

## NOTICE 96 OF 2019

SOUTH AFRICAN SCHOOLS ACT, 84 OF 1996 as amended

NORTHERN CAPE DEPARTMENT OF EDUCATION

### **CALL FOR COMMENTS ON NOTICE FOR CODE OF CONDUCT FOR MEMBERS OF THE SCHOOL GOVERNING BODIES**

The Notice for the Code of conduct for members of the school Governing Bodies Amendment is hereby published for comment.

All interested persons and organisations are invited to comment on the Notice in writing and direct their comments to:

The Head of Department: Education, Private Bag X5029, KIMBERLEY 8301 or 156 Barkly Road, Homestead, Kimberley 8301

Kindly provide the name, address, telephone and fax numbers and email address for the person or organization submitting the comment

The comments must reach the Department by 11 October 2019.

The Notice may also be obtained on [ncdoe.ncpg.gov.za](http://ncdoe.ncpg.gov.za)

(Signed)  
McCollen Ntsikelelo Jack (MPL)  
MEC: EDUCATION

OFFICIAL NOTICE

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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.

(Signed)  
**McCollen 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 a school day;

**"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;

**"stake holder"** 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;

**"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 practising attorney, non-practising attorney, an advocate, a non-practising advocate, legal advisor, prosecutor, magistrate, judge or any other person with a legal qualification that practises 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(I) of SASA.

**"member of staff"** means a person appointed according to the Public Service Act, 1994 (Act No.103 of 1994), or the South African Schools Act, 1996 (Act No. 84 of 1996), as amended, 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; and

**"Public School"** means a public school which enrolls learners in one or more grades from grade R (reception) to grade 12 including, where applicable, a special needs school and a school that provides education with a specialised focus on talent.

## **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 minimising 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. Disclosure of information**

- (a) A member of the governing body must treat all information that he or she obtains in his or her capacity of being a member of the governing body as confidential unless the law prescribes otherwise.
- (b) The governing body may classify and minute all information it deems to be confidential at its discretion.
- (3) This information must remain confidential even after a member ceases to be a member of a governing

body;

- (4) 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) authorised in terms of legislation, policy or rules of the governing body;
- (5) 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.

## **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 or 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 a respectable 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) exercise care to ensure that he or she protects the property of a school;
  - (k) act with fidelity, 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 or she is unable to attend two (2) consecutive ordinary meetings of the governing body, failing which he or she will no longer be eligible to be a 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;
  - (a) 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;
  - (b) ensure the implementation of decisions that were duly adopted by the governing body;
  - (c) 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;
  - (d) refrain from conducting himself or herself in a manner that may harm the relationship of trust between the governing body and the school;
  - (e) 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**

The following constitutes serious misconduct and any member may, after due process is followed, be found guilty of serious misconduct if he or 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 unauthorised, 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 unauthorised, 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, possesses or deals in illegal drugs or intoxicating liquor 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 m 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) 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; and

(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.

(z) in any way, conducts himself or herself in a manner that conflicts with the vision or mission of the school or any policy or legislation administered by the Department;

## **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 utilised 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) report any maladministration or mismanagement of school finances to the Chairperson of the Governing Body, the Circuit Manager or other relevant authority

## **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 clause 11.

(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.

(6) A member found to be in breach of this clause may, in addition to any other sanction, be requested to -

(a) publish at his or 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.

## **9. Process of handling complaints of misconduct**

(1) Should any interested party have any complaint -

(a) pertaining to the conduct concerning a member of the governing body other than the chairperson, such complaint must be lodged in writing with the chairperson and the chairperson must immediately report the alleged complaint to the Chief Director responsible for the School management and Support;

(b) pertaining to the conduct of a chairperson, the complainant must lodge his or her complaint, in writing, with the principal and the principal must immediately report the alleged complaint to the Circuit Manager responsible for the school and must inform the Chairperson of the Governing Body.

(2) Upon receipt of a complaint against any member of a governing body including the principal, the District Director must -

(a) within seven (7) days acknowledge, in writing, receipt of any complaint lodged with him or her and must determine the seriousness of the alleged misconduct, giving reasons for such determination;

(b) within fourteen (14) days of receipt of a less serious or minor complaint -

(i) attend to the complaint at circuit level;

(ii) notify the District Manager of the action and decision that he or she has taken in respect of the said complaint; and

(iii) inform the complainant and governing body in writing of the outcome of the complaint and the reasons for his or her decision; and

(c) within seven (7) days of receipt of any complaint relating to serious misconduct or a complaint relating to financial misconduct, conduct a preliminary investigation and submit the investigation report to the District Manager for the District Manager's action.

(3) Any complainant may notify the District Manager of his or her dissatisfaction with -

(a) the non-compliance by the Circuit Manager with prescribed time frames in dealing with the matter; (b) the determination made by the Circuit manager; or (c) both (a) and (b) above.

