



**Western Cape  
Government**

# **A Practical Guide to the Recruitment, Selection and Appointment of Educators at Public Schools**

*Second Edition*

***A resource designed to assist officials in the  
Education District Offices of the Western Cape Education  
Department in the Western Cape Government to provide  
targeted support to public schools engaged in the  
process of filling educator posts funded by the State***

**Note:** *This practical guide relates only to the recruitment, selection and appointment of educators in posts funded by the Western Cape Government in the ordinary course (including teachers, principals, deputy principals and school-based HODs) and does not cover the recruitment, selection and appointment of educators in posts funded by the governing bodies of public schools or the transfer of serving educators previously displaced as a result of operational requirements.*

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## How can this practical guide assist you?

This **practical guide** has been compiled to assist **officials in the Education District Offices of the Western Cape Education Department in the Western Cape Government** to provide targeted support to public schools engaged in the process of filling educator posts funded by the Western Cape Government.

In particular, this guide will address the following questions in the context of **filling educator vacancies at public schools**:

- What roles and responsibilities are allocated to education authorities, education unions, governing bodies and the school principal?
- What requirements must be met before the governing body of a school can take any decision relating to the recruitment and selection of educators?
- When and how should the governing body of a school establish a Selection Committee?
- What are the functions of a governing body's Selection Committee?
- When and how should the post requirements for a vacant educator post be drafted?
- When and how should the selection criteria be determined?
- When and how should interview questions be developed?
- When and how should the vacancy advertisement be drafted and published?
- What does the sifting of applications entail and who is responsible for this?
- How should the shortlisting of candidates be conducted?
- What preparation is required for the interviewing of shortlisted candidates?
- How should interviews be conducted?
- When and how does the governing body of a school make a recommendation regarding its preferred candidates?
- What considerations are relevant to the appointment of an educator by the Head of a Provincial Education Department?
- What type of record-keeping is required?

**Please note that this guide relates only to the recruitment, selection and appointment of educators in posts funded by the Western Cape Government in the ordinary course (including teachers, principals, deputy principals and school-based HODs) and does not cover the recruitment, selection and appointment of educators in posts funded by the governing bodies of public schools or the transfer of serving educators previously displaced as a result of operational requirements.**

### HOW TO USE THIS PRACTICAL GUIDE EFFECTIVELY

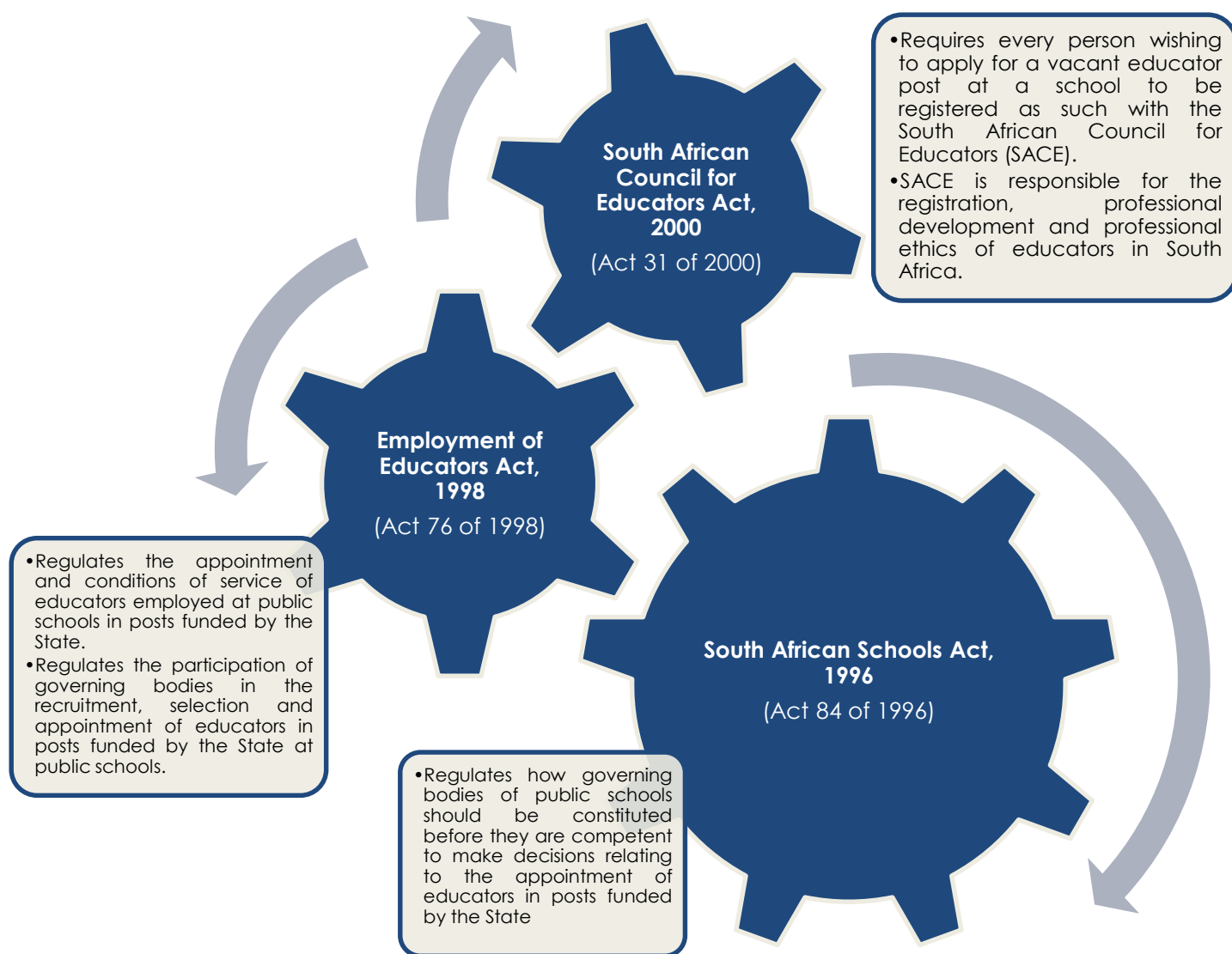
- Use the table of contents to navigate your way through the information provided in this guide.
- Use the Notes page at the end of each chapter for any notes that you would like to include.
- Please consult Legal Services before applying anything cited or discussed in this guide, as the relevant legislation referred to in this guide may have changed.
- Please consult Legal Services at any stage should you have any queries, concerns or suggestions regarding the content of this guide. This guide is a secondary source and should not be applied without consulting all relevant primary sources (including, for example, applicable legislation).

