -

(1) (i) ensure that the learner knows what he or she pleads guilty to and that it is not a stratagem just to get the matter over and done with,

(2) (ii) ask the learner, and the his or her representative or his or her parents whether they wish to say something before a penalty is imposed;

(3) (iii) ask the learner, his or her representative, his or her parents and any other parties, except the members of the disciplinary committee, to leave the room while the committee decides on a suitable punishment;

(4) (iv) decide on an appropriate sentence, keeping in mind the object of correcting the behavior and what the learner and parents said in 2 above (ii). This will ensure that the committee applies its mind to the matter.

(5) (v) call the excused parties in and inform them of the punishment;

(6) (iv) remind the parents and learner of his or her right to appeal and the procedure therefore. If the punishment is suspension they must be informed that they can appeal to the head of Department.

(f) If the learner pleads not guilty -

(1) (i) The chairperson requests the investigation to submit evidence

- calling of complaint and/or witnesses;

(2) (ii) After each witness has stated his or her case the learner or his or her parent must be given the opportunity to put questions to the witness.

The purpose is to give him or her the opportunity to refute the evidence. This is not cross-questioning.

Chairperson and committee members may also ask questions to get clarification on uncertainties;

(3) (iii) ask the learner if he or she wishes to say something – this is an opportunity to state his or her case;

(4) (iv) the investigator can ask questions;

(5) (v) the chairperson and committee members may also ask questions to clarify uncertainties;

(6) (vi) excuse the parents, learner and his or her representative while the committee reviews the evidence and decides on a verdict;

(7) (vii) call parents and learner in and inform them about them about the committee's decision;

(8) (viii) if the committee finds the learner guilty, ask him or her or his or her representative or the parents whether they wish to say something before a decision is made on appropriate punishment;

(9) (ix) decide on an appropriate sentence, keeping in mind the object of correcting the behavior and what the learner and parents said in 2 above (viii). This will indicate that the committee applied its mind to the matter;

(10) (x) call the learner, his or her representative and his or her parents and inform them of the punishment;

## **5. Short title**

This is called the Regulations relating to behaviour by learners in Public Schools.

## **2. REGULATIONS RELATING TO BEHAVIOUR BY LEARNERS IN PUBLIC SCHOOLS**

### **MEASURES RELATING TO THE GOVERNING BODIES FOR PUBLIC SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS**

**PROVINCIAL NOTICE NO. 33 OF 1999**

**[DATED: 25 JUNE, 1999]**

#### **MEASURES**

The Member of the Executive Council responsible for Education in the Province of the Eastern Cape has in terms of section 28 of the South African Schools Act, 1996 (Act No. 84 of 1996) promulgated the measures set out in the Schedule.

#### **SCHEDULE**

**1. Definitions.**—In these Measures any word or any expression to which a meaning has been assigned in the Act, bears the meaning assigned to it, unless the context otherwise indicates—

**“Department”** means the department responsible for education in the Province of the Eastern Cape;

**“educator”** means an educator as defined in the Educators Employment Act, 1994 (Proclamation No. 138 of 1994);

**“electoral officer”** means an electoral officer referred to in the Section 12;

**“governing body”** means a governing body contemplated in terms of section 16 (1) of the Act;

**“Head of Department”** means the Permanent Secretary;

**“interested party”** means a parent of an enrolled learner at a school or a representative of a sponsoring body or a person duly authorized by the Head of Department;

**“member”** means a member of the governing body;

**“member of staff”** means a person employed at a school;

**“Member of the Executive Council”** means the member of the Executive Council who is responsible for education in the Province of the Eastern Cape;

**“Minister”** means the minister as defined in section 1 of the Act;

**“non-educator member”** means a person employed at the school in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“officer”** means an employee or an educator of the Department appointed in terms of the Educators Employment Act, 1994 (Proclamation No. 138 of 1994) or the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“parent”** means—

(a) the parent or guardian of a learner with special education needs;

(b) the person legally entitled to custody of a learner with special education needs; or

(c) the person who undertakes to fulfill the obligations of a person referred to in paragraphs (a) and (b) towards the learner’s education at school;

**“principal”** means an educator appointed or acting in a post established as the head of the school;

**“Representative Council of Learners”** means a Representative Council of Learners established in terms of section 11 of the Act;

**“school”** means a public school for learners with special education needs as contemplated in section 12 of the Act; and

**“the Act”** means the South African Schools Act, 1996 (Act No. 84 of 1996).

**2. Composition of Governing Body.**—(1) A governing body established for a public school for learners with special education needs in terms of section 24 of the Act, shall subject to subsections (2) and (3) as appropriate, consist of—

(a) Elected members—

- (i) parents of learners at the school, if reasonably practicable;
- (ii) educators at the school;
- (iii) one member of staff at the school who is not an educator;
- (iv) learners in the eighth grade or higher, if reasonably practicable;
- (v) the principal in his or her official capacity;
- (vi) representatives of sponsoring bodies, if applicable; and

(b) Co-opted members—

- (i) representatives of organisations of parents of learners with special education needs, if applicable;
- (ii) representatives of organisations of disabled persons, if applicable;
- (iii) disabled persons, if applicable; and
- (iv) experts in appropriate fields of special needs education,  
in accordance with the number shown in Annexure E as appropriate.

(2) A Representative Council of Learners must elect the learners referred to in subsection 2 (1) (a) (iv).

(3) The Head of Department shall, if a governing body does not exist at a public school for learners with special education needs, or has ceased to function, appoint at least 3 persons in the service of the Department to perform duties and discharge the functions of a governing body at the school for a period not exceeding 3 months.

(4) The Head of Department may extend the period referred to in subsection (3) by further periods not exceeding 3 months each, but the total period shall not exceed one year.

(5) A governing body must be elected under these measures within a year after the appointment of persons referred to in subsection (3).

