

PN 27 of 12 July 2001: Regulations relating to Independent Schools, 2001
(Provincial Gazette No. 766)

It is hereby published for general information that the MEC responsible for Education in the Province of the Eastern Cape has, acting in terms of section 34 of the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999), made the regulations set out in the Schedule hereto.

SCHEDULE

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CHAPTER ONE

1. Definitions.-In these regulations unless the context indicates otherwise, a word which is defined the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999), (hereinafter referred to as the "Act") shall have the same meaning, and-

"**person**" includes natural and juristic persons;

"**application**" means the application referred to in regulation 3.

CHAPTER TWO

2. Registration of new schools.-(1) Any person may apply to the head of Department for the registration of a school as an independent school, and the head of Department must register such a school, and issue a registration certificate within 90 days to the applicant, if the school complies with the requirements for registration referred to in regulation 3.

(2) The head of Department may provisionally register a school for a calendar year where such school has failed to comply with the requirements for registration, provided that in his or her opinion-

- (a) such provisional registration improves the availability on an equitable basis of educational opportunities and resources in the Province; and
- (b) the applicant satisfies the requirements referred to in regulation 3 (4);
- (c) there are reasonable grounds that the schools will satisfy the requirements for registration within a period of one year.

(3) If the head of Department decides not to register a school, the procedure must be as follows:

- (a) the head of Department must, within 90 days, notify the applicant;
- (b) an applicant who is aggrieved by the refusal of the head of Department to grant his or her application

may, within 30 days after receiving notice of such refusal, appeal to the MEC, in writing, setting out the grounds of the appeal;

- (c) the MEC must consider the appeal and may confirm, vary or set aside the decision of the head of Department;
 - (d) the MEC must within 90 days-
 - (i) notify the appellant of his or her decision; and
 - (ii) provide the appellant with written reasons for his or her decision.
- (4) The registration of a school does not imply automatic awarding of government subsidy.

3. Requirements for registration of a new school.-(1) The following requirements apply to an application to register a new school with the Department under regulation 2 (1):

- (a) Applications for the registration of a school must be made in writing to the head of Department on FORM EGF/IS;
- (b) The completed form must be lodged with the district office of the Department in which the proposed school is to be established by not later than the 31st March of the year preceding the year of the proposed operation;
- (c) Subject to subregulation (2) (f) and unless smaller numbers are justified, a primary school must have at least 20 learners per grade, and a secondary school must have at least 25 learners per grade;
- (d) Schools using programs where learners progress at their own rate, computer or workbook-based programs may motivate for smaller numbers per class.

(2) The application must be accompanied by-

- (a) a constitution for the school covering all matters relating to the control of the school including its ownership, character, aims, governance, funding and admission policy;
- (b)
 - (i) a floor plan and site plan, which shall in the case of a multi-storey building, include a floor plan for each floor to be occupied, and which confirms that the proposed school building and grounds comply with Department guidelines;
 - (ii) facilities required for the implementation of intended curriculum;
- (c) proof of security of tenure over the proposed school buildings and grounds for a minimum of three years from the date of commencement of the school;
- (d) a certified proof of application for rezoning of a school and that the said building is suitable for the purpose for which it will be used;
- (e) a certificate from the relevant health authorities confirming that the facilities at the school meet the minimum health requirements;
- (f) proof that the school will be financially viable for a least 12 months after registration;
- (g) if applicable, written reasons justifying a decision to enroll fewer than 20 learners per grade in a primary school or fewer than 25 learners per grade in a secondary school;
- (h) needs analysis report on the area of the proposed school;
- (i) submission of certified copies of academic records of educators; and
- (j) a written commitment to appoint suitably qualified educators with a minimum qualification of REQV 13 and that they will be registered with South African Council for Educators.

(3) No registration of a school must be granted unless the head of Department is of the opinion that-

- (a) the school will not discriminate directly or indirectly, on basis of race;
- (b) the school will be able to maintain standards that are not inferior to standards at public schools in the Province;
- (c) there is a need for such a school in the area concerned, as determined by already existing schools, both private and public.

(4) A school must not be registered as an independent school if the applicant has been convicted of any criminal offence.

4. Registration of existing schools.-(1) A school which is registered as private or independent under the provisions of any law before the commencement of these regulations, shall be deemed to be an independent school registered under regulation 2 (1), provided that it satisfies the requirements and conditions for registration

provided in regulations 3 and 5 respectively.

(2) If the school referred to in subregulation (1) does not satisfy the prescribed requirements or conditions, it will be given 90 days to comply with such requirements or conditions.

