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GENERAL NOTICE

NOTICE 230 OF 2011

DRAFT

DRAFT REGULATIONS THAT GIVES EFFECT TO SECTION 27 OF THE
NORTH WEST SCHOOLS EDUCATION ACT 1998 (ACT NO. 3 OF 1998)
READ WITH SECTION 9(3) OF THE SOUTH AFRICAN SCHOOLS ACT 1996
(ACT NO. 84 OF 1996)

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INTRODUCTION

This draft Regulation gives effect to section 27 of the North West Schools Education Act 1998 (Act No. 3 of 1998) read with section 9(3) of the South African Schools Act 1996 (Act No. 84 of 1996), which provides that the MEC of Education in the province may make regulations with regards to the administration of public school hostels in the province.

This draft Regulation is gazetted for public consideration.

Comments on the proposed amendment may be submitted in writing on or before 15 December 2011 to:

The Director Legal Services, c/o Annelie Bevan, Private Bag X 2044, Mmabatho, 2735; or per facsimile to (018) 388 1800; or per email to abevan@nwpg.gov.za.

The draft regulations are also available on the North West Department of Education's website – www.nwpg.gov.za and follow the link to the Department of Education.

The North West Department of Education will continue to engage stakeholders over the comment period to ensure broad stakeholder participation in the review of the draft Regulations.

All comments submitted will be taken into account when finalising the regulations.

REGULATIONS

(PUBLISHED UNDER PROVINCIAL NOTICE NO ... OF 2011)

ADMINISTRATION OF PUBLIC SCHOOL HOSTELS

The Member of the Executive Council responsible for Education in the North West Province does hereby in terms of section 27 of the North West Schools Education Act 1998 (Act No. 3 of 1998) read with section 9(3) of the South African Schools Act 1996 (Act No. 84 of 1996) promulgate the regulations as set out in the Schedule.

SCHEDULE

1 Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act, shall bear the meaning assigned to it in the Act and unless the context indicates otherwise –

“**communicable diseases**” means any disease determined to be a communicable disease by the Minister for Health and including but not limited to: polio, measles, tuberculosis, diphtheria, tetanus, hepatitis B, cholera and meningitis;

“**Department**” means the Department of Education, North West;

“**expulsion**” means the permanent prohibition of a learner from residing in a hostel;

“**exemption**” means total, partial or conditional exemption of parents from the payment of hostel fees and “**exempted**” has a similar meaning;

“**governing body**” means the governing body as contemplated in section 16(1) of the Act;

“**Head of Department**” means the head of the Department of Education in the North West Province;

“**hostel**” means a facility which provides residential accommodation to learners;

“hostel fees” means any form of contribution of a monetary nature made or paid by a person or body in relation to the accommodation of a learner in a hostel.

“hostel manager” means the person responsible for the administration of a hostel;

“learner” means a learner as defined in section 1 of the Act who resides in a hostel, and **“hostel learner”** has a similar meaning;

“Member of the Executive Council” means the Member of the Executive Council responsible for education in the North West Province;

“parent” means a parent as defined in section 1 of the Act;

“Primary residence” means the place where the learner normally resides in the care of his or her parent or legal guardian;

“principal” means a principal as defined in section of the Act;

“school” means a public school which has a hostel on its premises;

“suspension” means the temporary prohibition of a learner from residing in a hostel;

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

2 Application and purpose of regulations

- (1) The purpose of these regulations is to regulate the administration and control of hostels, the admission of learners to hostels, disciplinary procedures and matters related thereto.
- (2) These regulations apply to all schools and hostels as defined.

3 Governance and management of hostels

- (1) Subject to these regulations, the governance of a hostel is vested in its governing body.
- (2) The governing body must perform its functions and obligations in accordance with the provisions of these regulations.

- (3) The Head of Department may close a hostel temporarily in the case of an emergency if he or she believes on reasonable grounds that the lives or safety of learners or staff are endangered or that there is a danger of damage to property.
- (4) A governing body must appoint a hostel manager and may appoint such additional staff members as may be necessary to assist in the administration and maintenance of the hostel.
- (5) The principal of a school must in his annual report to the Head of Department as contemplated in section 16(A)(1)(b) of the Act also include a report in respect of the functioning of the hostel during the financial year in question.