**3. Disqualification or removal of a member of governing body.**—A person shall be disqualified from being a member of a governing body if he or she—

(a) has at any time been convicted of an offence for which he or she is sentenced to imprisonment without the option of a fine, unless he or she has received a free pardon or the period of his or her imprisonment has expired at least 3 years prior to the date of his or her election as a member of such body;

(b) is mentally ill and has been so declared by a competent court;

(c) is an unrehabilitated insolvent; or

(d) in the case of a parent member, does not have a child enrolled as a learner with special education needs at the school concerned.

(2) The procedure for the disqualification or removal of a member of the governing body shall be as follows:

(a) The Head of Department or his or her duly appointed representative, shall by notice in writing, inform such member of the governing body, of the allegations raised against such member, and of the reasons why it is desired to disqualify or remove him or her, as a member of the governing body concerned.

(b) Such notice shall require the member of the governing body concerned, to either confirm or deny the allegations raised, within 14 days of receipt of the notice referred to in section 4 (1).

(c) If the member of the governing body concerned admits the allegations, or should he or she fail to respond within the prescribed 14 days, he or she shall be deemed to be guilty of the allegations raised and the Head of Department may in writing, advise such member that he or she is disqualified as a member of the governing body and that his or

her removal from such governing body is effective as from a date decided by the Head of Department.

(d) If the member concerned denies the allegations raised, the Head of Department, or his or her duly appointed representative, shall constitute a tribunal to hear the allegations raised against the member.

(e) The members of the tribunal shall be composed as follows:

(i) The chairperson shall be appointed by the Head of Department, or his or her duly appointed representative;

(ii) one member shall be appointed by the governing body concerned; and

(iii) one member shall be appointed by the member concerned.

(f) The chairperson of the tribunal, shall after consultation with the member concerned, fix a time and venue of the enquiry and provide all parties concerned with a written notification of the time and place so fixed.

(g) At the hearing, the member concerned, shall have the right to be present, to be assisted or represented by any other person, to give evidence and either personally or through a representative—

(i) to be heard;

(ii) to call witnesses; and

(iii) to inspect documents submitted in evidence.

(h) The failure without good cause shown of the member concerned to attend the hearing, shall not invalidate the proceedings.

(i) After the conclusion of the hearing, the tribunal shall by majority decision determine whether sufficient reason exists for the disqualification or removal of the member of the governing body concerned.

(j) The chairperson of the tribunal shall within 7 days thereafter notify the member concerned of the finding of the tribunal and report the outcome of the inquiry to the Head of Department.

**4. Terms of office of members of governing body.**—(1) Subject to the provisions of sections 5 and 29 of the Act—

(a) a member of a governing body who is not a learner with special education needs shall hold office for a period of 3 years from the date determined by the head of Department;

(b) a member who is a learner with special education needs shall hold office for a term of one year: Provided that the Head of Department may at any time remove a member from office for reasons he or she deems to be sufficient after giving such member an opportunity to make any representations he or she may wish to make.

(2) A member of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

(3) Subject to the provisions of subsection (1) and provisions of sections 5 and 29 of the Act, the members of the governing body shall, notwithstanding the expiration of their term of office referred to in subsection (1), hold office for an extended period until a new governing body is constituted in accordance with section 2: Provided that such extended period shall not exceed 3 months.

**5. Dissolution and reconstitution of governing body.**—(1) If—

(a) at any stage only half or fewer of the members who, at the constitution of the governing body were elected, or declared elected in accordance with section 16 (4) (b) (i) are still in office at any stage; or

(b) a meeting of at least 50% of parents entitled to vote under section 11 (1) is convened in accordance with subsection (2) and at that meeting at least 60% of the

parents attending the meeting vote on a motion of no confidence in the governing body concerned,

the Member of the Executive Council shall by notice in the *Provincial Gazette* dissolve such governing body with effect from the date mentioned in the notice, whereupon a governing body shall be reconstituted in accordance with section 2.

(2) The meeting referred to in subsection (1) (b) shall be convened—

(a) by the chairperson of a governing body within 21 days after he or she has been requested thereto in writing by not less than 10% of the parents entitled to vote as there provided; and

(b) on 14 days prior written notice sent by post to such parents or handed to each learner with oral instructions to hand it to his or her parents.

(3) If the Member of the Executive Council is satisfied that a governing body has failed to perform any of the duties imposed upon it by the law or these measures, he or she may direct such governing body in writing to perform such duties in a period specified in such writ and, if such a governing body still does not perform such duties within such period to the satisfaction of the Member of the Executive Council, he or she may by notice in the *Provincial Gazette* dissolve the governing body with effect from the date mentioned in the notice, where-after a governing body shall be reconstituted in accordance with section 2.

(4) The members of a governing body reconstituted in accordance with this section read with section 2, shall hold office for the unexpired term of office of the members of the dissolved governing body.

**6. Failure by governing body to perform functions.**—If a governing body has ceased to perform its functions, the matter shall be dealt with in accordance with section 25 of the Act.

**7. Recusal by member of governing body.**—A member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision-making on any issue in which the member has a personal interest.

**8. Reimbursement of member of governing body.**—(1) Necessary expenses incurred by a member of a governing body in the performance of his or her duties may be reimbursed by the governing body.

(2) No member of a governing body may be remunerated in any way for the performance of his or her duties.

**9. Franchise.**—(1) Every parent having one or more learners with special education needs enrolled at a school, shall be entitled to vote at an election of the parent members of the governing body of such school and only such parents will be admitted to the polling hall.

(2) Any person who is under subsection (1) entitled to vote, shall have one vote in respect of each candidate, with a maximum number of votes equal to the number of members to be elected in accordance with section 2.

(3) A parent's vote may be exercised by a proxy who has the written authority of the parent, provided that a proxy voter may not exercise more than 2 proxy votes.

**10. Electoral officer.**—(1) The Head of Department shall appoint a principal of a school or other officer in writing as an electoral officer to conduct the nomination and election as the case may be of parent, educator and non-educator members referred to in section 2 (1) to a governing body: Provided that a principal may not act as an electoral officer for the designation or election of members of the governing body at his or her particular school.

(2) The educators at the school at the request of the electoral officer may elect deputy electoral officers. Other electoral assistants may be appointed by the electoral officer and/or deputy electoral officer as required.