(3) If, after the expiry of the period referred to in subregulation (2), the school does not comply with the prescribed requirements or conditions for registration, the procedure must be as follows:

- (a) The head of Department must notify the owner of the school in writing of his or her decision to deregister the school, and the reason for the decision;
- (b) An owner of a school who is aggrieved by the decision of the head of Department may, within 30 days of receiving notice of such a decision, appeal to the MEC in writing, setting out the grounds of appeal;
- (c) The MEC must consider the appeal and may confirm, vary or set aside the decision of the head of Department;
- (d) The MEC must within 90 days from the date on which the appeal referred to in paragraph (b) has been submitted-
 - (i) notify the appellant of his or her decision; and
 - (ii) provide the appellant with written reasons for his or her decision.

5. Conditions governing registration.-The following conditions of registration apply to any school that is registered with the Department:

- (a) The head of Department must, within 21 days, be notified of any change of ownership;
- (b) Notice of at least three calendar months must be given to parents, staff, learners and the head of Department of any intention to close or suspend the operation of a school;
- (c) A change of premises must be approved by the head of Department who must be furnished with-
 - (i) the address of the proposed new location for the school; and
 - (ii) all the documentation set out in paragraphs (b) to (e) of subregulation (2), reflecting any new circumstances caused by the change of address;
- (d) Educators appointed must satisfy the minimum qualification (REQV 13) requirement of the Department, unless, upon application by the school, the head of Department is of the opinion that the services of a specified person are of particular benefit to the school;
- (e) At the head of that school there must be a principal who must be a professional educator responsible for the organisation and supervision of the school;
- (f) The admission policy of the school must not discriminate, directly or indirectly, on the grounds of race;
- (g) The number of learners attending the school must not exceed the norms stipulated by the public school in the Province;
- (h) The school must-
- (i) follow the approved curricula of the Department that have been approved by the head of Department;
 - (ii) ensure that the average duration of a school day and the minimum number of school days are as approved by the head of Department;
 - (iii) keep the required registers referred to in Chapter Three.

6. Deregistration of schools.-(1) If, in the opinion of the head of Department-

- (a) a school does not satisfy a requirement for registration which was at any time considered by the head of Department as contemplated in paragraph (b) of regulation 3 (3);
- (b) a school does not satisfy a condition for registration contemplated in regulation 5; or
- (c) the governing body of a school contemplated in regulation 4 (1) fails to comply with the obligation imposed by regulation 4 (2), the head of Department must determine a reasonable period for compliance with the relevant requirement of days, condition, or obligation and must in writing instruct the governing body of the school accordingly.

(2) If, after the expiry of the period referred to in subregulation (1), the school still does not comply with the requirements, condition, or obligation-

- (a) the governing body of the school must be granted an opportunity to make written representations against the withdrawal of the school's registration;
- (b) if, notwithstanding the written representation, the head of Department reasonably believes that the school should be deregistered, he or she must furnish the governing body with a notice of withdrawal of registration together with written reasons for his or her decision;
- (c) subject to paragraph (e), the notice of withdrawal of registration must take immediate effect unless the head of Department on good cause indicates otherwise;
- (d) a governing body aggrieved by a decision of the head of Department under paragraph (b) may, within 30 days of receiving notice of the withdrawal of registration, appeal to the MEC;
- (e) unless the MEC on good cause shown directs otherwise, the lodging of an appeal must have the effect of suspending the operation of a notice of withdrawal until the MEC has decided on the appeal; and
- (f) the MEC must consider the appeal and must confirm, vary or set aside, within 30 days, the decision of the head of Department.

7. Penalties for operating unregistered school.-(1) No person may-

- (a) establish or maintain a school that has not been registered in terms of regulations 4 (3) or 2 (1); or
- (b) establish or maintain a school that has been deregistered.

(2) Any person who contravenes subregulation (1) is guilty of an offence and is liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

CHAPTER THREE
REGISTERS

8. Keeping of registers and other documents.-All registered independent schools must keep the following documentation in such a form and manner as may from time to time be determined or required by the head of Department:

- (a) an admission register and an attendance register of the learners enrolled at or attending the school;
- (b) a record of results of learners as reflected in reports given to parents or guardians;
- (c) a file for each learner containing the following documents-
 - (i) a certified copy of the birth certificate or identity document;
 - (ii) the application form;
 - (iii) a copy of each learner's record of results; and
 - (iv) the transfer document and/or a report from the last school attended in which the last standards passed is indicated;

[Wording of sub-para. (i) and (ii) as per original *Gazette*.]
- (d) a register of the educators employed at the school in which their names, qualifications and remuneration are recorded;
- (e) a file for each educator containing-
 - (i) a signed service contract;
 - (ii) proof of South African citizenship or a work permit;
 - (iii) a certified copy of an identity document; and
 - (iv) certified copy of the educator's qualifications;
- (f) financial records, including an annual audited report;
- (g) such other records and documentation as head of Department may from time to time determine.

