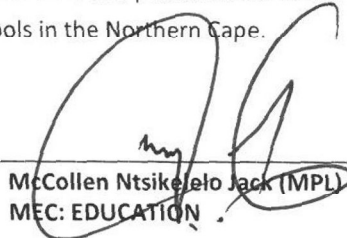


GENERAL NOTICES • ALGEMENE KENNISGEWINGS

NOTICE 147 OF 2019

SOUTH AFRICAN SCHOOLS ACT, 84 OF 1998 as amended

I, **Mc COLLEN NTSIKELELO JACK**, Member of the Executive Council responsible for education in the Province of the Northern Cape, acting in terms of Section 18A (1) of the South African Schools Act, 1996, hereby determine and publish in the Schedule hereto the Code of Conduct for Members of the School Governing Bodies for public schools in the Northern Cape.



McColleen Ntsikelelo Jack (MPL)
MEC: EDUCATION

SCHEDULE

CODE OF CONDUCT FOR MEMBERS OF GOVERNING BODIES FOR PUBLIC SCHOOLS

PREAMBLE

Members of school governing bodies in public schools, recognize the supremacy of the constitution, and in particular that the education system has to strive to:

Heal the divisions of the past and support the establishment of a society based on democratic values, social justice and fundamental human rights, and to improve the quality of life of all learners and to free the potential of each:

Recognize further that while the State has the obligation to make education available and accessible, its efforts have to be complemented by the commitment and acceptance of responsibility by each member of a school governing body to uphold the values and principles contained in the constitution;

Accept that the interests of education require a system of schools which will redress past injustices in educational provision, provide an education of a high quality for all learners and, in so doing, lay a strong foundation for the development of all people's talents and capabilities, advance transformation of society, combat racism and sexism and all other forms of unfair discrimination and prejudice, contribute to the eradication of poverty and economic well-being of the province, protect and advance our diverse culture and languages, uphold the rights of all learners, parents and educators, and promote their acceptance of responsibility for the organization, governance and funding of schools in partnership with the State.

Therefore adopt, of our free will, this Code of Conduct aimed at upholding the above values and principles, and establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure to which we are elected, appointment or co-opted

1. Definitions

In this Code of conduct all words, phrases or terminology shall have the same meaning attached to them in the constitution, South African School Act, 1996 and the Northern Cape School Act, 1996:

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

“**Circuit Manager**” means an official responsible for the management of a cluster of schools within a circuit;

“**Code of Conduct**” means a set of rules regulating the behaviour of members of governing bodies;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Day**” means calendar days, including Saturdays and Sundays;

“**Department**” means the Northern Cape Department of Education;

“**District Manager**” means the official responsible for the management of education at the district level;

“**Educator**” means any person who teaches, educates or trains other persons or who provides professional educational services at a public school including professional therapy and educational psychological services but does not include a person who is appointed to exclusively perform extra-curricular duties;

“**Governing body**” means a body as defined in the South African Schools Act, 1996 (Act No. 84 of 1996);

“**Head of Department**” means the Head of the Department of Education in the Province of Northern Cape;

“**Learner**” means any person enrolled at a public school, receiving education or obliged to receive education in terms of the South African Schools Act, 1996 (Act No. 84 of 1996);

“**Legal representative**” means either a practicing attorney, non-practicing attorney, an advocate, a non-practicing advocate, legal advisor, prosecutor, magistrate, judge or any other person with a legal qualification that practices in any field of law;

“**Member**” means a member of a school governing body of a public school in the Northern Cape as defined in Section 23(1), 24(1) of SASA.

“**Member of staff**” means a person appointed at a Public school according to the Public Service Act, 1994 (Act No.103 of 1994), or the South African Schools Act, 1996 (Act No. 84 of 1996) and who is not an educator at a school;

“**Member of the Executive Council**” means the Member of the Executive Council of the Province of Northern Cape, responsible for Education in the Province;

“**Official**” means office based employee of the Department employed in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), as amended, or the Public Service Act, 1994 (Act No.103 of 1994);

“**Principal**” means an educator appointed or acting as the head of a public school;

“**Public School**” means an ordinary public school, a public school for learners with special education needs or a public school that provides education with a specialized focus on talent, including sport, performing arts or creative arts;

“**Stakeholder**” means any member of the governing body, parent, owner of private land on which a public school is situated, an official of the department or member of the community; and

“**Scheduled meeting**” means a meeting of the governing body as per the Constitution of the governing body.