4 Admission to hostels

- (1) A school must have a written admission and re-admission policy which contains the criteria to be considered by the school in determining an application by a learner for admission or re-admission to a hostel.
- (2) In deciding whether or not to admit a learner to a hostel, a school may not unfairly discriminate against a learner in any manner.
- (3) The following factors must as a minimum be contained in an admission policy and be considered by the school in deciding whether to admit a learner to a hostel:-
 - (i) the distance of the learner's primary residence from the hostel;
 - (ii) whether or not the primary residence of a learner is situated on farm property;
 - (iii) whether or not the primary care giver of a learner is a single parent;
 - (iv) the availability of school or public transport from a learner's place of primary residence to a public school situated closer to the learner's primary residence than the school in question;
 - (v) the physical disability status of the learner;
 - (vi) the academic achievement of the learner during the previous school year;

- (vii) the measure in which the admission of the learner will improve representativity and cultural diversity in respect of the existing learner composition at the school and in the hostel;
 - (viii) assistance to financially needy learners by accommodating them in a hostel.
- (4) Learners whose primary residence is situated outside of the boundaries of the North West Province may only be accommodated in a hostel in the event of vacancies still existing after all qualifying applicant learners whose primary residences are situated within the boundaries of the North West Province have been accommodated.
- (5) The governing body of a school shall devise suitable application forms for admission to the hostel, which must be freely available and provided without charge to all prospective applicants for admission to a hostel.
- (6) The governing body shall determine and consistently apply a cut off date in respect of the submission of applications for admission to a hostel, and applications received after this will only be considered in the event of the specific hostel not having been filled to its capacity from applicants who have applied timeously, and after having applied the admission criteria.

5 Re-admission to hostels

- (1) The re-admission of an existing learner takes place automatically subject to subsection (2) below.
- (2) The governing body may refuse to re-admit a learner after due observance of the Promotion of Administrative Justice Act 2000 (Act No 3 of 2000) and after having afforded the learner a fair opportunity to state his or her case, if:
- (i) the learner turns 20 years of age in the year in which he would have been re-admitted, but for the contents of this provision;
 - (ii) substantial changes in the personal circumstances of a learner in respect of the qualifying criteria applied by the governing body;
 - (iii) relocation of the learner's primary residence to a place outside the boundaries of the North West Province.

- (3) No learner may be refused re-admission to a hostel on the grounds that his or her parent has not paid the school fees or hostel fees determined by the governing body.

6 Refusal of application to be admitted to a hostel

- (1) A governing body must keep a complete register of all applications for admission together with all documents submitted in respect of the application of learners for admission to the hostel.
- (2) The reasons for a refusal to admit a learner to a hostel must be recorded by the governing body who considered the application for admission.
- (3) Any authorised official in the employment of the Department must have access to the register, documentation and reasons referred to in subsections (1) and (2).
- (4) Any learner or parent of a learner who has been refused admission to a hostel may appeal against the decision to the Head of Department.
- (5) An appellant must follow the appeal procedure prescribed in regulation 15.

7 Prohibited Practices

- (1) No learner may be refused admission to a hostel on the grounds of:-
 - (i) his or her parents being unable to pay or having failed to pay the school fees or hostel fees determined by the governing body;
 - (ii) he or she does not subscribe to the mission statement of the school;
 - (iii) he or she has refused to enter into a contract in terms of which his or her parent waives any claim for damages arising out of the learner's residence in the hostel;
 - (iv) unfair discrimination on the grounds of race, gender, sexual orientation, culture, religion, health status, or any other ground of discrimination prohibited by law.

- (2) Neither the principal nor governing body, nor any person appointed by the principal or governing body may administer any test relating to the admission of a learner to a hostel.

8 Register of admissions

- (1) The principal of a school must keep a register of all learners who are residing in its hostel.
- (2) The register must as a minimum contain the following information pertaining to a learner:
 - (i) full names;
 - (ii) date of birth;
 - (iii) age;
 - (iv) identity number, if available;
 - (v) primary residence address;
 - (vi) full names, addresses and telephone numbers of the learner's parents;
 - (vii) full names, addresses and telephone numbers of the learner's lawful guardian if applicable;
- (3) The authorised officials of the North West Department of Education must have access to the register of hostel admissions.