9. Total quality management.-(1) The MEC may, at his or her own instance or on the written request of the owner, governing body or principal of a school, order that an evaluation of a school be made.

(2) The evaluation must be conducted within written terms of reference stipulated by the MEC and pertaining to any requirement or conditions of registration.

(3) The MEC must provide the school with a written report of the evaluation within 60 days of its completion.

CHAPTER FOUR

10. Conditions of use of subsidy paid in terms of section 31 of the Act.-(1) A subsidy paid in terms of section 31 (2) of the Act may only be used on condition that-

- (a) it be used to further the education of children as contemplated in the Act;
- (b) the applicant or the school allows an official of the state, designated by the head of Department to inspect the school at any time and provide that official with all documentation and information which may be required by that official;
- (c) the applicant, the school, the governing body or any person immediately reports any financial irregularities or abuse to the South African Police Service or the head of Department; and
- (d) the school complies with the accounting procedures set out in subregulation (2).

(2) Despite any other law, the school must-

- (a) keep proper books and records in relation to receipts and payments;
- (b) prepare a report of all the activities of the school, as a case may be, including financial statements, in respect of each financial year;
- (c) annually, within nine (9) months after the end of each financial year, submit the report and financial statements referred to in paragraph (b) to the head of Department.

(3) "**financial year**" referred to in subregulation (2) means-

- (a) the period from the date on which the school is registered for the first time to the last day of March in the following year; and
- (b) each period of twelve (12) months ending on the last day of March.

(4) The financial statements must comply with generally accepted accounting principles and any other directions that may be given by the MEC or the MEC responsible for financial matters, as to the information to be contained in such statements, the manner in which such information is to be presented or the methods and principles according to which such statements are to be prepared.

(5) The school, as the case may be must preserve the documents referred to in subregulation (2), as well as all supporting vouchers and receipts, whether original or reproduced, for a period of five (5) years.

11. Short title.-These regulations are called Regulations relating to Independent Schools, 2001.

FORM EGF/IS

PROVINCE OF THE EASTERN CAPE DEPARTMENT OF EDUCATION

APPLICATION FOR REGISTRATION OF AN INDEPENDENT SCHOOL

1. Proposed name of school

2. Postal address of the school
3. Residential address of the school

4. District
5. Region

6. Name and address of owner of school

7. Information of the nearest school with the same classes

Name	Type	Distance
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8.	Is the school to be managed on behalf of a religious society or some other body?	Yes	No
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9. If yes, give the name and address of the society or body concerned

10. The owner of the land on which the school is to be built:

11. Will the school be situated within: (mark with a X in appropriate block)

An area under the control of a local authority	On private land or farm
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12.	Have occupational rights in respect of the site been obtained for school purposes?	Yes	No
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13. If yes, state the date and reference number

Date	Reference Number
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14.	Has the local authority approved the site/building for school purposes?	Yes	No
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15. Estimated enrolment:

Gr. R	Gr. 1	Gr. 2	Gr. 3	Gr. 4	Gr. 5	Gr. 6	Gr. 7	Gr. 8	Gr. 9	Gr. 10	Gr. 11	Gr. 12	Total
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16. Number of learners from outside the feeder area

17. Particulars from where the pupils in No. 16 are from:

18. Number of educators needed

(Please attach a detailed breakdown of standards/subjects to taught and include the teachers' qualifications)

19. How many classrooms will be provided?
20. Will the curricula and syllabi of this Department be followed? Yes No
21. If the answer to 20 is "No", a complete memorandum must accompany this application, indicating the different subjects per standard offered by the school and the time allocation per week for each of the subjects.
22. If pupils are to be taught in Grade 12, will this Department's final examination be written? Yes No
23. If the answer in 22 is "No", reasons must be given and the name of the examining body whose examinations will be written must be indicated

24. Do you intend applying for the school to be registered as an examination centre? Yes No

25. Language/s that will be used as medium of instruction

26. Does the applicant intend applying for subsidy? Yes No
If so, state reasons:

27. Does the applicant intend following the school calendar of this Department? Yes No

28. If the answer at 27 is "No", full details of the school calendar to be followed must be submitted with this application, indicating the number of school days per term.

29. Plans:-A sketch plan or plans of the school must accompany this application, school grounds and hostels (if any), showing the dimensions and position of the rooms, buildings and outbuildings. The estimated distance from the school to the nearest public road and building must also be shown. A note should be added to show the material used for walls (ie. brick, stone etc.) and roofing as well as the total window area of each room.