(3) The electoral officer shall preside at any meeting for the purpose of an election of a governing body during a particular election.

**11. Date, time and place of nomination and election meeting of parents.—**(1) The electoral officer shall determine the date, time and place for a nomination and election meeting and shall inform the principal in writing thereof.

(2) In the case of a new school, the nomination and election meeting will be held not later than 30 days after the establishment of such a school.

(3) In the case of an existing governing body, the nomination and election meeting will be held not later than 30 days after the expiry of the period of office of such a governing body.

(4) The Member of the Executive Council may, on good cause shown, allow deviation from the requirements of subsections (2) and (3), to the extent that he or she considers it justified.

**12. Notice of a nomination and election meeting of parents.—**(1) The electoral officer shall prepare a notice in the form of Annexure A, of the nomination and election meeting referred to in section 13 in which the date, time and place of such meeting shall be stated and shall, at least 10 days prior to the date of nomination and election meeting, provide the principal with a sufficient number of copies of such notice in order that the provisions of subsection (2) may be carried into effect.

(2) The principal shall at least 14 days prior to the date of the nomination and election meeting—

(a) hand a copy of the notice referred to in subsection (1) to every learner of the school concerned with the oral instruction to hand it to his or her parents, a notice so served shall be deemed to have been received by the parent or parents concerned; or

(b) send a copy of such notice to the parents by post, if he or she deems it expedient.

**13. Making school register available.**—The principal shall place the register containing the names and addresses of parents of the learners with special education needs of the school concerned, at the disposal of the electoral officer for purposes of control before the nomination and election meeting.

**14. Nomination of parent members.**—(1) A candidate can be nominated by a parent of a learner with special education needs of the school concerned—

(a) by lodging with the electoral officer, not more than 7 days, and not less than 24 hours, prior to the commencement of the nomination and election meeting, a nomination form duly completed by the proposer, seconder and candidate; or

(b) by being proposed as a member of the governing body during the nomination and election meeting, provided that another parent seconds the proposal and the nomination form duly completed by the proposer, the seconder and, if present, the candidate is, within the time referred to in subsection (2) lodged with the electoral officer.

(2) The electoral officer shall determine the time to be allowed for the nomination of candidates during the nomination and election meeting, and shall inform the meeting thereof.

(3) After expiry of the time referred to in subsection (2), the electoral officer shall consider the nomination and reject the nomination of any candidate who—

(a) has not been nominated in accordance with subsection (1);

(b) is ineligible as contemplated in section 3; or

(c) in the case of a nomination referred to in subsection (1) (b), has not completed the said nomination form, unless written proof to the satisfaction of the electoral officer is submitted before the expiry of the time referred to in subsection (2) that such candidate will be willing to serve as a member of the governing body, and thereupon the electoral officer shall announce the names of the candidates whose nominations have been accepted.

(4) (a) If the total number of candidates whose nominations have been accepted as contemplated in subsection (3), is less than the number of members determined in terms of section 2 (1) in respect of the governing body concerned, a new meeting at which new candidates may be nominated shall be convened in accordance with the provisions of these sections.

(b) If the number of thus accepted candidates who are parents of learners with special education needs of the school concerned—

(i) is equal to the number of the members determined in terms of section 2 (1) in respect of the governing body concerned, the electoral officer shall declare every candidate thus accepted to be a duly elected member of the governing body; or

(ii) is more than the number of members determined in terms of section 2 (1) in respect of the governing body concerned, a poll shall be held in accordance with section 15.

(c) The nominations shall be deemed closed when double the number of vacancies to be filled has been reached.

**15. Poll for parent members of governing body.**—(1) The poll referred to in section 14 (4) (b) (ii) shall be held on the date, time and the place determined in accordance with section 12 (1).

(2) The electoral officer shall issue every parent referred to in section 9 (1) who wishes to vote, with an approved ballot paper on which an official mark or stamp appears.

(3) A parent referred to in section 9 (1) shall record his or her vote on the ballot paper referred to in subsection (2): Provided that if such parent is on account of illiteracy, blindness or any other physical disability unable thus to record his or her vote, the electoral officer may, at the request of the said parent and in the presence of a witness named by the parent concerned, record the vote of such parent on the ballot paper referred to in subsection (2) for the candidates indicated by the parent concerned.

(4) The electoral officer shall reject a ballot paper—

(a) on which the official mark or stamp referred to in subsection (2) does not appear;

(b) on which more votes are recorded than the number of members to be elected in accordance with section 2; or

(c) which is completed in such a way that it is in the opinion of the electoral officer uncertain for which candidate a vote was recorded.

(5) After a rejection of the ballot paper referred to in subsection (4), the electoral officer shall—

(a) in the presence of every candidate who wishes to be present, count the votes recorded for every candidate; and

(b) excluding a governing body referred to in section 2 (4), declare the number of parents determined in terms of section 2 (1) in respect of the governing body concerned, for whom the greatest number of votes have been recorded to be duly elected members of the governing body concerned and state the number of votes recorded for every candidate.

(6) Where the number of votes recorded for 2 or more candidates is equal and it affects the results of the poll, the electoral officer shall ascertain the result with regard to the said candidates by lot.

**16. Election of educator members.**—(1) The electoral officer shall determine the

date, time and place of the meeting for the election of educator members, which shall be held within 5 days of the nomination and election meeting for parent members.

(2) The electoral officer shall prepare a notice of the election meeting and at least 10 days before such meeting distribute a copy of the notice to every educator on the establishment of the school.

(3) A quorum at the poll shall consist of one more than half of the total number of educators on the establishment of the school.

(4) The electoral officer shall issue each educator who wishes to cast his or her vote with an approved ballot paper on which an official mark or stamp appears.

(5) An educator referred to in subsection (2) shall, cast his or her vote by writing the names of the applicable number of candidates as per Annexure E on the ballot paper contemplated in subsection (4).

(6) The electoral officer shall reject a ballot paper—

(a) on which the official mark or stamp referred to in subsection (4), does not appear;

(b) on which the names of more than the applicable number of candidates appears; or

(c) which is completed in such a way that it is in the opinion of the electoral officer uncertain for which candidate or candidates a vote was recorded.

