Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette **No. 11761** *Regulasiekoerant*

Vol. 713 **6 November / November 2024** **No. 51511**

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ISSN 1682-5845

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EDUCATION

NO. R. 5518 **6 November 2024**

REGULATIONS RELATING

TO

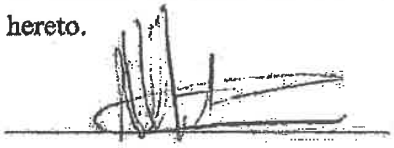
THE CODE OF CONDUCT OF SCHOOL GOVERNING BODIES

OF

PUBLIC SCHOOLS IN THE NORTH WEST PROVINCE

2024

By the virtue of the powers bestowed to me in terms of section 18A of the South African Schools Act, 1996 (Act 84 of 1996), as amended, I, Mischad Viola Motsumi Member of the Executive Council for Education in North West, hereby determine the Code of Conduct for Members of Governing Bodies of Public Schools as set out in the Schedule hereto.



Honourable MEC – Education

REGULATIONS RELATING TO THE CODE OF CONDUCT OF SCHOOL GOVERNING BODIES OF PUBLIC SCHOOLS IN THE NORTH WEST PROVINCE

Published under

Provincial Notice...of 2024 (PG...of 2024)

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1. INTRODUCTION

(1) The South African Schools Act 84 of 1996 "the South African Schools Act") contemplates an education system in which four major stakeholders, namely the State, parents, educators and learners, co-operate to advance specified objectives relating to schooling and the provision of public education;

(2) Members of the governing bodies are tasked with the duty of overseeing the provision of public education at public schools;

(3) And whereas, the governance of every public school is vested in its governing body in terms of section 16 (1) of the South African Schools Act;

(4) The members of a governing body play an integral part in building quality governance structure at public school to promote the best interests of the school and provision of quality education to all learners;

(5) And whereas, a governing body stands in a position of trust towards the school;

(6) It is vital for members of the governing bodies of public schools to recognize that they stand in a fiduciary relationship towards their school and the community;

(7) It is required from the members of the governing body to conduct themselves always in an ethical and proper manner to draw the trust of all education stakeholders;

(8) Therefore, it is important to determine the code of conduct for the members of the governing body of a public school to improve and maintain a quality governance structure at public schools.

2. STATUS AND APPLICATION OF CODE OF CONDUCT

(1) This is a Code of Conduct for members of the governing body of a public School
"the Code") determined by the Member of the Executive Council in terms of
section 18A of the South African Schools Act.

(2) The Code applies to all members of the governing bodies of public Schools
"governing bodies") in North West..

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(3) All members of governing bodies are expected to abide by and to respect the provisions of this Code.

3. PURPOSE OF THE CODE

(1) The Purpose of the Code is to regulate the conduct of members of the Governing body when performing their role and functions for and on behalf of the public school.

(2) The Code is also intended:

(a) to establish a disciplined and purposeful school environment dedicated to the improvement and maintenance of a quality governance structure at public schools;

(b) to provide provisions of due process, safeguarding the interests of the members of the governing body in disciplinary proceeding; and

(c) to provide for the procedure for the suspension or termination of the membership of members of the governing body for breach of the Code after due process and to safeguard their interests in such proceedings.

4. DUTY TO FAMILIARIZE WITH APPLICABE LEGISLATIONS

(1) Every member of a governing body must familiarize himself or herself with the applicable legislations to education system and governance of a school.

(2) Members of a governing body must attend or avail themselves to training organised by the Department or recognised governing body association or other appropriate training authority to train members of a governing body of a particular school or group of schools.

5. GENERAL FUNCTIONS AND DUTIES OF MEMBERS OF GOVERING BODIES

(1) Every member of a governing body occupies a position of trust towards his or her public school.

(2) Every member of a governing body has a fiduciary duty to the public School, which requires that the member, at all times, acts:

(a) with fidelity, honesty, integrity and in good faith; and

(b) in the best interest of the school.

(3) Members of the governing body are responsible for the governance of the school and professional matters rests with the school principal.

(4) The governing body members should support the school principal, educators and non-educators in carrying out their functions for the improvement of learner performance.

