

[No. 263 of 2006]

CODE OF CONDUCT FOR MEMBERS OF GOVERNING BODIES OF PUBLIC SCHOOLS

Under section 18A of the South Africa Schools Act, 1996 (Act No. 84 of 1996), I, MA Tsopo, Member of the Executive Council responsible for Education, after consultation with associations of governing bodies in the Province, hereby determine a Code of Conduct for Members of Governing Bodies of Public Schools as set out in the Schedule.

SCHEDULE

1. Legal Framework and application of the Code
2. Purpose of Code
3. General conduct of members of governing body
4. Duty of members of governing body of a public school to avoid conflicts of interest
5. Declaration of interest
6. Procedure to be followed in relation to non-compliance with Code of Conduct
7. Recommendation by the disciplinary committee
8. Decision by the Head of Department
9. Appeal to the Member of the Executive Council
10. Failure by the governing body to take action against its members

1. Legal framework and application of the Code of Conduct

- (1) This is a Code of Conduct for members of the governing body of a public school as determined by the Member of the Executive Council responsible for education in the Province in terms of section 18A of the South African Schools Act, 1996 (Act No. 84 of 1996).
- (2) The Code applies to all members of the governing bodies of public schools both individually and collectively.
- (3) Any reference to member or member of the governing body includes, unless specifically indicated, the chairperson of the governing body.

2. Purpose of Code

The Code is aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at the public school.

3.

General conduct of members of governing body

(1)

A member of a governing body must —

- (a) honour the Constitution and abide thereby in the execution of his or her responsibilities as member of the governing body;
- (b) comply with relevant legislation;
- (c) perform the functions allocated to him or her in terms of the relevant legislation in good faith, diligently, honestly and rationally;
- (d) fulfill his or her role in an effective and efficient manner;
- (e) act in the best interest of the school and its learners;
- (f) promote unity amongst the school community, which includes, amongst others, parents, learners and educators;
- (g) promote good relations with the Department;
- (h) act in a manner to redress imbalances of the past;
- (i) subject to paragraph 4, disclose to the governing body in writing any conflict of interest that may arise and must, subject to paragraph 5, recuse himself or herself where he or she has an interest in the matter before the governing body;
- (j) take steps to solicit sponsorships, donations or voluntary contributions from individuals and businesses in the community served by the school for the benefit of the school in order to improve the quality of education provided by the school to all learners; and
- (k) adhere to the constitution of the governing body and any other applicable rules of the governing body.

(2)

A member of a governing body may not -

- (a) conduct himself or herself in a disgraceful, improper or unbecoming manner;

- (b) interfere with the professional management of the school;
 - (c) be absent from meetings of the governing body, except for good reason and in line with the constitution of the governing body; and
 - (d) subject to subparagraph (3), without the permission of the governing body or a committee, disclose any privileged or confidential information of the governing body or committee to any unauthorized person.
- (3) Subparagraph (2) does not derogate from the right of any person to access information in terms of national legislation.
- (4) For the purpose of subparagraph (2) "privileged or confidential information" means any information —
- (a) determined by the governing body or committee to be privileged or confidential;
 - (b) of which its disclosure would violate a person's right to privacy; or
 - (c) declared to be privileged, confidential or secret in terms of law.

4.

Duty of members of governing body of a public school to avoid conflicts of interest

A member of a governing body must -

- (a) take every possible step to avoid a conflict of interest between his or her personal interests and the interests of the school;
- (b) not place himself or herself in a position where his or her personal interests could conflict with his or her duties to the public school, and in particular must not
 - (i) use confidential information to advance personal gain or advantage;
 - (ii) accept secret profits, bribes or unconscionable benefits;
- (c) declare, subject to paragraph 5, to the governing body in writing any conflict of interest that may arise.

5.

Declaration of interest

When a member of governing body becomes aware that the governing body may be taking a decision in which the member, a member's close family, or associates have an interest, the member must -

- (a) declare his or her interest in writing to the chairperson of the governing body;
- (b) ensure that the interest which is declared is minuted at a meeting of the governing body; and
- (c) recuse himself or herself from part of any meeting of the governing body or committee of the governing body where the issue is considered.

6.

Procedure to be followed in relation to non-compliance with Code of Conduct

- (1) A failure of a member of a governing body to comply with the provisions of the Code of Conduct is regarded as misconduct.
- (2) Subject to subparagraph (3), all allegations of misconduct of a member of a governing body of a public school must be directed to the chairperson of the governing body and allegations of misconduct of the chairperson of the governing body must be referred to the principal.
- (3) All allegations of misconduct of a member of a governing body must also be referred to the Director of the relevant district.
- (4) The chairperson of the governing body must on receipt of allegations of misconduct examine the information presented to him or her and determine whether the allegations are of a serious nature.
- (5) The principal must, on receipt of allegations of misconduct of the chairperson, refer the allegations of misconduct to the governing body, who must, without the chairperson being present, examine the information and determine whether the allegations are of a serious nature.
- (6) The chairperson of the governing body may, after giving the relevant member a fair opportunity to make representations, issue a warning to the member, if the allegations are not of a serious nature and in the instance where the chairperson is involved, the governing body may, after giving the chairperson a fair opportunity to make representations, issue a warning to the chairperson, if the allegations are not of a serious nature.
- (7) If any allegations of misconduct are of a serious nature, the governing body must appoint a disciplinary committee comprising of at least three persons to make a recommendation to the governing body.
- (8) The governing body may appoint persons who are not members of the governing body to the disciplinary committee referred to in subparagraph (7) above.