(7) The applicable number of candidates, for whom the greatest number of votes have been recorded, shall be declared as duly elected by the electoral officer.

(8) Where the number of votes recorded for the first 3 or more candidates is equal, the electoral officer shall repeat the electoral procedure until the applicable number of candidates recorded a simple majority of the votes: Provided that if one or two candidates, as the case may be, recorded a simple majority of votes, but the number of votes recorded for the other candidates in the second position is equal, the electoral procedure will be repeated with regard to the other candidates until one or two of the other candidates, as the case may be, recorded a simple majority of the votes.

**17. Election of learner members.**—A Representative Council of Learners established in terms of the guidelines laid down in terms of section 11 (2) of the Act, shall elect from its own number, the number of learners indicated per Annexure E, one of whom shall be a boy and one a girl, where applicable, from the eighth grade and higher who shall be members of the governing body, in accordance with its own procedures.

**18. Election of non-educator members.**—The procedure for the election of educator members shall apply with the necessary adaptation to the election of non-educator members.

**19. Election of sponsoring body members.**—A representative of a sponsoring body shall be elected from its own number according to its constitution or procedures.

**20. Decision of electoral officer.**—The electoral officer shall decide all matters connected with the nomination of candidates and the poll referred to in sections 14 and 15 respectively. In the case of a dispute or grievance arising, aggrieved parties shall be entitled to appeal to the Head of Department.

**21. Procedure after election of governing body.**—After the election of a governing body the electoral officer shall—

(a) place all documents, including ballot papers, used at such election in envelopes and seal such envelopes;

(b) keep those envelopes in safe custody for a period of at least 3 months from the date of the election of the governing body concerned;

(c) notify each elected member, including a member referred to in section 14 (4) (b) (i), in writing, of his or her election; and

(d) notify the principal who in turn shall notify the Head of Department forthwith in writing of the date of the election and of the names and addresses of the persons elected as

members including the names and addresses of the persons declared elected in accordance with section 14 (4) (b) (i).

**22. Election of office bearers.**—(1) The principal shall convene the first meeting of the governing body within 14 school days after he or she was notified in accordance with section 21 (d) of the names and addresses of the members of the governing body.

(2) At the first meeting of the governing body such body must, from amongst its members, elect officer bearers, who must include at least a chairperson, a treasurer and a secretary.

(3) Only a parent member of the governing body who is not employed at the school may serve as the chairperson of the governing body.

(4) Subject to the provisions of subsection (6), the office bearers shall remain in office for a term of 12 months from the date of their election.

(5) An office bearer of a governing body may be re-elected or co-opted after the expiry of his or her term of office.

(6) Where for any reason the office of an office bearer becomes vacant, the governing body shall, subject to the provisions of subsection (3), at the first meeting after the vacancy has occurred, elect one of its members to fill that vacancy for the unexpired period of office of that office bearer.

(7) The principal shall preside at the elections referred to in subsections (2) and (6).

(8) The principal shall after a meeting at which any office bearer has been elected in accordance with this section, notify the Head of Department forthwith in writing of the date of the meeting and of the name, address and office of the person elected.

**23. Meeting of governing body.**—(1) A governing body shall meet at least once each school term.

(2) The chairperson of a governing body shall determine the date, time and place of the meeting and the secretary of such body shall at least 14 days prior to such meeting, notify each member in writing thereof: Provided that in the case of a matter requiring urgent handling in the opinion of the chairperson of the governing body at least 24 hours notice may be given.

(3) Any person may, on the invitation of the governing body, be present at a meeting of such a body and take part in the discussion, but shall have no vote and shall leave the meeting when the governing body so decides.

(4) A governing body may require any staff member of the school concerned to attend a meeting of such body in connection with any matter relating to the functions of the governing body.

(5) At least one more than half of the members of a governing body constituted in accordance with section 2 (1), shall constitute a quorum for any meeting of the governing body.

(6) A governing body shall determine its own rules relating to its meetings and procedures at those meetings.

**24. Minutes of proceedings of meetings.**—(1) The secretary of a governing body shall keep minutes of the proceedings of every meeting and shall on request provide the Head of Department, or any officer duly authorized thereto by him or her, a parent of a learner with special education needs at that school, or member of staff of the school with a copy of such minutes: Provided that there will be no violation of the rights of persons and that the applicant requires it for the exercising or protection of his or her rights.

(2) The minutes of the proceedings of every meeting of a governing body or committee thereof—

(a)

shall at the next ensuing meeting of the governing body or committee thereof, as the case may be, be submitted for approval; and

(b) shall at all reasonable times be open for inspection by the members and the Head of Department or any officer duly instructed by him or her, a parent, or member of staff of the school.

(3) Upon the dissolution of a governing body or the expiry of its term of office, all minutes and other documents of such body or any committee thereof shall be handed to the principal concerned.

(4) Upon the disestablishment of a school the principal shall hand in all minutes and other documents of the governing body or any committee thereof to the Department for safe-keeping.

25. Incidental vacancies in governing body.—(1) An incidental vacancy shall occur in a governing body if a member—

(a) resigns;

(b) dies;

(c) is absent from 3 consecutive meetings without the permission of the governing body;

(d) becomes ineligible as contemplated in section 3 (b), (c), and (d); or

(e) was removed from office in terms of section 4 (1).

(2) Whenever an incidental vacancy occurs—

(a) in a governing body constituted in terms of section 2 (4), the Head of Department shall forthwith appoint an eligible person in the vacancy; and

(b) in a governing body constituted in accordance with section 2 (1), the governing body shall fill such vacancy by means of co-option at its next meeting.

(3) A member or members appointed or co-opted in accordance with subsection (2) shall remain in office for the unexpired period of term of office of his or her predecessor.

(4) Where a vacancy has been filled—

(a) in accordance with subsection (2) (a) the Head of Department shall, and

(b) in accordance with subsection (2) (b) the secretary of the governing body concerned shall, forthwith notify the principal, in writing, of the name of the person who is no longer a member of the governing body and the name and address of his or her successor.