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(5) When making decisions, in his or her capacity as a member of a Governing body, a member must:

(a) ensure that it is procedurally fair and supported by reasons;

(b) act honestly and rationally, and not arbitrarily or capriciously,

(c) not conduct himself or herself in a manner that would raise a reasonable suspicion of bias; and

(d) not be influenced by any ulterior motive or purpose.

(6) Every member of the governing body, when exercising his or her functions in the governing body must act:

(a) ethically;

(b) in accordance with applicable legislation. This legislation includes:

(i) the Constitution of the Republic of South Africa108 of1996("the Constitution");

(ii) the South African Schools Act 84 of 1996;

(iii) the North West Schools Act 3 of 1998;

(iv) the North West Regulations Relating to Governing Bodies of Public Schools of 2009;

(v) the Promotion of Administrative Justice Act 3 of 2000;

(vi) the Promotion of Access to Information Act 2 of 2000; and

(vii) Draft financial guide for Educational Institutions for North West Province;

(c) in the manner that provides effective, transparent, and accountable school administration ensuring that decisions are justifiable and legitimate; and

(d) in a manner that facilitates effective education and learning in public schools.

(7) Every member of a governing body must:

(a) take all practical steps to ensure that the stakeholders of public schools derive as much educational benefit from public schools as is possible;

(b) uphold the rights of all learners, parents, educators and employees and promote their acceptance of responsibility for the organization and governance schools;

(c) uphold democratic values of the Republic of South Africa;

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(d) seek to redress the imbalance of the past;

(e) combat all forms of unfair discrimination and intolerance by ensuring that all learners irrespective of race, color, ethnicity, gender and creed are provided with quality education; and

(f) allow other stakeholders an opportunity to express their views and listen to them when conducting any consultations prescribed by the legislation.

(8) Members of governing bodies must advance the principles of co-operative governance entrenched in the Constitution by ensuring that:

(a) they conduct their activities without impending not contradicting the spirit and ethos of the Constitution and national legislation; and

(b) co-operate with other spheres of government in mutual trust and good faith by-

(i) fostering friendly relations;

(ii) assisting and supporting one another;

(iii) informing one another of, and consulting one another on, matters of common interest;

(iv) co-coordinating their actions with one another;

(v) adhering to agreed procedures; and

(vi) avoiding legal proceedings against one another.

(c) members of the school governing body should behave appropriately at all times.

(9) All components of the governing body must report to their respective constituencies.

(10) A member of the governing body must –

(a) not become involved in any action which may bring the school into disrepute, or in any way harm the good name of the school and a governing body;

(b) work at all times to the best of his or her abilities and skills to ensure that the work of the governing body is carried out in terms of the requirements of the law and the stipulations of the constitution of the governing body; and

(c) refrain from doing anything that may harm the relationship of trust between the governing body and the school, the community, learners and the state.

6. DUTY OF MEMBERS OF GOVERNING BODY TO AVOID CONFLICTS OF INTEREST

(1) Every member of a governing body must:

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(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 his or her duties to the public school, and in particular must not:

(i) use of confidential information improperly.

(ii) accept secret profits, bribes or other corrupt or unconscionable benefits.

(c) not use information which is not available to the public for his or her own personal benefits; and

(d) disclose to the governing body in writing any conflict of interest that may arise.

(2) When a member of a governing body becomes aware that the governing body will be taking a decision in which a 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 is declared and minuted at the next meeting of the governing body, and any other relevant subcommittee of the governing body; and

(c) recuse himself or herself from any meeting of the governing body where the issue is considered.

7. DUTY OF MEMBERS OF GOVERNING BODY RELATING TO CONFIDENTIAL INFORMATION

(1) While executing their duties and functions, members of the governing body may have access to private and confidential information relating to learners, parents, and employees of the public school.

(2) A member of the governing body:

(a) must only use such information for the purpose for which it is disclosed;

(b) must respect privacy and maintain confidentiality in respect of any such information; and

(c) may not divulge such information except to the extent necessary to enable him or her to perform the duties or functions or required by law.