2. Purpose

The purpose of this Code of Conduct is to –

- (a) Promote a standard Code of Conduct that is applicable to all members of governing bodies;
- (b) Assist members in conducting themselves in accordance with the Code of Conduct;
- (c) Establish minimum standards of expected behaviour for members of governing bodies;
- (d) Assist in eliminating or minimizing conflict amongst members of governing bodies whilst dealing with misconduct;
- (e) Promote and maintain good governance in schools in order to provide quality education;
- (f) Provide a standard framework within which all members of governing bodies must operate; assist members of governing bodies when supporting the principal, educators and members of staff at the school in the performance of their duties.

3. Application

This Code of Conduct shall be applicable to all members of governing bodies in public schools within the Province of Northern Cape, with effect from the date of publication of this notice.

4. Conflict of interest and Disclosure of information

Notwithstanding the provision of Section 59 of the Act:

- (1) A Member recognize that he/she stands in a position of trust towards the school;
- (2) A Member must disclose any interest or relationship that will, or is likely to, or may lead to a reasonable perception that it will, affect his/her judgement on any matter that they are required to consider or any function that may undertake in their capacity as such;
- (3) A Member must, before considering or deciding any such matter or undertaking any such function, disclose to the Head of Department:
 - (a) Any direct or indirect past financial or personal interest in the matter;
 - (b) Any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias; and
 - (c) If the circumstances that require disclosure are unknown to a member prior to considering or deciding any matter or undertaking any function, such disclosure must be made immediately when these circumstances become known to the member,
 - (d) A member who has made such a disclosure to the Head of Department under paragraph 4(c), may not undertake the function, consider or decide the matter without the written approval of the Head of Department.

- (4) A member of the governing body must treat all information that he/she obtains in his/her capacity of being a member of the governing body as confidential unless the law prescribes otherwise.
- (5) The confidentiality referred to in paragraph 4(4) should not compromise the principles of accountability and transparency.
- (6) Information must remain confidential even after a member ceases to be a member of a governing body;
- (7) Statements or information provided to the media including social networking sites or to any person relating to the governing body, a member of the governing body, the school, a parent, a learner or any staff of the school, shall only be given with the consent of the governing body and/or by person(s) authorized in terms of legislation, policy or rules of the governing body;
- (8) A member may not disseminate false information or unsubstantiated allegations via any means whatsoever including any social networking sites about the governing body or any member of the governing body, the school, a parent, a learner or any staff members at the school.
- (9) A member found to be in breach of paragraph 4(8) may, in addition to any other sanction, be requested to: –
- (a) Publish at his/her cost a retraction of the offensive statement or information; and
- (b) Issue an apology to the person or institution affected by the disclosure, dissemination or publication of information.

5. General Code of Conduct for members of a school governing body

- (1) A member of a governing body must –
- (a) at all times conduct himself or herself in a manner that will promote the best interests of the school;
- (b) conduct himself or herself at all times in a manner that will bring credit to the governing body of the school;
- (c) conduct himself or herself in a responsible and sensible manner in the performance of his or her duties as a member of the governing body;
- (d) only perform governance related duties to the best of his/her ability;
- (e) ensure that the work of the governing body is carried out lawfully and in accordance with the Constitution of the governing body;
- (f) conduct himself or herself at all times in an ethical manner;
- (g) disclose any information that relates to his or her conduct, especially in respect of the National Register of Sex Offenders (NRSO) compiled in terms of the Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007), or any other Acts relating to offences committed against children and which information may not have been known to the school prior to the member's election or appointment. Any member who fails to disclose such information shall, after due process being followed, vacate his or her seat immediately upon such information becoming known to the school or the department;
- (h) conduct himself or herself at all times in a manner conducive to the smooth running of the school and of the meetings of the governing body;
- (i) adhere to the provisions of the Constitution of the governing body as set out in section 18 of the Act;
- (j) ensure that he/she protects the property of the school;
- (k) act with loyalty, honesty, integrity and in the best interest of the public school when administering, controlling and managing the property of the school; and
- (l) In writing, excuse himself or herself if he/she is unable to attend a scheduled meeting of the governing body. Failure to do so for two (2) consecutive scheduled meetings of the governing body, might lead to the member's membership of the governing body being terminated.
- (m) In writing, resign from the governing body if he/she is convicted of a criminal offence (related to/not related to his/her execution of his/her governing body responsibilities) during his term of office as an active member of the governing body.