- (9) The disciplinary committee must -
- (a) within a reasonable time of its appointment, provide the member of the governing body with a written description of the allegations of misconduct;
 - (b) give the member of the governing body an opportunity to make written representation within 21 calendar days from the date of the provision of written description of allegations of misconduct;
 - (c) consider such representations; and
 - (d) make a recommendation to the governing body of a public school.
- (10) The disciplinary committee may allow oral testimony, when they deem it appropriate in the circumstances.

7.

Recommendation by the disciplinary committee

- (1) The committee may recommend that -
- (a) disciplinary proceedings that have been initiated against a member of the governing body not be proceeded with;
 - (b) the member of the governing body be reprimanded; or
 - (c) a recommendation be made to the Head of Department for the suspension or termination of the membership of the member of the governing body.
- (2) If the Committee recommends the suspension or termination of membership of a member of the governing body and the governing body accepts such a recommendation, the governing body must immediately refer all documents relating to the matter to the Head of Department for decision.
- (3) Members of the governing body who are employees of the Department may also be dealt with in accordance with the provisions of the Employment of Educators Act, 1998 (Act No. 76 of 1998) or the Public Service Act, 1994 (Proclamation No. 103 of 1994).

8.

Decision by the Head of Department

- (1) The Head of the Department must, on receipt of the recommendation of the governing body of a public school:

- (a) consider all documents referred to him or her;
 - (b) satisfy himself or herself that the procedure as set out in paragraphs 6 and 7 was followed;
 - (c) consider the merits of the matter; and
 - (d) take a decision whether to accept or reject the recommendation of the governing body to suspend or terminate membership of a member of the governing body.
- (2) If the Head of Department accepts or rejects the recommendation of the governing body he or she must -
- (a) inform the relevant member of the governing body, as well as the governing body in writing as soon as reasonably possible;
 - (b) provide written reasons for his or her decision; and
 - (c) where it was decided to suspend or terminate membership of the governing body, inform the member of the governing body that he or she may appeal against the decision to the Member of the Executive Council.
- (3) Pending the consideration of the appeal the member of the governing body may not participate in the activities of the governing body of a public school in his or her capacity as member or chairperson of the governing body.

9.

Appeal to the Member of the Executive Council

- (1) The appeal must -
- (a) be lodged within 30 ordinary days from the date of receiving a written decision of the Head of Department to the Member of the Executive Council;
 - (b) be in writing; and
 - (c) set out the grounds for appeal.
- (2) The Member of the Executive Council must -
- (a) consider the appeal;
 - (b) confirm or set aside the decision of the Head of Department;

- (c) make his or her decision known in writing to the appellant and the governing body as soon as reasonably possible.

10.

Failure by the governing body to take action against its members

- (1) The Head of Department may direct the governing body of a public school to take action against its members as contemplated in paragraphs 6 and 7 within 14 ordinary days if there are allegations that -
 - (a) a member or members of the governing body have breached this Code;
 - (b) the allegations of breach are *prima facie* of a serious nature to warrant a suspension or termination of membership of a member from a governing body; and
 - (c) the governing body of a public school has failed or neglected to take action.
- (2) Subject to subparagraph (3), if the governing body fails to take action within 14 ordinary days, the Head of Department may, on reasonable grounds, suspend or terminate membership of a member or members from a governing body.
- (3) The Head of Department may not take action under subparagraph (2) unless he or she has -
 - (a) in writing, given the members of the governing body who are alleged to have committed a misconduct, a notice of his or her intention to suspend or terminate their membership of the governing body of a public school;
 - (b) set out the description of the alleged breach and stated the reasons for his or her intention to suspend or terminate membership of the governing body;
 - (c) granted the member or members an opportunity to make representation within 21 ordinary days from the date of receiving such notice;
 - (d) given due consideration to any such representation received.
- (4) When the Head of Department decides to suspend or terminate membership of the governing body as contemplated in this paragraph, he or she must -
 - (a) inform the member in writing of his or her decision;

- (b) provide written reasons for his or her decision; and
- (c) inform the member that he or she may appeal against the decision to the Member of the Executive Council.

(5) The provisions envisaged in paragraph 9 that relates to appeal apply, with the necessary changes, to an appeal of a member of the governing body contemplated in this paragraph.