(5) Where a member is co-opted to fill a vacancy of an elected member, such a member shall have voting rights.

**26. Members of governing body and committees do not receive payment.**—No member of a governing body or a committee shall receive any payment, direct or indirect, pecuniary or otherwise for, or in connection with his or her services as such member.

## **ANNEXURE A**

### **NOTICE OF NOMINATION AND ELECTION MEETING**

Election of Learners with Special Education Needs/Educators/Non-Educator/Parents of Learners with Special Education Needs as Members of Governing Body

(SECTIONS 14, 17, 18, 19 AND 20).

NAME OF SCHOOL

Notice is hereby given that a meeting for the nomination and election of candidates for the election of

LEARNERS with Special Education Needs/EDUCATORS/NON-EDUCATORS/PARENTS

As members of the Governing body for the above-mentioned school will be held on.....(date) at.....(time) at.....(place).

A candidate may also be nominated by lodging with the electoral officer, not more than seven days, and not less than 24 hours, prior to the commencement of the above meeting, a nomination form duly completed by the proposer, seconder and candidate. (Nomination forms are obtainable from the principal.)

If more candidates are nominated than the number of members to be elected, a poll will be conducted immediately.

Date  
Address

Signature of Electoral Officer

Information in Connection with Election

*(To accompany notice of nomination and election meeting and poll)*

1. Constitution of governing body

(i) parents of learners with special education needs at the school, if reasonably practicable;

- (ii) educators at the school;
- (iii) members of staff at the school who are not educators;
- (iv) learners with special education needs in the eighth grade or higher, if reasonably practicable;
- (v) the principal;
- (vi) representatives of sponsoring bodies, if practicable;
- (vii) representatives of organisations of parents of learners with special education needs, if practicable;
- (viii) representatives of organisations of disabled persons, if practicable;
- (ix) disabled persons if practicable;
- (x) experts in appropriate fields of special needs education.

## 2. Nomination of parent members

(a) Each candidate shall be proposed by an enfranchiser referred to in paragraph 4 and seconded by another enfranchiser. An enfranchiser who proposes or seconds a candidate shall satisfy himself or herself that the candidate is eligible to be elected as a member.

(b) A nomination form shall be completed in respect of every candidate. These forms are obtainable from the principal before the meeting and will also be available at the meeting.

## 3. Disqualification of members.—A candidate shall be ineligible to be a member if he or she—

(a) has been convicted of any offence for which he or she was sentenced to imprisonment without the option of a fine, unless he or she has received a free pardon or the period of his or her imprisonment ended at least three years prior to the date of his or her election;

(b) is mentally ill and has been so declared by a competent court;

(c) is an unrehabilitated insolvent; or

(d) in the case of a parent member, does not have a child enrolled as a learner with special education needs at the school concerned.

#### Franchise

(a) Every parent of one or more learners on the roll of a school at the time of the election of members of a governing body for such a school shall be entitled to vote at such an election.

(b) A person who is not the natural parent but who is a person in whose custody one or more learners referred to in paragraph (a) have been lawfully placed, is entitled to vote at such an election.

(c) A person who is entitled to vote shall have one vote in respect of any particular candidate; provided that the total number of votes of such person shall not exceed the number of members to be elected.

## **ANNEXURE B**

### **NOMINATION FORM**

**Election of (Learners with Special Education Needs/Educator/Non-Educators/Parents of Learners with Special Education Needs) as Members of Governing Body.**

Name of School

PROPOSER

I,

(Full name)

of

(Residential address)

being a learner with special education needs/educator/non-educator/parent of a learner with special education needs of the above school, hereby propose

(Full name of candidate)

Signature of Candidate

as a member of the governing body of the above-mentioned school.

Signature of Proposer

SECONDER:

I,

(Full name)

of

(Residential address)

being a learner with special education needs/educator/non-educator/parent of a learner with special education needs of the above school, hereby second the above-mentioned proposal.

## **ANNEXURE C**

### **Minimum requirements of Constitution and Standing Orders of a Representative Council of Learners with Special Education Needs.**

Election of class representatives

1.1 Each class in the school will have the opportunity annually to elect one representative to the Representative Council of Learners, which will be constituted of all such elected representatives.

1.2 Elections will be conducted by the class teacher who was appointed as a deputy electoral officer for this purpose.

1.3 In such elections, for which one week's notice will be given in writing and prominently displayed in each classroom, candidates will be nominated and seconded verbally by class members, and the consent of candidates will be obtained. Thereafter, election will be by secret ballot, each class member having one vote only.

Election of executive committee

The duly elected representatives will elect from among their ranks at least the following members of and Executive Committee—

1. A Chairperson;

2. A Treasurer;

3. A Secretary.

**ANNEXURE D**

**BALLOT FORM**

**For the election of (Learner with Special Education Needs/Educators/Non-Educators/Parents of Learners with Special Education Needs) as members of a governing body:**

*(delete the inapplicable)*

Nominees	Mark Choice with an X in this Column
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	

## INSTRUCTIONS

A voting paper shall be rejected if—

- (a) does not contain an official mark or stamp;
- (b) more votes are recorded than the number of members; and
- (c) it contains votes (crosses) for more than there are members to be elected.

## ANNEXURE E

### Numbers and types of members on School Governing Bodies and ballot form reference numbers

School	Principal	Educators	Parents	Non Educator Staff	Learners of Care Worker	Sponsoring Body	Total
Primary Schools with less than 150 Learners	1	2	6	1	0	1	11
Ballot form	1	E3	P5	NT3			
Primary Schools with more than 150	1	3	7	1	0	1	13
Ballot form		E3	P6	NT3			
Secondary Schools with less than 150	1	2	7	1	1	1	13

Learners							
Ballot form		E3	P8	NT3	L3		
Secondary Schools with more than 150 Learners	1	3	9	1	2	1	17
Ballot form		E3	P9	NT3	L3		
Comprehensive or Combined Schools with less than 150 learners	1	2	8	1	2	1	15
Ballot form		E3	P8	NT3	L3		
Comprehensive or Combined Schools with more than 150 learners	1	3	9	1	2	1	17
Ballot form		E3	P9	NT3	L3		
Place of Safety	1	1	1	1	1		5

*Note:* If a governing body serves more than one school, the total number of learners at both schools together will be used to decide the number of the governing body. If the school does not have a non-teaching member staff the number of parent governors must be reduced by one (so the total number of governors will be reduced by 2).