(2) A member of a governing body must –

- (a) conduct himself or herself in a manner that promotes the professional management of a school or with any educator's performance of his or her duties;
- (b) conduct himself or herself in a manner that promotes the work of a member of staff in the performance of his or her duties at the school;
- (c) ensure the implementation of decisions that were duly adopted by the governing body;
- (d) refrain from interfering with learners during any school activity or do anything that may be construed as interference with learners during a school activity. Any conduct in furtherance of the member's responsibilities as a member of the governing body during a school activity will not be construed as interference;
- (e) refrain from conducting himself or herself in a manner that may harm the relationship of trust between the governing body and the school;
- (f) refrain from any action which may bring him or her and/or the school into disrepute or in any manner whatsoever harm the good name of the school, the governing body or any member of the school community.

6. Serious Misconduct

(1) The following constitutes serious misconduct and any member may, after due process is followed, be found guilty of serious misconduct if he/she:–

- (a) possesses or consumes intoxicating substances, alcohol or illegal drugs whilst performing governing body functions and duties;
- (b) carries on his or her person or uses unauthorized, unlawful or illegal dangerous objects to harm other persons during any school activity and whilst performing his or her governing body functions and duties;
- (c) engages in a sexual relationship with a learner of a public school;
- (d) participates, initiates or conducts a corrupt, unethical, immoral or unbecoming relationship with any person in the school governing body or the school where he or she is a member of the governing body;
- (e) conducts himself or herself in a manner which will affect his or her powers of decision making in the governing body;
- (f) brings the name of the school or the governing body into disrepute;
- (g) verbally abuses a learner, parent, educator or member of staff employed at the school or another member of the school governing body;
- (h) misuses or abuses school property and resources;
- (i) abuses or misuses his or her position as a member of the governing body in any manner whatsoever;
- (j) accepts or gives bribes or favours to any person in the performance of his or her duties as a member of the governing body;
- (k) uses his or her position as a member of the governing body for personal gain or for the benefit or gain of his or her relatives, acquaintances, friends or any other person;
- (l) unduly influences the procurement processes of the school for personal gain or for purposes of enriching friends, acquaintances, relatives or any other person;
- (m) Hinders the Department's investigations into the conduct of any person and in particular investigations relating to any other member of the governing body, learner, educator or member of staff employed at the school or hinders investigations into any other matter whatsoever;
- (n) Fails to perform the functions mandated to him or her as a member of the governing body;
- (o) Binds the school into unauthorized, unlawful or financially wasteful contracts by entering into or negotiating contracts that are not beneficial to the school or that negatively affects the school's budget;
- (p) Requests or accepts any personal or financial favours or gain by virtue of conducting any duties or activities of the governing body;

- (q) Exempts or directs the governing body to exempt himself or herself or any other member of the governing body from the payment of school fees contrary to the school fee exemption policy;
 - (r) Receives any concession in school fees payment for his or her children attending a school where he or she is a member by virtue of his or her position on the governing body and not in accordance with the school fee exemption policy;
 - (s) Grants concessions in school fees to any member of the school staff or to another member of the governing body who would otherwise not qualify in terms of the school fee exemption policy;
 - (t) Sells, deals or is in possession of illegal intoxicating or stupefying substance in or out of the school premises or during any school activity. Should any member operate a liquor business, same shall not be located within 50 metres of the school boundary fence and shall not allow entry of under-aged persons in the business;
 - (u) Operates a business of a sexual nature which renders services of a sexual nature or sells items related to a sexual activity;
 - (v) Conducts any business on the school premises which is in conflict with the school policies or the department's policies or which adversely affects teaching and learning at the school delays staff recruitment, staff selection and placement procedures without any lawful or reasonable grounds;
 - (w) Delays staff recruitment, staff selection and placement procedures without lawful or reasonable grounds;
 - (x) Involves himself or herself in acts of nepotism, bribery, corruption or favouritism in the staff recruitment, selection and placement procedures;
 - (y) Has been found guilty of a criminal offence whilst serving on the governing body;
 - (z) Commits any act of bribery, corruption or favouritism in the admission of learners:
- (aa) Charges or instructs the principal to charge any administration, registration or any other type of fee for the admission of learners (excluding school fees, where applicable);
 - (bb) Commits any act of theft or fraud whilst executing governing body functions;
 - (cc) Utters any racist, sexist or xenophobic words or displays such behaviour towards any learner, parent, member of staff, member of the governing body, any departmental official or any other person at the school or during any school activity;
 - (dd) Participates or causes, directs or incites other members of the governing body, parents, learners or members of staff to participate in unlawful, immoral or unethical activities;
 - (ee) Conducts himself or herself in any manner whatsoever that will affect good governance and management of a school;
 - (ff) Conducts a corrupt relationship with another member of the governing body, staff or any other person at the school which hinders the smooth running of the school.
 - (gg) In any way, conducts himself or herself in a manner that conflicts with the vision or mission of the school or any policy/legislation administered by the Department;
- (2) (A member who) In any way, is involved in and/or commits an act which in the discretion of the Head of Department constitutes a serious misconduct.

