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PROVINCIAL NOTICE**DEPARTMENT OF EDUCATION**

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SOUTH AFRICAN SCHOOLS ACT, 1996(ACT NO.84 OF 1996): REGULATIONS RELATING TO THE GOVERNING BODD2S OF PUBLIC SCHOOLS (EXCLUDING SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS)

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

(Signed)

NOMSA JAJULA

MEC: DEPARTMENT OF EDUCATION**SCHEDULE****REGULATIONS RELATING TO THE GOVERNING BODIES FOR PUBLIC SCHOOLS (EXCLUDING PUBLIC SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS)****DEFINITIONS**

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

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

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

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

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

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

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

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

"member" means a member of the governing body;

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

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

COMPOSITION OF THE GOVERNING BODIES

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

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

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

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

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

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

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

DISQUALIFICATION OF MEMBERS OF GOVERNING BODY

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

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

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

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

TERMS OF OFFICE OF MEMBERS OF GOVERNING BODIES

4. (1) Subject to the provisions of section 31 of the Act, a member of a governing body other than a learner must hold office for a period of three years from the date determined by the head of Department: Provided that, a member who is a learner must hold office for a term of one year: Provided further that the head of Department may at any time remove a member from office for reasons he or she deems sufficient.

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

(3) The members of a governing body must, notwithstanding the expiration of their term of office referred to in

regulation 4(1) hold office until a new governing body is constituted.

DISSOLUTION AND RECONSTITUTION OF GOVERNING BODIES

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

(2) If-

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

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

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

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

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

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

STATUS OF GOVERNING BODY

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

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

ELECTORAL OFFICER

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

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

(3) The electoral officer must -

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

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

DATE, TIME AND PLACE OF NOMINATION AND ELECTION MEETING OF PARENTS

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

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

establishment of such school.

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

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

NOTICE OF NOMINATION AND ELECTION MEETING OF PARENTS

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

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

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

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

MAKING SCHOOL REGISTER AVAILABLE

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

NOMINATION OF PARENT MEMBERS

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

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

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

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

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

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

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

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

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

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

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

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

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

ELECTION FOR PARENT MEMBERS OF GOVERNING BODIES

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

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

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

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

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

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

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

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

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

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

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

ELECTION OF EDUCATOR MEMBERS

13.(1) The electoral officer must determine the date, time and place of the meeting for the election of educator members, which must be held within five days of the nomination and election meeting for parent members.

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

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

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

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

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

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

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

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

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

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

ELECTION OF LEARNER MEMBERS

4. A Representative Council of Learners established in terms of the Act and approved by the Member of the Executive Council must elect from its own number, two learners,

with due regard to the Provincial gender policy where applicable, from the eighth grade and higher, who must be members of the governing body, in accordance with its own procedures.

ELECTION OF NON-EDUCATOR MEMBERS

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

DECISION OF ELECTORAL OFFICER

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

PROCEDURE AFTER ELECTION OF GOVERNING BODY

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

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

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

(c) notify each elected member, including a members referred to in regulation 1 l(4)(b)(i), in writing of his or her election; and

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

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

ELECTION OF OFFICE BEARERS

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

- (2) At the first meeting of the governing body such body must, from amongst its members, elect office bearers, who must include at least a chairperson, deputy chairperson, a treasurer and a secretary.
- (3) Only a parent member of the governing body who is not employed at the school may serve as the chairperson or deputy-chairperson of the governing body.
- (4) Subject to the provision of subregulation (6), the office bearers must remain in office for the term of twelve months from the date of the election.
- (5) An office bearer of a governing body may be re-elected or co-opted after the expiry of his or her term of office.
- (6) Where for any reason the office of an office bearer becomes vacant, the governing body must, subject to the provisions of subregulation (3), at the first meeting after that vacancy has occurred, elect one of its members to fill that vacancy for the un-expired period of office of his or her predecessor.
- (7) The electoral officer must preside at an election referred to in subregulation (2) and also an election referred to in subregulation (6),
- (8) The principal must, after a meeting at which any office bearer has been elected in accordance with this section, notify the head of Department forthwith in writing of the date of the meeting and of the name, address and office of the person elected.

MEETINGS OF GOVERNING BODIES

19. (1) A governing body must meet at least once each school term.
- (2) The chairperson of the governing body must determine the date, time and place of the meeting and the secretary of such body must at least fourteen days prior to such meeting, notify each member in writing thereof. Provided that in the case of a matter requiring urgent handling in the opinion of the chairperson of the governing body at least 24 hours notice must be given.
- (3) Any person may on the invitation of the governing body be present at a meeting of such a body and take part in the discussion, but must have no vote and must leave the meeting when the governing body so decides.
- (4) A governing body may require any staff member of the school concerned to attend a meeting of such body in connection with any matter relating to the functions of the governing body.
- (5) At least 1 more than half of the members of a governing body (amongst which shall be a parent), constituted in accordance with regulation 2, must constitute a quorum for any meeting of the governing body.
- (6) A governing body must determine its own rules relating to its meetings and procedures at those meetings.

MINUTES OF PROCEEDINGS OF MEETINGS

20. (1) The secretary of a governing body must keep minutes of the proceedings of every meeting and must on request provide the head of Department, or any officer duly authorised thereto by him or her, a parent of a learner at that school, or member of staff of the school with a copy of such minutes: Provided that there will be no violation of the rights of persons and that the applicant requires it for the exercising or protection of his or her rights.
- (2) The minutes of the proceedings of every meeting of a governing body or committee thereof
 - (a) must at the next ensuing meeting of the governing body or committee thereof, as the case may be, be submitted for approval; and
 - (b) must at all reasonable times be open for inspection by the members and the head of Department or any officer duly instructed by him or her, a parent, or member of staff of the school.
- (3) Upon the dissolution of a governing body or the expiry of its term of office,
all minutes and other documents of such body or any committee thereof must be handed to the principal concerned.

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

INCIDENTAL VACANCIES IN GOVERNING BODIES

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

(a) resigns;

(b) dies;

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

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

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

(2) Whenever an incidental vacancy occurs -

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

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

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

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

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