

NOTICE 430 OF 2012
NORTH WEST PROVINCE
NORTH WEST SCHOOLS EDUCATION ACT
(ACT 3 OF 1998)

REGULATIONS RELATING TO THE ADMINISTRATION OF PUBLIC SCHOOL HOSTELS

I, Boikanyo Raymond Elisha, the Member of the Executive Council responsible for Education and Training 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.

(Signed)

BOIKANYO RAYMOND ELISHA

MEC FOR EDUCATION AND TRAINING

NORTH WEST PROVINCE

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:

"authorised officials" means any official in the employ of the Department at the level of Institutional Support Coordinator or higher;

"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 A and B, cholera, chicken pox, meningitis, mumps, leprosy, haemorrhagic fever diseases of Africa and whooping cough;

"cut off date" means 30 September of each year, and if this date falls on a weekend or public holiday, the first ensuing workday;

"Department" means the Department of Education and Training, 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 and Training in the North West Province;

"hostel" means a facility in a school which provides residential accommodation and care 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 supervisor" means the official employed to manage the affairs of a hostel referred to in chapter D, section 1 (2) of PAM, and where more than one such person had been appointed, the most senior of such persons;

"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 and Training in the North West Province;

"PAM" means the Personnel Administration Measures as determined by the Minister of Basic Education in terms of the Employment of Educators Act, 1998 (No 76 of 1998);

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

"primary residence" means the place where the learner resides in the care of his or her parent or legal guardian;

"principal" means a principal as defined in section 1 of the Act;

"school" means a public school which has a hostel facility as contemplated in section 1 and 12 of the Act;

"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, subject to sub-regulation 2(3).
- (3) Sub-regulations 4(3)(a); 4(4); 5(2)(a) and 5(3) of these regulations do not apply to special schools.

3 Governance and management of hostels

- (1) Subject to these regulations, the governance of a hostel is vested in the governing body of the school.
- (2) The governing body must perform its functions and obligations in accordance with the provisions of these regulations.
- (3) The Head of Department may either *mero motu* or at the request of the governing body 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) The Department must appoint a full time hostel supervisor who reports directly to the school principal and may employ such additional staff of the hostel, as approved by the MEC.
- (5) The governing body, may employ such additional staff members as may be necessary to assist in the administration and maintenance of the hostel.
- (6) 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 governing body 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:-
 - (a) the distance of the learner's primary residence from the hostel;

- (b) whether or not the primary residence of a learner is situated on farm property;
 - (c) whether or not the primary care giver of a learner is a single parent;
 - (d) 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;
 - (e) the academic achievement of the learner during the previous 2 (two) school years;
 - (f) 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;
 - (g) assistance to financially needy learners by accommodating them in a hostel;
 - (h) the capacity of the school to accommodate learners with disabilities and special needs.
- (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 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 consistently apply the cut off date in respect of the submission of applications for admission to a hostel, and applications received after this date 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.
- (7) The governing body shall lodge a copy of the admission and re-admission policy and any subsequent amendment thereto with the applicable Area Office Manager of the Department.
- (8) The governing body shall advise applicants of their entitlement to apply for a hostel subsidy as contemplated in any National Norms and Standards for School Funding promulgated by the Minister of Basic Education.

5 Re-admission to hostels

- (1) The re-admission of an existing learner in respect of the subsequent academic year takes place automatically subject to sub-regulation (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, only if:
 - (a) the learner turns 19 (nineteen) years of age in the year in which he would have been re-admitted, but for the contents of this provision;
 - (b) substantial changes occurred during the previous academic year in the personal circumstances of a learner in respect of the qualifying criteria applied by the governing body;
 - (c) his or her hostel fees in respect of the previous academic year remain unpaid, and the Department has not paid a hostel subsidy to the school in respect of that learner before the cut off date;
 - (d) he or she had been expelled from the hostel on account of misconduct during the period of 2 (two) years immediately

preceding his or her application for re-admission.