**3. REGULATIONS RELATING TO THE GOVERNING BODIES OF PUBLIC SCHOOLS (EXCLUDING SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS)**

**2.1 PROVINCIAL NOTICE NO. 51 OF 2003  
[DATED: 4 SEPTEMBER 2003]**

**SOUTH AFRICAN SCHOOLS ACT, 1996(ACT NO.84 OF 1996):**

I, NOMSA JAJULA Member of the Executive Council responsible for Education in the Province of the Eastern Cape, acting in terms of section 28, read with section 61, of the South African Schools Act, 1996(Act No. 84 of 1996), hereby make regulations relating to the governing bodies of public schools {excluding schools for learners with special education needs), as set out in the Schedule hereto.

**(Signed)**

**NOMSA JAJULA**

**MEC: DEPARTMENT OF EDUCATION**

**SCHEDULE**

**REGULATIONS RELATING TO THE GOVERNING BODIES FOR PUBLIC SCHOOLS (EXCLUDING PUBLIC SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS)**

**Definitions**

1. In these Regulations any word or any expression to which a meaning has been assigned in the South African Schools Act (Act No. 84 of 1996), bears that meaning, and unless the context otherwise indicates-

**"Act "** means the South African Schools Act, 1996 (Act No. 84 of 1996);

**"Department"** means the Department responsible for education in the Province of the Eastern Cape;

**"educator"** means an educator as defined in the Employment of Educators' Act, Act 76 of 1998,

**"electoral officer"** means an electoral officer appointed in terms of regulation 14;

**"governing body"** means a governing body contemplated in section 16 (1) of the "Act";

**"head of Department"** means the Superintendent General of the Department;

**"interested party"** means a parent of a learner enrolled at a school or a representative of a sponsoring body or a person duly authorized by the head of Department to perform or exercise any duty or power imposed or conferred on him or her by the Act and these Regulations;

**"member"** means a member of the governing body;

**"member of staff"** means an educator or non-educator employed at a departmental institution, and being on the payroll of the Department;

**"Officer"** means an employee or an educator of the Department appointed in terms of the Employment of Educators Act, 1998(Act No. 76 of 1998), or the Public Service Act, 1994 (Proclamation No. 103 of 1994).

### **Composition of the governing bodies**

2.(1) A governing body established for a public school in terms of section 23 of the Act, must subject to subsections (2), (3), (5), (6) and (8) as appropriate consist of -

(a) number of parent members, educator members and learner members, which will vary according to the type and grading of the school as set out in Annexure B; and

(b) the Member of the Executive Council may approve the constitution of a governing body at a public school which differs from the constitution contemplated in section 18 of the Act if-

(i) the governing body of the school has applied in writing for such a different constitution, providing reasons therefore; and

(ii) the Member of the Executive Council is satisfied that such constitution is in the interest of education at the school,

(2) The Member of the Executive Council may, at any time in his or her discretion, withdraw the permission referred to in subregulation (1)(b) whereupon a new governing body shall be constituted in accordance with section 23 of the Act.

(3) A governing body must be elected under these Regulations within one year after the appointment of persons referred to in section 25(1) of the Act.

### **Disqualification of members of governing body**

3. A person is disqualified from becoming or remaining a members of a governing body if he or she-

(a) has been convicted of a crime, including rape, incest or sodomy, or any crime related to child abuse;

(b) is declared mentally ill by a competent court; or

(c) does not have a child enrolled as a learner at the school concerned.

### **Terms of office of members of governing bodies**

4. (1) Subject to the provisions of section 31 of the Act, a member of a governing body other than a learner must hold office for a period of three years from the date determined by the head of Department: Provided that, a member who is a learner must

hold office for a term of one year: Provided further that the head of Department may at any time remove a member from office for reasons he or she deems sufficient.

(2) A member of a governing body may be re-elected or co-opted, as the case may be, after the expiry of his or her term of office.

(3) The members of a governing body must, notwithstanding the expiration of their term of office referred to in regulation 4(1) hold office until a new governing body is constituted.

### **Dissolution and reconstitution of governing bodies**

5. (1) Whenever for any reason the number of members of a governing body falls below the quorum referred to in regulation 19(5), such governing body must be deemed to have been dissolved and a governing body must be reconstituted as prescribed in these measures.

(2) If-

(a) at any stage only half or fewer of the members who, at the constitution of the governing body were elected or declared as elected in accordance with regulation 17 are still in office; or

(b) at least 50% of all parents entitled to vote under section 23 of the Act at the election of members of a governing body of a school,

should attend a special parents' meeting and at least 60% of the parent members attending this meeting vote for the dissolution of the governing body, the Member of the Executive Council must give notice of the dissolution in the Provincial Gazette.

(3) The chairperson of a governing body must convene a parents' meeting within 21 days after the dissolution of the governing body as contemplated in subregulation (2),

(4) If the Member of the Executive Council is satisfied that a governing body has failed

to perform any of the duties imposed upon it by any law or these Regulations, he or she may direct such governing body in writing to perform such duties in a period specified in such directive and if such governing body still does not perform such duties within such period to his or her satisfaction, the Member of the Executive Council may by notice in the Provincial Gazette dissolve the governing body and order that it be reconstituted as prescribed in these Regulations.

(5) The members of a governing body reconstituted in accordance with subregulation (4), must hold office for the unexpired term of office of the members of the dissolved governing body.

### **Status of governing body**

6, (a) The governance of a public school is vested in its governing body,

(b) A governing body stands in a position of trust towards the school.

### **Electoral officer**

7. (1) The head of Department must appoint a principal of a school or other officer in writing as an electoral officer to conduct the nomination and election, as the case may be, of parent, educator and non-educator members to a governing body: Provided that a principal may not act as an electoral officer for the designation or election of members of the governing body at his or her particular school.