7. Conduct Relating to Financial Management

Financial misconduct is an act of serious misconduct and every member of a governing body must:-

- (a) maintain the highest standard of ethical behaviour in matters pertaining to funds and the management of school funds;
- (b) ensure utmost honesty and confidentiality in dealing with documentation and records pertaining to the financial matters of the school;
- (c) ensure that the resources of the school, and especially financial resources, are managed and utilized responsibly;
- (d) ensure that all school financial matters are conducted honestly and in accordance with the applicable policies, rules, regulations and prescripts as determined by the Minister of Education, the Member of the Executive Council or the Head of Department and the governing body;
- (e) accept assistance from the school principal in respect of the financial regulations, policies, the relevant prescripts and Acts with regard to the management of the school funds;

- (f) consider the policy advice on the financial implications of decisions relating to the financial matters of the school from the school principal;
- (g) ensure that all school accounts are managed in a proper manner in accordance with generally acceptable accounting practices and which must be in accordance with the Act, relevant policies and practices;
- (h) inform the governing body of his or her immediate relatives, business partners, friends or any other acquaintances who may have an interest in financial matters relating to the governing body;
- (i) recuse himself or herself from any item on the agenda of a meeting that discusses a financial matter which affects the member or in which the member has an interest;
- (j) ensure that procedures are in place for the collection of monies, their safe keeping, use and the banking thereof;
- (k) not bind the school into any contracts without the consent of the governing body, the Member of the Executive Council or any other relevant authority;
- (l) abstain from voting on any financial matters or contracting on behalf of a school if the member is a minor; and
- (m) immediately report any maladministration or mismanagement of school finances to the Head of Department

8. Breach of code of conduct

- (1) Any member who breaches this Code of Conduct must be subjected to the disciplinary process in terms of this Code of Conduct.
- (2) In the event of a member being found guilty of serious misconduct after a disciplinary hearing, a sanction shall be imposed on the member in terms of paragraph 9.4.
- (3) The Member of the Executive Council may, from time to time, declare other forms of serious misconduct, general misconduct or serious financial misconduct and such declaration shall be accepted as constituting serious misconduct, general misconduct or serious financial misconduct.
- (4) A member found guilty of a serious act of misconduct may be suspended or have his or her membership of the governing body terminated by the Head of Department.
- (5) Should there be any evidence of misconduct by the principal, educator or a non-educator in terms of this code then it may form the basis for a disciplinary hearing against the principal, educator or non-educator in terms of the respective codes of conduct applicable to that particular official.

9. Process of handling complaints of misconduct

9.1 Precautionary Suspension

- (1) The Head of Department may, as a precautionary measure, suspend a governor who is suspected of serious misconduct.
- (2) In considering the Precautionary suspension of a member the Head of Department shall take into account:-
 - (a) The seriousness of the misconduct alleged;
 - (b) The likelihood of interference with any witness, evidence or the investigation
 - (c) The safety of any person; and
 - (d) The impact of the suspension on good and effective governance.

9.2 Preliminary Investigation

- (1) Should any interested party have any complaint/serious concern or allegation(s):-
 - (a) Pertaining to the conduct concerning a member of the governing body, such complaint/serious concern must be lodged in writing with the Head of Department or anyone officially delegated by him/her;
 - (2) Upon receipt of such complaint against any member of a governing body including the principal, the Head of Department or his delegate must:-
 - (a) Within seven (7) days acknowledge, in writing, receipt of any complaint lodged with him/her and must determine the seriousness of the alleged misconduct by directing that:-

- (i) The District office must within Thirty (30) days, attend to the complaint through a preliminary investigation;
 - (ii) Due process is to continue even if implicated member resigns in the middle of the investigation
- (3) The District office must appoint an Investigating officer to conduct the Preliminary investigation and that the Investigating Officer may summon any person who:
- (a) may request any information from any person during the investigation;
 - (b) may be able to give information of material importance concerning the investigation and/or the hearing;
 - (c) has in his/her possession, custody or control any book; document or object which may have a bearing on the matter being investigated.
- (i) The District office furnish him/her with a written Preliminary report on their findings **within Fourteen (14) days** after receipt of the complaint.
 - (ii) Upon completion of the Preliminary investigation, the District shall compile and submit a Preliminary written report of the findings to the Head of Department.