(3) A member of a governing body must-

(a) exercise the greatest circumspection and wisdom if approached individually outside the governing body with any potentially contentious issue affecting the school, and will not respond as an individual member, but will encourage the issue to be brought to the attention of the governing body.

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(b) may not use his or her membership in the governing body or confidential information obtained as a member for personal gain or improperly obtain a benefit from another source.

8. DUTY OF MEMBERS OF GOVERNING BODY RELATING TO PROPERTY OF PUBLIC SCHOOL.

(1) Every member of the governing body must:

(a) exercise utmost care to ensure the reasonable protection of property of the public school.

(b) act with fidelity, honesty, integrity, and in the best interest of the public school when administering, controlling and managing the property of the school on behalf of the governing body.

(2) A member of the governing body must uphold and give effect to decisions of the governing body to allow the reasonable use of the school facilities at the local community for fundraising, social and religious purposes.

9. DUTY OF MEMBERS OF GOVERNING BODY RELATING TO FINANCES OF PUBLIC SCHOOL

(1) Every member of the governing body must support the governing body to:

(a) adopt a budget annually;

(b) approve annual financial statements, upon the recommendation of the financial Committee;

(c) open and maintain books of account and establish and administer a school fund;

(d) act with fidelity, honesty, integrity, and in the best interest of the public school when administering, controlling and managing the finances of the school;

(e) seek to prevent any prejudice to the financial interest of the public school;

(f) 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 public school in order to improve the quality of education provided by the public school to all learners, but subject to the conditions set out in applicable laws;

(g) take effective and appropriate steps to:

(i) prevent irregular, fruitless and wasteful expenditure, and loses resulting from any criminal conduct, at any expenditure not complying with the policies of the public school; and

(ii) manage the funds of the public school efficiently and economically;

(h) keep on behalf of the governing body when so required, proper records of:

(i) funds received and spent by the school;

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(ii) assets and liabilities of the school; and

(iii) the school's financial transactions.

10. DUTY TO ATTEND MEETINGS OF A GOVERNING BODY

(1) Members of governing bodies must:

(a) attend all meetings of the governing body, governing body's committees convened according to the constitution and in compliance with the Schools Act;

(b) attend all meetings of the governing body with each of the following constituencies as convened according to the Schools Act and the governing body's constitution:

(i) parents;
(ii) learners;
(iii) educators; and
(iv) support staff.

(c) In the envisaged meetings, if a member is assigned by the governing body, assist in the:

(i) presentation of report to parents, learners and educators at least once per year;

(ii) keeping minutes of governing body meetings and making them available for inspection by the provincial head of department and any interested person;

(d) apply their mind to matters to be addressed at the meetings of the governing body, governing body's committees and meetings of the governing body with stakeholders.

(2) Members of the governing body of a public school who are not able to attend a meeting musk seek leave in writing from the Chairperson of the governing body as soon as possible but before the meeting is held.

(3) Where a member of a governing body is unable to seek permission before the meeting as envisaged above, he or she must inform in writing the Chairperson of the governing body as soon as it is reasonably practicable to do so.

11. DUTY OF MEMBERS OF GOVERNING BODY TO ACCEPT POLICY DOCUMENTS

(1) Members of the governing body must assist a governing body to adopt:

(a) a constitution;

(b) a mission statement of the public school, setting out the values and beliefs of the school.

(c) other policies that are lawfully required to be adopted.

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(d) admission, finance, language policy and other prescribed documents.

12. RESOLUTION OF CONFLICTS AMONG MEMBERS

(1) Each member of the governing body has a responsibility to maintain an environment where conflict and difference can be addressed in a manner characterised by respect and civility.

(2) No member of the SGB will accept, condone or ignore inappropriate conduct by any member of the school governing body.

(3) where there is a persisting or injurious conflict between members of the governing body such must be reported to the chairperson of the governing body as soon as reasonably possible, and the chairperson of the governing body may after a vote on the matter by other members attending or by a vote on the matter by the executive committee of the governing body resolve the matter.

(4) In resolving the matter, the chairperson of the governing body may refer the matter to the Head of the Department for proper suspension or termination of membership of the guilty member.

(5) Where the chairperson of the SGB is accused of an alleged violation of the Code, the matter must be reported to the deputy chairperson or the district director.