(2) The educators at a school, may at the request of the electoral officers, elect a deputy electoral officer as required.

(3) The electoral officer must -

(a) not be nominated or elected as a member of the governing body of a school for which he or she is an electoral officer; and

(b) preside at any meeting for the purpose of an election of a governing body during a

particular election.

### **Date, time and place of nomination and election meeting of parents**

8. (1) The electoral officer must determine the date, time and place for a nomination and election meeting and inform the principal of the school concerned in writing thereof.

(2) In the case of a new school the nomination and election meeting must be held not later than 30 days after the establishment of such school.

(3) In the case of a new governing body, the nomination and election meeting must be held not later than 30 days after the expiry of the period of office of such a governing body.

(4) The Member of the Executive may, on good cause shown, allow a deviation from the requirements of this regulation to the extent that he or she considers reasonable in the circumstances.

### **Notice of nomination and election meeting of parents**

9. (1) The electoral officer must prepare a notice in the form of Annexure A, of the nomination and election meeting referred to in regulation 11 in which the date, time and place of such meeting must be stated and must, at least ten days prior to the date of nomination and election meeting, provide the principal with a sufficient number of copies of such notice in order to give effect to the provisions of this regulation.

(2) The principal must at least 14 days prior to the date of the nomination and election meeting-

(a) hand a copy of the notice referred to in subregulation (1) to every learner of the school concerned with the oral instruction to hand it to his or her parents. A notice so served shall be deemed to have been received by the parent or parents concerned; or

(b) send a copy of such notice and proxy to the parents by post, if he or she deems it

expedient.

### **Making school register available**

10. (l) The principal must place the register containing names and addresses of parents of learners at the school concerned, at the disposal of the electoral officer for purposes of control before the nomination and election meeting.

### **Nomination of parent members**

11. (1) A candidate can be nominated by a parent of a learner at the school concerned -

(a) by lodging with the electoral officer, not more than seven days and not less than 24 hours, prior to the commencement of the nomination and election meeting, a nomination form duly completed by the proposer, seconder and candidate; or

(b) by being proposed as a member of the governing body during the nomination and election meeting, provided that another parent seconds the proposal and nomination form duly completed by proposer, the seconder and, if present, the candidate, is, within the time referred to in this regulation, lodged with the electoral officer.

(2) The electoral officer must determine the time to be allowed for the nomination of candidates during the nomination and election meeting, and must inform the meeting thereof.

(3) After expiry of the time referred to in subregulation (2) the electoral officer must consider the nomination and reject the nomination, of any candidate who-

(a) has not been nominated in accordance with subregulation (1);

(b) is disqualified in terms of regulation 3; or

(c) in the case of nomination referred to in subregulation (l)(b), has not completed the said nomination form, unless written proof of the satisfaction of the electoral officer is

submitted before the expiry of the time referred to in subregulation (2) that such candidate will be willing to serve as a member of the governing body, and thereupon the electoral officer must announce the names of the candidates whose nominations have been accepted.

(4) If the total number of candidates whose nominations have been accepted as contemplated in subregulation (3), is -

(a) less than the number of members determined in terms of regulation 2(1) in respect of the governing body concerned, a new meeting at which the new candidates may be nominated must be convened in accordance with these Regulations.

(b) if the number of thus accepted candidates who are parents of learners at the school concerned -

(i) is equal to the number of members determined in terms of regulation 2(1) in respect of the governing body concerned, the electoral officer must declare every thus accepted candidate to be a duly elected member of the governing body; or

(ii) is more than the number of members determined in terms of regulation 2(1) in respect of the governing body concerned, elections must be held in accordance with regulation^ the nominations must be deemed closed when double the number of vacancies to be filled has been reached.

### **Election for parent members of governing bodies**

12.(1) The nomination referred to in regulation 11 must be held on the date, time and place determined in accordance with regulation 9.

(2) The electoral officer must issue every parent who wishes to vote, with an approved ballot paper on which the official mark or stamp appears.

(3) A parent must record his or her vote on the ballot paper referred to in subregulation (2) : Provided that such parent is, on account of illiteracy, blindness or any other

physical disability, unable to record his or her vote, the electoral officer may, at the request of the said parent and in the presence of a witness named by the parent concerned, record the vote of such parent on the ballot paper referred to in subregulation (2), for the candidates indicated by the parents concerned.

(4) The electoral officer must reject a ballot paper-

(a) on which the official mark or stamp referred to in subregulation (2) does not appear;

(b) on which more votes are recorded than the number of members to be elected in accordance with regulation 2; or

(c) which is completed in such a way that it is, in the opinion of the electoral officer uncertain for which candidate or candidates a vote was recorded.

(5) After rejection of the ballot paper referred to in subregulation (4), the electoral officer must-

(a) in the presence of every candidate who wishes to be present, count the votes recorded for every candidate; and

(b) excluding a governing body appointed in terms of section 25 of the Act declare the number of parents determined in terms of regulation 2 in respect of the governing body concerned, for whom the greatest, number of votes have been recorded to be duly elected members of the governing body concerned and state the number of votes recorded for every candidate.

(6) Where the number of votes recorded for two or more candidates is equal and it affects the results of the poll, the electoral officer must ascertain the result with regard to the said candidates by lot.

### **Election of educator members**

13.(1) The electoral officer must determine the date, time and place of the meeting for

the election of educator members, which must be held within five days of the nomination and election meeting for parent members.

(2) The electoral officer must prepare a notice of the election meeting and at least ten days before such meeting must distribute a copy of the notice to every educator on the establishment (staff) of the school.

(3) A quorum at the poll must consist of one more than half of the total number of educators on the establishment of the school.

(4) The electoral officer must issue each educator who wishes to cast his or her vote with an approved ballot paper on which an official mark or stamp appears,

(5) An educator referred to in subregulation (2) must cast his or her vote by writing the names of the candidates on the ballot paper contemplated in subregulation (4)

(6) The electoral officer must reject a ballot paper-

(a) on which the official mark or stamp referred to in subregulation (4) does not appear;

(b) on which the names of more than the stipulated number of candidates appear; or

(c) which is completed in such a way that it is, in the opinion of the electoral officer, uncertain for which candidate or candidates a vote was recorded.