9 Hostel fees

- (1) Hostel fees must be determined and charged in accordance with the provisions of section 39 of the Act.
- (2) Hostel fees form part of the school fund of the school as contemplated in section 37 of the Act.
- (3) The determination of hostel fees may not be used to exclude financially impecunious learners and must be based upon the actual costs of accommodating a learner in a hostel.

- (4) The governing body of a school may upon application exempt a learner either totally, partially or conditionally from the payment of hostel fees based upon the equitable criteria and procedures determined by the Minister for Basic Education in terms of section 39(4) of the Act.
- (5) A parent is liable to pay the hostel fees determined in terms of subsection (1) unless or to the extent that he or she has been exempted from payment.
- (6) A parent may appeal to the Head of Department against a decision of a governing body regarding the exemption of such parent from the payment of hostel fees.
- (7) The appeal procedure contained in regulation 15 must be followed in respect of an appeal.
- (8) A school may by means of legal process enforce the payment of hostel fees by parents who are liable to pay.
- (9) A parent will be liable to pay if:
 - (i) no application for exemption had been made;
 - (ii) an application for exemption had been made, but was unsuccessful and no appeal had been lodged with the Head of Department within the time period prescribed in regulation
 - (iii) an application for exemption had been made, but the application as well as a subsequent appeal to the Head of Department against the refusal or partial refusal of exemption were unsuccessful.
- (10) A school may not attach in execution the dwelling in which a parent of a learner resides;
- (11) A learner may not be deprived of his or her right to participate in all aspects of the programme of a school or hostel despite the non-payment of hostel fees by his or her parent and may not be discriminated in any manner including but not limited to the following conduct:
 - (i) suspension from school classes or the hostel;
 - (ii) verbal or non-verbal abuse;

- (iii) denial of access to –
 - (a) cultural, sporting or social activities of the school; or
 - (b) school classes, examinations or tests; or
- (iv) denial of a school report or examination or tests results.

10 Residents Committee

- (1) A representative residents committee consisting of hostel learners must be established in respect of every hostel in order to represent the interests of hostel learners at the school.
- (2) The number of committee members shall be determined by the governing body, depending on the capacity of the specific hostel, but the residents committee shall be entitled to at least one seat on the representative council of learners at the school contemplated in section 11 of the Act.
- (3) The responsibilities of the residents committee are to:
 - (i) represent the interests of hostel learners generally;
 - (ii) liaise with the hostel manager, governing body and principal in respect of all matters which affect hostel learners;
 - (iii) assist the hostel manager to the extent which the hostel manager reasonably requires with the management and administration of the hostel;
 - (iv) promote compliance with the code of conduct referred to in regulation 14 and to report all instances of non-compliance with the code of conduct to the hostel manager.
- (4) The governing body must determine a written policy which contains the procedures for the establishment and election of the residents committee members.
- (5) The authorised officials of the North West Department of Education must have access to the written policy determined in terms of subsection (4).

11 Access Control to hostels

- (1) Only duly admitted learners and duly appointed hostel staff members may reside in a hostel.
- (2) No person shall without the permission of the hostel manager or principal enter the premises of a hostel.
- (3) Despite having been duly authorised to enter on a hostel premises a person who intends to enter a hostel premises may be required by the hostel manager or principal or any person duly delegated by them to:
 - (i) furnish his or her name, address and any other relevant information;
 - (ii) produce proof of his or her identity;
 - (iii) declare whether he or she has any firearm or other dangerous object or illegal drugs in his or her possession;
 - (iv) declare what the contents are of any vehicle, suitcase, attaché case, bag, handbag, folder, envelope, parcel or container of any nature which he or she has in his or her possession or control and show the contents thereof to such hostel manager, principal or their delegate;
 - (v) subject himself or herself and anything which he or she has in his or her possession or control to a search by a person of the same gender, or examination by an electronic device, sniffer dogs or other apparatus in order to determine the presence of any dangerous object or illegal drug;
 - (vi) hand over to the hostel manager, principal or their delegate anything which he or she has in his or her possession or custody for examination or custody until he or she leaves the hostel premises.
- (4) Without derogation of the provisions of the Trespass Act (Act no 6 of 1959) the hostel manager, school principal or any person delegated by them may at any time remove any person from the hostel premises if:
 - (i) that person enters the hostel premises concerned without the required authorisation;