- (3) In the event of the relocation of the learner's primary residence to a place outside the boundaries of the North West Province, the governing body may refuse to re-admit a learner in respect of the subsequent academic year, subject to regulation 4(4).
- (4) Any decision not to re-admit a learner must be communicated by the governing body in writing to the learner by no later than 31 October.

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) A governing body must in writing and within 30 (thirty) days of the cut-off date inform an applicant of the outcome of his or her application for hostel accommodation.
- (3) 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.
- (4) Any authorised official in the employment of the Department must have access to the register, documentation and reasons referred to in sub-regulations (1) and (2).
- (5) Any learner or parent of a learner who has been refused admission or re-admission to a hostel may appeal against the decision to the Head of Department.
- (6) An appellant must follow the appeal procedure prescribed in regulation 15.

7 Prohibited Practices

- (1) No learner may be refused admission or re-admission to a hostel on the grounds of:
 - (a) his or her parents being unable to pay or having failed to pay the school fees determined by the governing body;
 - (b) him or her having refused to enter into a contract in terms of which his or her parent waives all claims for damages arising out of the learner's residence in the hostel;
 - (c) unfair discrimination on the grounds of race, gender, sexual orientation, culture, religion, health status, disability or any other ground of discrimination prohibited by law;
 - (d) unavailability of accommodation, in circumstances where paying tenants other than learners, hostel staff members, or the spouse of children of hostel staff members occupy accommodation in the hostel.
- (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:
 - (a) full names;
 - (b) date of birth;
 - (c) age and gender;

- (d) identity number, if available;
 - (e) primary residence address;
 - (f) full names, addresses and telephone numbers of the learner's parents, as well as those of a next of kin;
 - (g) full names, addresses and telephone numbers of the learner's lawful guardian if applicable;
 - (h) chronic illness or disability, and level of support required in respect thereof;
 - (i) religion;
 - (j) special dietary requirements, if any; and
 - (k) the combined household income of the learner's parents or lawful guardian, with corroborating documentary proof.
- (3) The authorised officials of the North West Department of Education must have access to the register of hostel admissions.
- (4) The principal of a school must before 31 October of each year submit to the Head of Department an application for hostel subsidies in respect of learners who may qualify in terms of any National Norms and Standards for School Funding promulgated by the Minister for Basic Education.

9 Hostel fees

- (1) Hostel fees must be determined and charged in accordance with the provisions of section 39 of the Act, read in conjunction with any National Norms and Standards for School Funding promulgated by the Minister for Basic Education.
- (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 governing body which must be consistently applied by them.
- (5) A parent is liable to pay the hostel fees determined in terms of sub-regulation (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:
- (a) no application for exemption had been made;
 - (b) 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 15;
 - (c) 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 against in any manner including but not limited to the following conduct:
- (a) suspension from school classes or the hostel;
 - (b) verbal or non-verbal abuse;
 - (c) denial of access to -
 - (i) cultural, sporting or social activities of the school; or
 - (ii) school classes, examinations or tests; or
 - (d) 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:
- (a) represent the interests of hostel learners generally;
 - (b) liaise with the hostel supervisor, governing body and principal in respect of all matters which affect hostel learners;
 - (c) assist the hostel supervisor to the extent which the hostel supervisor reasonably requires with the management and administration of the hostel;
 - (d) 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 supervisor.
- (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 sub-regulation (4).

11 Access Control to hostels

- (1) Only duly admitted learners, duly appointed full time or part time hostel staff members with their spouses and children and subject to regulation 7(1)(iv), such additional paying tenants whose residency may be approved in writing by the governing body after having complied with the provisions of section 36 of the Act may reside in a hostel.
- (2) No non-resident shall without the permission of the hostel supervisor or principal enter the premises of a hostel.
- (3) Despite having been duly authorised to enter a hostel premises a person who intends to enter a hostel premises may be required by the hostel supervisor or principal or any person duly delegated by them to:
- (a) furnish his or her name, address and any other relevant information;