13. CRIMINAL OFFENCES BY MEMBERS OF GOVERNING BODY

(1) The members must realize that in cases of allegations of criminal offences, the governing body may request the South African Police Services (SAPS) to investigate and, if necessary, prosecute any alleged criminal offences committed by a member that is directly related to the performance of his or her governing body's duties.

(2) The handing over of a matter or case to the SAPS does not exonerate the governing body from also instituting disciplinary measures in terms of its constitution against the member, especially in serious cases where suspension and/or termination of membership will be recommended or is required.

14. FAILURE TO COMPLY WITH THE CODE

(1) If a member of the governing body fails to comply with the Code, the Head of Department may suspend or terminate the membership of such member of a governing body in accordance with section 18A of the South African Schools Act, after due process outlined in this Code.

15. PROCEDURE TO BE FOLLOWED BEFORE MEMBER OF THE GOVERNING BODY IS TO BE SUSPENDED OR HIS OR HER MEMBERSHIP IS TERMINATED

(1) If it is alleged that a member has committed misconduct the Head of Department may appoint any person to conduct an investigation into the allegations.

(2) The person appointed may request any information from any person, examine any document and interview any person during the investigation.

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(3) Upon completion of the investigation the investigator shall submit a written report of his/her findings to the Head of Department who will decide whether or not to charge the member with misconduct.

(4) The Head of Department may, pending an investigation and if he believes that the continued presence of the member on the school governing body may jeopardize the process, suspend any member who is alleged to have violated this Code of Conduct.

(5) If the Head of Department is of the opinion that the investigation has revealed *prima facie* proof of the commission of misconduct he must appoint any person to conduct a formal enquiry into the alleged misconduct.

(6) The Head of Department must:

(a) give the member concerned at least five working days' written notice of the charges against him/her and the reasons thereof.
(b) give the member an opportunity to state his or her side of the story.

(c) the member concerned must acknowledge receipt of the notice when it is served upon him/her.

(7) The member concerned may choose a legal representative or a fellow member of the governing body to represent him/her.

(8) An interpreter may be appointed at the hearing, upon the request of such member.

(9) If a member charged with misconduct fails to attend the hearing and fails to show good cause as to why he or she cannot attend the hearing, the hearing will then continue in his/her absence.

(10) At the hearing, the member must:

(a) be given an opportunity to lead evidence in defence of the charges laid against him or her.

(b) be granted an opportunity to cross examine any person called to testify against him or her.

(11) At the end of the disciplinary hearing, after the concerned member has been found guilty, within a reasonable time, the presiding officer will make a recommendation to the Head of Department whether to suspend or terminate membership of such member.

(12) The Head of Department must make his or her decision whether to suspend or terminate membership within reasonable time after receipt of the recommendation of the presiding officer as envisaged above.

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(13) The Head of the department must communicate his or her decision to the concerned member, provide reasons for such decision and inform the aggrieved member of the right to lodge an appeal within 14 days of the outcome to the Member of the Executive Council.

(14) A member who is aggrieved by the decision of the Head of the Department may appeal to the Executive Council in writing, setting out the grounds of the appeal, within 14 days after receiving notice of Head of the Department's decision.

(15) Pending finalization of the appeal the member may not participate in any business of the governing body.

(16) The member of the Executive Council will consider the appeal and either confirm or set aside the decision of the Head of Department.

(17) The Member of the Executive Council will as soon as practicable:

(a) notify the member of the school governing body of his or her decision in writing; and

(b) provide the member of the school governing body with written reasons for his or her decision.

16. FAILURE OF THE GOVERNING BODY TO TAKE ACTION AGAINST ITS MEMBERS

(a) The Head of Department may direct the governing body to take action against a member within 14 days after an allegation of a breach of this Code or of any legal transgression has been received by any official of the Department.

(b) If the governing body is unable for whatever reason to take action against a member, the Head of Department will direct the district director to investigate the allegation and to manage the disciplinary process as outlined in this Code.

17. AMENDMENTS

This Code may be amended from time to time, and in consultation with the associations of governing bodies in North West Province,

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

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