- (ii) that person refuses or fails to observe any of the instructions referred to in subsection (3) above;
- (iii) the removal of such person is necessary for the safeguarding of the hostel premises concerned or the protection of the hostel residents;
- (iv) the provisions of subsections (2) to (4) do not apply in respect of a member of the South African Police Service who is required to enter the premises in the execution of his or her official duties, the Minister for Basic Education, Member of the Executive Council or an official of the Department or the National Department of Education who is required in the performance of his or her duties to enter upon the premises of a hostel and who produces acceptable proof of his or her identity to the hostel or school management;

12 Random search and seizure and drug testing

- (1) No person may bring a dangerous object or illegal drug onto hostel premises or have such object or drug in his or her possession on hostel premises.
- (2) Subject to subsection (3), the hostel principal or his or her delegate may, at random, search any learner, or the property or hostel room of any learner, for any dangerous object or illegal drug, if a fair and reasonable suspicion has been established-
 - (a) that a dangerous object or an illegal drug may be found on hostel premises; or
 - (b) that one or more learners on hostel premises are in possession of dangerous objects or illegal drugs.
- (3)
 - (a) A search contemplated in subsection (2) may only be conducted after taking into account all relevant factors, including-
 - (i) the best interest of the learner in question or of any other learner at the hostel;

- (ii) the safety and health of the learner in question or of any other learner at the hostel;
 - (iii) reasonable evidence of illegal activity; and
 - (iv) all relevant evidence received.
 - (b) When conducting a search contemplated in subsection (2), the hostel manager, principal or his delegate must do so in a manner that is reasonable and proportional to the suspected illegal activity.
- (4) Where a search contemplated in subsection (2) entails a body search of the learners in question, such search may only-
 - (a) be conducted by-
 - (i) hostel manager or the principal, if he or she is of the same gender as the learner; or
 - (ii) by the hostel manager or the principal's delegate, who must be of the same gender as the learner;
 - (b) be done in a private area, and not in view of another learner;
 - (c) be done if one adult witness, of the same gender as the learner, is present;
 - (d) be done if it does not extend to a search of a body cavity of the learner.
- (5) Any dangerous object or illegal drug that has been seized must be-
 - (a) clearly and correctly labelled with full particulars, including-
 - (i) the name of the learner in whose possession it was found;
 - (ii) the time and date of search and seizure;
 - (iii) an incident reference number;
 - (iv) the name of the person who searched the learner;

- (v) the name of the witness; and
 - (vi) any other details that may be necessary to identify the item and incident;
 - (b) recorded in the school record book; and
 - (c) handed over to the police immediately to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977)
- (6) If the police cannot collect the dangerous object or illegal drug from the school immediately, the hostel manager, principal or his or her delegate must-
- (a) take the dangerous object or illegal drug to the nearest police station; and
 - (b) hand the dangerous object or illegal drug over to the police to dispose of it in terms of section 31 of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- (7) The police officer who receives the dangerous object or illegal drug must issue an official receipt for it to the hostel manager, principal or his or her delegate.
- (8) A learner may be subjected to disciplinary proceedings if a dangerous object or illegal drug is found in his or her possession.
- (9) Any disciplinary proceedings in respect of a learner must be conducted in terms of the code of conduct contemplated in regulation 14.
- (10) No criminal proceedings may be instituted by the school against a learner in respect of whom a search contemplated in subsection (2) was conducted and a dangerous object or illegal drug was found.