(4) Upon considering the determination by the Circuit Manager that the complaint was one of serious misconduct, the District Manager may request the Head of Department to impose a precautionary suspension of not more than fourteen (14) days pending a disciplinary hearing under the following circumstances - (a) if it is likely that the member will interfere with witnesses;

(b) where the possibility exists that potential witnesses will be threatened or intimidated;

(c) where the possibility exists that evidence may be tampered with; or (d) any other valid reason.

(5) If it is a serious complaint, the District Manager, after considering the determination of the Circuit Manager in terms of sub-clause 2, must within seven (7) days direct that -

(a) a tribunal be constituted;

(b) the Chairperson of the Governing Body serve on the disciplinary tribunal responsible for conducting the disciplinary hearing subject to the provisions of sub-clause 9(6) below; and

(c) the disciplinary hearing be conducted within fourteen (14) days of the precautionary suspension.

(6) If the chairperson is implicated then the deputy chairperson must serve on the tribunal, however, should both the chairperson and the deputy chairperson be implicated then another member appointed by the governing body should be part of the tribunal.

(7) The following members of the governing body shall not be eligible to serve on the disciplinary tribunal -

(a) any member who has been directly involved with the events or conduct in question;

(b) any person related to the implicated member or where a conflict of interest exists between the person and the member implicated;

(c) the school principal; and

(d) learner members of the governing body.

(8) The tribunal must constitute of at least four (4) people and must include the following -

(a) an official of the Governance and Management component at district level;

(b) any other official from the Department with the necessary expertise and competence in disciplinary proceedings; and (c) two (2) members of the governing body appointed by the governing body, one being the chairperson in terms of sub-clause 5(b).

(9) The District Manager must appoint, in writing, the two departmental officials in terms of sub-clause 8 above.

(10) The District Manager or his or her delegate, who is duly appointed in terms of a written delegation, must preside over the meeting of the tribunal to elect the chairperson.

(11) The governing body must appoint, in writing, in the Departmental approved template the governing body representatives in the tribunal.

(12) The tribunal must provide secretariat services.

(13) In matters concerning financial misconduct, an additional member with the necessary financial background and expertise shall be co-opted to the tribunal by members of the tribunal.

(14) A governing body may request the assistance of a governing body association in preparing for the hearing and for the purpose of representing the governing body as the initiator at the hearing.

## **10. Disciplinary Hearing**

(1) The tribunal must give seven (7) days' written notice of the disciplinary hearing to a member who is alleged to have committed serious misconduct.

(2) The notice must contain -

(a) the charges preferred against the member;

(b) the venue, date and time of the hearing;

(c) 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;

(d) 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;

(e) clear notification that representation by a legal representative will not be allowed;

(f) the right to call witnesses in support of his or her defense; and

(g) any other relevant information relating to the disciplinary hearing.

(3) The disciplinary tribunal shall appoint a chairperson from amongst the members of the tribunal.

(4) The chairperson of the tribunal must determine the procedure to be followed at the hearing but he or she must take into account the following -

(a) the right of each party to have a fair and just hearing;

(b) the right to allow witness evidence, cross-examining and re-examining of witnesses;

(c) 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;

(d) the right of each party to make closing arguments;

(e) the right to an interpreter;

(f) the right of the member to mitigate in the event that he or she is found guilty; and

(g) that accurate records of the proceedings are kept for the duration of the term of office of the governing body.

(5) The tribunal chairperson must administer an oath to the member, all witnesses and to the interpreter, if applicable.

(6) The chairperson of the tribunal must conduct the hearing in a fair, just and humane manner.

(7) The hearing must be conducted in a language that is understood by the member, the witnesses and representatives involved in the hearing. An interpreter may be appointed at the request of the member.

(8) The tribunal must, after hearing all evidence, make a finding and provide the reasons for the finding to the District Manager and recommend an appropriate sanction to him or her.

(9) The tribunal may make the following recommendations to the District Manager -

(a) that the member be absolved because there is no substance in the allegations of misconduct levelled against him or her; or

(b) that a recommendation be made to the Head of Department to impose a sanction in terms of clause 11 hereunder.

(10) The tribunal must complete the hearing within fourteen (14) days after being constituted by the District Manager.

(11) The District Manager must, in writing, inform the member of the -

(a) outcome of the findings of the tribunal and give reasons for such finding; and

(b) the proposed recommendation, if applicable.

(12) It is only the Head of Department that may impose a sanction of either a suspension or termination of membership.

(13) In the event of a recommendation of a sanction of suspension or termination of membership, the District Manager must, within seven (7) days of the conclusion of the hearing, forward the tribunal's 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.

(14) The decision of the Head of Department must be communicated by the District Manager to the member and the member must be notified of his or her right of appeal to the Member of the Executive Council in terms of clause 12.

#### **11. Sanctions**

(1) 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.

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

#### **12. Appeals**

(1) A member against whom a sanction has been imposed by the Head of Department in terms of clause 11(1) may, within seven (7) days of receipt of the sanction, appeal to the Member of the Executive Council against that decision.

(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.