(7) The candidates, for whom the greatest number of votes has been recorded, must be declared as duly elected by the electoral officer.

(8) Where the number of votes recorded for the first four or more candidates is equal, the electoral officer must repeat the electoral procedure until two candidates recorded a simple majority of the votes : Provided that if one candidate recorded a simple majority of votes, but the number of votes recorded for the other candidate in the second position is equal, the electoral procedure must be repeated with regard to the other

candidates until one of the other candidates records a simple majority of the votes.

### **Election of learner members**

14. A Representative Council of Learners established in terms of the Act and approved by the Member of the Executive Council must elect from its own number, two learners, with due regard to the Provincial gender policy where applicable, from the eighth grade and higher, who must be members of the governing body, in accordance with its own procedures.

### **Election of non-educator members**

15. The procedure for the election of educator members must apply with the necessary adaptation to the election of non-educator members.

### **Decision of electoral officer**

16. The electoral officer must decide all matters connected with the nomination of candidates and the poll referred to in regulations 11 and 12 respectively. In the case of a dispute or grievance arising, aggrieved parties must be entitled to appeal to the Provincial Electoral Officer, and thereafter, to the head of Department.

### **Procedure after election of governing body**

17. After the election of a governing body the electoral officer must -

(a) place all documents, including ballot papers, used at such election in envelopes and seal the envelopes;

(b) keep those envelopes in safe custody for a period of at least three months from the date of the election of the governing body concerned;

(c) notify each elected member, including a members referred to in regulation 1

1(4)(b)(i), in writing of his or her election; and

(d) notify the principal, within seven days, through the head of Department forthwith in writing of the date of the election and of the names and addresses of the persons elected as members including the names and addresses of the persons declared elected in accordance with regulation 1 1(4)(b)(i).

(e) all ballot papers or voting materials used must be kept in the school after the election for a period of one year after the date of election.

### **Election of office bearers**

18.(1) The principal must convene the first meeting of the governing body within fourteen school days after he or she was notified in accordance with regulation 17(d) of the names and addresses of the members of the governing body.

(2) At the first meeting of the governing body such body must, from amongst its members, elect office bearers, who must include at least a chairperson, deputy chairperson, a treasurer and a secretary.

(3) Only a parent member of the governing body who is not employed at the school may serve as the chairperson or deputy-chairperson of the governing body.

(4) Subject to the provision of subregulation (6), the office bearers must remain in office for the term of twelve months from the date of the election.

(5) An office bearer of a governing body may be re-elected or co-opted after the expiry of his or her term of office.

(6) Where for any reason the office of an office bearer becomes vacant, the governing body must, subject to the provisions of subregulation (3), at the first meeting after that vacancy has occurred, elect one of its members to fill that vacancy for the un-expired period of office of his or her predecessor.

(7) The electoral officer must preside at an election referred to in subregulation (2) and also an election referred to in subregulation (6),

(8) The principal must, after a meeting at which any office bearer has been elected in accordance with this section, notify the head of Department forthwith in writing of the date of the meeting and of the name, address and office of the person elected.

### **Meetings of governing bodies**

19. (1) A governing body must meet at least once each school term.

(2) The chairperson of the governing body must determine the date, time and place of the meeting and the secretary of such body must at least fourteen days prior to such meeting, notify each member in writing thereof: Provided that in the case of a matter requiring urgent handling in the opinion of the chairperson of the governing body at least 24 hours notice must be given.

(3) Any person may on the invitation of the governing body be present at a meeting of such a body and take part in the discussion, but must have no vote and must leave the meeting when the governing body so decides.

(4) A governing body may require any staff member of the school concerned to attend a meeting of such body in connection with any matter relating to the functions of the governing body.

(5) At least 1 more than half of the members of a governing body (amongst which shall be a parent), constituted in accordance with regulation 2, must constitute a quorum for any meeting of the governing body.

(6) A governing body must determine its own rules relating to its meetings and procedures at those meetings.

## **Minutes of proceedings of meetings**

20. (1) The secretary of a governing body must keep minutes of the proceedings of every meeting and must on request provide the head of Department, or any officer duly authorised thereto by him or her, a parent of a learner at that school, or member of staff of the school with a copy of such minutes: Provided that there will be no violation of the rights of persons and that the applicant requires it for the exercising or protection of his or her rights.

(2) The minutes of the proceedings of every meeting of a governing body or committee thereof-

(a) must at the next ensuing meeting of the governing body or committee thereof, as the case may be, be submitted for approval; and

(b) must at all reasonable times be open for inspection by the members and the head of Department or any officer duly instructed by him or her, a parent, or member of staff of the school.

(3) Upon the dissolution of a governing body or the expiry of its term of office,

all minutes and other documents of such body or any committee thereof must be handed to the principal concerned.

(4) At the closure of the school the principal must hand in all minutes and other documents of the governing body or any committee thereof at the Department for safekeeping.

## **Incidental vacancies in governing bodies**

21.(1) An incidental vacancy must occur in a governing body if a member-

(a) resigns;

(b) dies;

(c) is absent from three consecutive meetings without the permission of the governing body;

(d) becomes disqualified as contemplated in regulation 3; or

(e) is removed from office in terms of regulation 4(1)

(2) Whenever an incidental vacancy occurs -

(a) in a governing body constituted in terms of regulation 2(1), the head of Department must forthwith appoint an eligible person in the vacancy; and

(b) in a governing body constituted in accordance with regulation 2(1) the governing body must fill such vacancy by means of co-option at its next meeting.

(3) A member or members appointed or co-opted in accordance with subregulation (2) must remain in office pending a bi-election which must be held within 90 days

(4) Where a vacancy has been filled as contemplated in subregulation (2) the secretary of the governing body concerned must, forthwith notify the principal, in writing, of the name of the person who is no longer a member of the governing body and the name and address of his or her successor.

(5) Where a member is co-opted to fill a vacancy of an elected member, such a member must have voting rights.