13 Suspension from Hostel

- (1) The governing body may suspend a learner from residing in or entering the hostel if such learner:

- (i) is reasonably suspected of serious misconduct as determined by Notice by the Member of the Executive Council in terms of section 9(3) of the Act; or
 - (ii) is reasonably suspected of suffering from a communicable disease as defined.
- (2) Where a learner had been suspended in terms of subsection (1)(i), a governing body must conduct disciplinary proceedings in the manner prescribed in the Act, any regulations or notices made in terms of the Act and the code of conduct of the school within 7 (seven) school days after the suspension of such learner.
- (3) If disciplinary proceedings are not concluded within 7 (seven) school days after the suspension of a learner, the governing body must obtain the approval of the Head of Department for the continuation of the suspension of such learner.
- (4) Where a learner had been suspended in terms of subsection (1)(ii), the suspension of the learner will continue until a medical report had been received from a duly registered medical practitioner to the effect that the learner does not suffer from a communicable disease as defined or that the learner no longer suffers from such disease.

14 Conduct of learners

- (1) A governing body must establish a written code of conduct containing the hostel rules, disciplinary procedure to be followed in cases of transgressions of the hostel rules or suspected transgressions of the hostel rules and the permissible sanctions to be imposed where a learner had transgressed the hostel rules.
- (2) The code of conduct in respect of hostel learners may be incorporated into the code of conduct of the school contemplated in section 8 of the Act subject thereto that a learner may not in respect of a single transgression be subjected to more than one disciplinary process.
- (3) A governing body may, if a learner is found guilty of serious misconduct during the disciplinary proceedings contemplated in this regulation:-
- (i) impose as a disciplinary sanction the suspension of such learner for a period not exceeding 1 (one) month or any other sanction contemplated in the code of conduct; or

- (ii) expel such learner from the hostel.
- (4) A learner who has been expelled from a hostel or the parent of such learner may appeal against the decision of the governing body.
- (5) The appeal procedure contained in regulation (15) must be followed in respect of an appeal.
- (6) The Head of Department must decide an appeal against the expulsion of a learner within 5 (five) working days from the date of receipt of the appeal.
- (7) If the Head of Department upholds the appeal against an expulsion, the Head of Department may either after consultation with the governing body impose a suitable sanction on the learner, or without consultation with the governing body refer the matter back to the governing body for an alternative sanction in terms of the code of conduct, other than expulsion.
- (8) The governing body must implement any sanction imposed by the Head of Department in terms of subsection (7).
- (9) The behaviour by a hostel learner which may constitute serious misconduct, the disciplinary proceedings to be followed in such cases and the provisions of due process in safeguarding the interests of the learner involved in disciplinary proceedings as determined by the Member of the Executive Council in terms of section 9(3) of the Act shall also apply in respect of hostel learners.

15 Appeal Procedure

- (1) A parent or learner who enjoys a right of appeal in terms of the provisions of these regulations may appeal in writing against the decision complained of to the Head of Department.
- (2) The written appeal must reach the office of the Head of Department within 10 (ten) working days after the appellant became aware of that decision.
- (3) The written appeal must contain:
 - (i) the grounds or reasons for the appeal;

- (ii) all information which the appellant deems relevant for purposes of deciding the appeal;
 - (iii) certified photocopies of all documents pertaining to the appeal which the appellant deems relevant.
- (4) The Head of Department must within 10 (ten) working days after receipt of the appeal refer to in subsections (2) and (3):
 - (a) notify the principal of the school concerned of the appeal;
 - (b) furnish to the principal a copy of the appeal and all accompanying documents;
- (5) The principal shall within 5 (five) days from receipt of the appeal from the Head of Department:
 - (i) deliver the complete record of the proceedings appealed against to the Head of Department;
 - (ii) deliver any reasons for the decision appealed against and any response to the appeal which the governing body desires to give.
- (6) The governing body shall, if the record of the proceedings and decision appealed against are within the possession of any of its members, forthwith avail such record to the principal to enable him or her to comply with his or her obligations in terms of subsection (5).
- (7) Subject to section 14(6), the Head of Department must within 10 (ten) days after the date of receipt of the documentation or information contemplated in subsection (6):
 - (i) uphold or dismiss the appeal;
 - (ii) subject to regulation 14(7) substitute the decision of the governing body for his or her own decision after consultation with the governing body or without consultation with the governing body refer the matter back to the governing body for re-consideration.

- (8) The governing body must implement any decision taken by the Head of Department on appeal contemplated in these regulations any decision taken by the Head of Department in terms of this section.

16 Short title

These regulations are called the Administration of Public School Hostels Regulations 2011