30. I,

The undersigned, being the owner/duly authorised agent of the owner, of the aforementioned school, hereby applies to the Superintendent General Department of Education, Culture and Sport for the registration of such school. I hereby declare that the particulars furnished above are true and correct.

Signature of the owner or his agent

Date

Capacity in which application is made

Place

31. Recommendation of Education Development Officer:

I hereby declare that the particulars furnished in this form are correct as far as I have been able to ascertain.

Recommended/Not recommended:

Comments:

EDUCATION DEVELOPMENT OFFICER DATE

32. Recommendation of District Manager:
Recommended/Not recommended:
Comments:

DISTRICT MANAGER DATE

33. Recommendation of Regional Manager:
Recommended/Not recommended:
Comments:

REGIONAL DIRECTOR DATE

34. Recommendation of Director: General and Further Education:
Recommended/Not recommended:
Comments:

DIRECTOR: GENERAL AND FURTHER EDUCATION DATE

35. Recommendation: Chief Director
Recommended/Not recommended:
Comments:

CHIEF DIRECTOR: EDUCATION PROVISIONING AND
MANAGEMENT DATE

36. Approval of the Superintendent General: Education
Approved/Not approved:
Comments:

REGISTRATION REQUIREMENTS CHECKLIST

NAME OF SCHOOL :

DISTRICT :

CO-ORDINATOR :

DATE :

NO.	DOCUMENT DESCRIPTION	YES/NO	SIGNATURE	DATE
1.	Constitution as referred to in 3 (2) (a)			
2.	Registration as non-profit organisation			
3.	C.K. Number			
4.	Health Certificate			
5.	Principle Qualification			
6.	Owner Profile			
7.	Sample of educators contract			
8.	Sample of parent contract			
9.	Lease contract/Deed of ownership			
10.	Floor plan			

NOTE:

NO APPLICATIONS SHOULD BE SENT TO THE HEAD OFFICE UNLESS THEY HAVE ALL THE DOCUMENTS MENTIONED ABOVE.

IF ANY OF THE ABOVE DOCUMENTS IS NOT SUBMITTED THE APPLICATION WILL NOT BE PROCESSED AND WILL BE RETURNED TO DISTRICT

SIGNATURE OF DISTRICT CO-ORDINATOR

DATE

**DEPARTMENT OF EDUCATION
PROVINCE OF THE EASTERN CAPE**

This is to certify that

EMIS NO.

has been registered as an independent school with the
Department of Education
Province of the Eastern Cape

In terms of

the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999)
and the Regulations promulgated thereunder for the

PRIMARY PHASE

DATE OF COMMENCEMENT:

**DEPARTMENT OF EDUCATION
PROVINCE OF THE EASTERN CAPE**

This is to certify that

EMIS NO.

has been registered as an independent school with the
Department of Education
Province of the Eastern Cape

In terms of
the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999)
and the Regulations promulgated thereunder for the

INTERMEDIATE PHASE

DATE OF COMMENCEMENT:

SUPERINTENDENT GENERAL: EDUCATION

DATE ISSUED

**DEPARTMENT OF EDUCATION
PROVINCE OF THE EASTERN CAPE**

This is to certify that

EMIS NO.

has been registered as an independent school with the
Department of Education
Province of the Eastern Cape

In terms of
the Eastern Cape Schools Education Act, 1999 (Act No. 1 of 1999)
and the Regulations promulgated thereunder for the

COMBINED PHASE

DATE OF COMMENCEMENT:

**PN 33 of 25 June 1999: Measures relating to the Governing Bodies for Public Schools for Learners with Special Education Needs
(Provincial Gazette No. 416)**

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

ARRANGEMENT OF REGULATIONS

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3.	Disqualification or removal of a member of governing body
4.	Terms of office of members of governing body
5.	Dissolution and reconstitution of governing body
6.	Failure by governing body to perform functions
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23.	Meeting of governing body
24.	Minutes of proceedings of meetings
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Annexure A	Notice of nomination and election meeting
Annexure B	Nomination form
Annexure C	Minimum requirements of constitution and standing orders of a representative council of learners with special education needs
Annexure D	Ballot form
Annexure E	Numbers and types of members on school governing bodies and ballot form reference numbers

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 sub-section 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

Signature of Electoral Officer

Address

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)

	<i>Nominees</i>	<i>Mark Choice with an X in this Column</i>	
	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

<i>School</i>	<i>Principal</i>	<i>Educators</i>	<i>Parents</i>	<i>Non Educator Staff</i>	<i>Learners of Care Worker</i>	<i>Sponsoring Body</i>	<i>Total</i>
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 Learners	1	2	7	1	1	1	13
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).