- (b) produce proof of his or her identity;
 - (c) declare whether he or she has any firearm or other dangerous object or illegal drugs in his or her possession;
 - (d) 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 supervisor, principal or their delegate;
 - (e) 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;
 - (f) hand over to the hostel supervisor, 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 any other legislation, the hostel supervisor, school principal or any person delegated by them may at any time remove any person from the hostel premises if:
- (a) that person enters the hostel premises concerned without the required authorisation;
 - (b) that person refuses or fails to observe any of the instructions referred to in sub-regulation (3) above;
 - (c) the removal of such person is necessary for the safeguarding of the hostel premises concerned or the protection of the hostel residents;
 - (d) the provisions of sub-regulations (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 sub-regulation (3), the hostel supervisor, school 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 sub-regulation (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 sub-regulation (2), the hostel supervisor, 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 sub-regulation (2) entails a body search of the learners in question, such search may only:
 - (a) be conducted by-
 - (i) hostel supervisor or the principal, if he or she is of the same gender as the learner; or
 - (ii) by the hostel supervisor 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; and
 - (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 hostel 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 supervisor, 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 supervisor, 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) Criminal proceedings may be instituted by the school against a learner in respect of whom a search contemplated in sub-regulation (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:
 - (a) 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
 - (b) is reasonably suspected of suffering from a communicable disease as defined.
- (2) Where a learner had been suspended in terms of sub-regulation (1)(i), a governing body must conduct and finalise disciplinary proceedings in the manner prescribed in the Act, any regulations or notices made in terms of the Act and the code of conduct referred to in regulation 14 within 14 (fourteen) calendar days after the suspension of such learner.
- (3) If disciplinary proceedings are not concluded within 14 (fourteen) calendar 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 sub-regulation (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 impose as a disciplinary sanction:
 - (a) the suspension of such learner for a period not exceeding 1 (one) month from the hostel;
 - (b) expel such learner from the hostel; or
 - (c) any other sanction contemplated in the code of conduct.
- (4) A learner or the parent of such learner may appeal against the decision of the governing body taken in terms of sub-regulation (3).
- (5) The appeal procedure contained in regulation 15 must be followed in respect of an appeal.
- (6) If a learner who had been on suspension in terms of regulation 13(1)(a) lodges an appeal against a sanction taken in terms of sub-regulation (3), such suspension shall remain effective pending the decision of the Head of Department in terms of sub-regulation (7).
- (7) If the Head of Department upholds the appeal against the sanction taken in terms of sub-regulation (3), 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.

- (8) The governing body must implement any sanction imposed by the Head of Department in terms of sub-regulation (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 14 (fourteen) calendar days after the appellant became aware of that decision.
- (3) The written appeal must contain:
 - (a) the grounds or reasons for the appeal;
 - (b) all information which the appellant deems relevant for purposes of deciding the appeal;
 - (c) certified photocopies of all documents pertaining to the appeal which the appellant deems relevant.
- (4) The Head of Department must within 14 (fourteen) calendar days after receipt of the appeal referred to in sub-regulations (2) and (3):
 - (a) notify the principal of the school concerned of the appeal; and
 - (b) furnish to the principal a copy of the appeal and all accompanying documents.
- (5) The principal shall within 5 (five) calendar days from receipt of the appeal from the Head of Department:
 - (a) deliver the complete record of the proceedings appealed against to the Head of Department;
 - (b) deliver any reasons for the decision appealed against and any written 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 sub-regulation (5).
- (7) The Head of Department must, in the case of an appeal in terms of an expulsion, within 5 (five) calendar days and in all other appeals within 14 (fourteen) calendar days after the date of receipt of the documentation or information contemplated in sub-regulation (6):
 - (a) uphold or dismiss the appeal;
 - (b) 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) Notwithstanding the provisions of sub-regulation (5) (6) and (7), the Head of Department may decide an appeal if the period prescribed in sub-regulation (5) has expired without compliance therewith by the principal.
- (9) The governing body must implement any decision taken by the Head of

Department on appeal.

16

Short title

These regulations are called the Administration of Public School Hostels Regulations 2012.