9.3 Disciplinary Process (Formal Enquiry)

- (1) If upon receipt of the Preliminary investigation report from the District, the Head of Department is of the opinion that the Preliminary investigation report has revealed prima facie proof of the commission of the alleged misconduct, he/she must:-
- (a) Appoint any person as the presiding officer to conduct a formal enquiry into the alleged misconduct and keep a record of the notice of the disciplinary hearing and of the proceedings;
 - (b) Appoint a person who will lead evidence at the enquiry, on his behalf;
 - (c) Direct that the Presiding officer convene the formal enquiry within 14 days of his/her appointment
 - (d) Give the member concerned at least seven (7) days' written notice of the formal enquiry (Hearing) including the charges preferred against him/her;
 - (e) The notice for the formal enquiry must detail:
 - (i) the venue, date and time of the hearing;
 - (ii) information to the member that the disciplinary hearing will proceed in the member's absence if a member without just cause and documentary proof (where applicable) fails to turn up for the hearing;
 - (f) The Notice of the formal enquiry must also advise the charged member of his/her rights including:
 - (i) The right of the member to have a representative from the governing body or any other person present during the hearing to represent him or her: Provided that that person is not a legal representative; clear notification that representation by a legal representative will not be allowed;
 - (ii) The right to call witnesses in support of his or her defense; and any other relevant information relating to the formal enquiry/ charges.
 - (iii) The right to allow witness evidence, cross-examining and re-examining of witnesses;
 - (iv) The right to an interpreter;
 - (v) The right to plead mitigation in the event that he or she is found guilty;
- (2) Upon receipt of the notice of the charges, the member charged must acknowledge receipt of the notice of the charges when it is served upon him/her.
- (3) The Presiding officer must determine the procedure to be followed at the formal enquiry but he/she must be cognizant of the following: –
- (a) The right of each party to have a fair and just hearing;
 - (b) The need to appoint an intermediary to enable a learner who is under the age of 18 to give evidence should it appear that the learner would endure mental stress or suffering should the learner testify at the proceeding;
 - (c) The right of each party to make closing arguments;

- (d) That accurate records of the proceedings are kept for the duration of the term of office of the governing body.
- (e) The administering an oath to the member, all witnesses and to the interpreter, if applicable.
- (f) To conduct the hearing in a fair, just and humane manner.

(4) In the event of a recommendation of a sanction of suspension or termination of membership, the Presiding officer must, within seven (7) days of the conclusion of the formal enquiry, forward the his/her findings and the recommended sanction to the Head of Department and the Head of Department must, within twenty one (21) days, consider the recommended sanction and take appropriate action.

9.4 Sanctions

(1) The Head of Department must make his decision whether to suspend or terminate membership within reasonable time after receipt of the recommendation of the presiding officer and in writing inform the member charged; the complainant and the governing body about his decision and the reasons thereof accordingly.

(2) The following sanctions may be imposed by the Head of Department on a member found guilty of an act of serious misconduct: –

- (a) Suspension for a determined period of time;
- (b) Termination of membership; or
- (c) Coupled with termination, a disqualification from being elected, co-opted or appointed as a member of any governing body for a period of three (3) years from date of imposition of the sanction.

(3) Any conduct that constitutes a criminal offence must immediately be reported to the South African Police Services for investigation and prosecution, if applicable.

10. Appeals

(1) A member against whom a sanction has been imposed by the Head of Department in terms of paragraph 9.4 may, **within seven (7) days** of receipt of the sanction, appeal to the Member of the Executive Council against such decision and/or sanction.

(2) The Member of the Executive Council may dismiss or uphold an appeal.

(3) Should the Member of the Executive Council uphold the member's appeal, then the Member of the Executive Council may absolve the member of all charges or if he or she deems appropriate, vary the sanction or impose a lesser sanction.

11. Review of Notice

This Code of Conduct may be reviewed at any given time.

12. Repeal of Notice

The Code of Conduct for members of governing bodies in public schools contained in Notice No 27/2005, and published in the Provincial Gazette of 12 September 2005, is hereby repealed.

13. Short Title

This Notice shall be known as the Code of Conduct for members of governing bodies in public schools, and shall come into effect on publication in the Provincial Gazette.