### SOURCES

- Constitution of the Republic of South Africa, 1996
- South African Schools Act, 1996 (Act 84 of 1996)
- South African Council of Educators Act, 2000 (Act 31 of 2000)
- Employment of Educators Act, 1998 (Act 76 of 1998)
- Regulations regarding the Terms and Conditions of Employment of Educators (Government Notice R1743, Government Gazette 16814 of 13 November 1995, as amended)
- Employment Equity Act, 1996 (Act 55 of 1996)
- Children's Act, 2005 (Act 38 of 2005)
- Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016)
- Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017
- Code of Conduct for Members of School Governing Bodies of Public Schools in the Western Cape, Western Cape Provincial Gazette 6982 dated 13 April 2012
- Regulations relating to the Declaration of Personal Interests of Members of Governing Bodies, Western Cape Provincial Gazette Extraordinary 7039 dated 31 January 2013
- Education Labour Relations Council Resolution 5 of 1998 (including Schedule 1)
- Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002 (including Annexures A-B)
- Guidelines to School Governing Bodies regarding the Management of Child Abuse, Deliberate Neglect and Sexual Offence published by the Western Cape Education Department as Annexure H to the Department's Abuse No More Protocol, 2014
- *Kimberley Junior School v Head of the Northern Cape Education Department* [2009] ZASCA 58 (28 May 2009)
- *Head of the Western Cape Education Department and Others v Governing Body of Point High School and Others* [2008] ZASCA8 (31 March 2008)

## CHAPTER 1: Applicable Legal Framework

Included below is an overview of the **primary legislation** applicable to the recruitment, selection and appointment of educators at public schools in posts funded by the State:



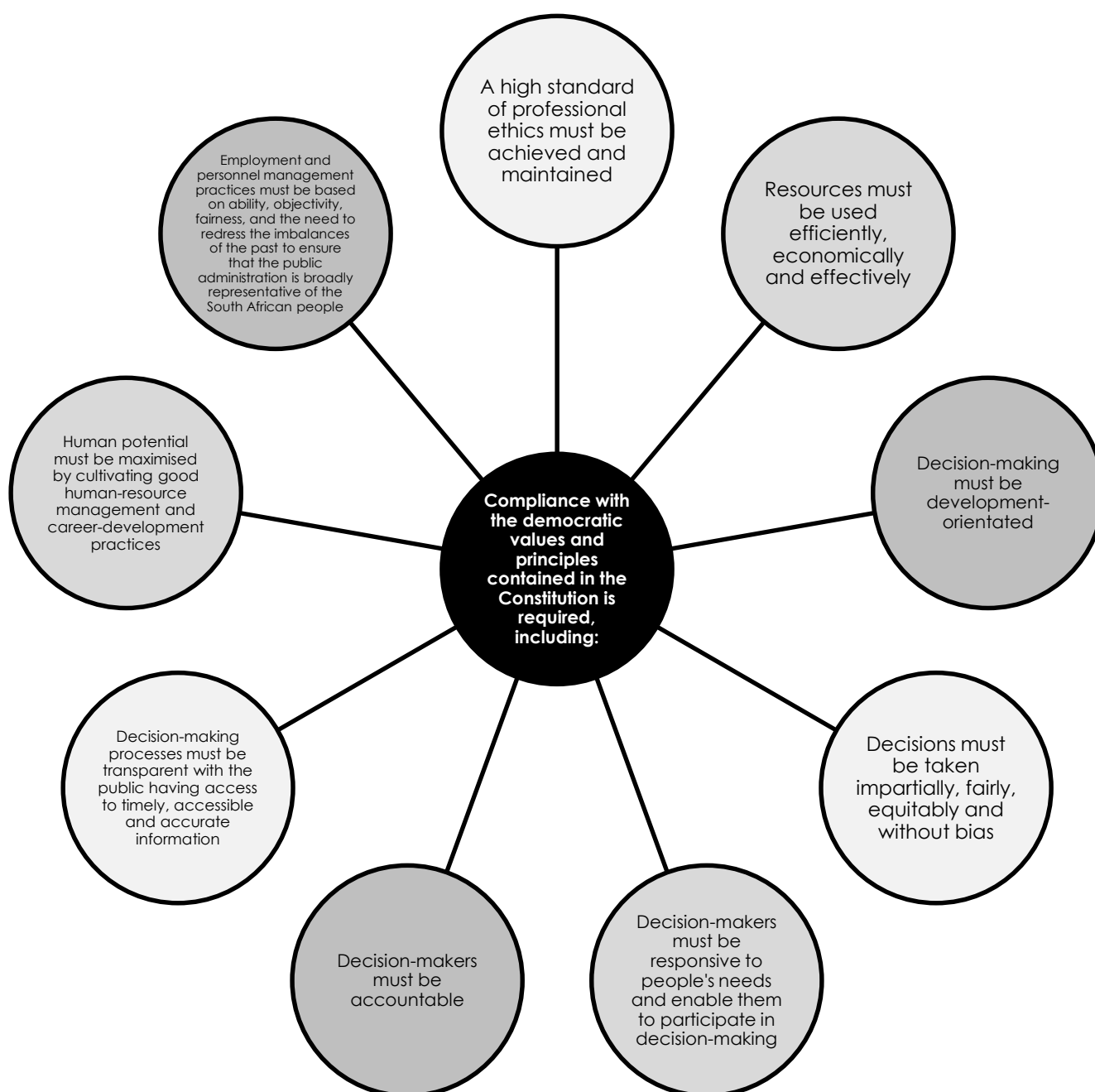
This practical guide will draw on this legislation to provide an overview of the following:

- The **roles and responsibilities of key stakeholders**; and
- The **processes and procedures that must be followed**

in the context of the recruitment, selection and appointment of educators in state-funded posts at public schools.

## Basic democratic values and principles

Section 195(1) of the Constitution of the Republic of South Africa, 1996 sets out basic democratic values and principles that are applicable to the decision-making processes followed by Provincial Governments and Schools Governing Bodies when recruiting, selecting and appointing an educator in a state-funded post at a public school.



## Who is responsible for what?



In line with the applicable legal framework described above, there are various stakeholders that have roles and responsibilities in the recruitment, selection and appointment of educators in state-funded posts at public schools. Included below is an overview of these stakeholders and their respective roles and responsibilities.

### Candidate

- ✓ Ensuring that he or she is registered as an educator with the South African Council for Educators (SACE) before he or she begins teaching
- ✓ Submitting an online application for a vacant educator post that complies with the requirements determined for that post

### School Governing Body

- ✓ Ensuring that its decisions are taken in the best interests of learners at the school and their parents and in a manner that is fair, unbiased and free from undue prejudice
- ✓ Making recommendations to the Head of the Provincial Education Department regarding the appointment of educators in the service of the Provincial Education Department to the staff establishment of the school concerned
- ✓ Ensuring that it is properly constituted at all times so that it is competent to take decisions
- ✓ Ensuring that it complies with all substantive and procedural requirements set out in its constitution, applicable laws and collective labour agreements

### School Governing Body's Selection Committee

- ✓ Carrying out various functions for the School Governing Body in relation to the recruitment and selection of candidates for appointment in a vacant educator post funded by the State, including:
  - Determining the selection criteria;
  - Shortlisting candidates for interviews;
  - Interviewing all shortlisted candidates;
  - Selecting recommended candidates; and
  - Submitting a list of preferred candidates to the School Governing Body for recommendation to the Head of the Provincial Education Department for appointment

### School Principal

- ✓ Attending to the professional management of the public school concerned under the authority of the Head of the Provincial Education Department
- ✓ Serving in an official capacity on the governing body of the public school concerned
- ✓ Assisting the governing body of the public school concerned in the performance of its functions and responsibilities
- ✓ Together with the school management team, determining the post requirements for a vacant educator post

### Provincial Education Department Head Office

- ✓ Providing input on and approving vacancy advertisements
- ✓ Receiving applications from candidates
- ✓ Determining which applications meet the post requirements (i.e. sifting all applications received)
- ✓ Ensuring that all substantive and procedural requirements are met before an appointment is made

### Minister of Basic Education

- ✓ Determining the procedure and requirements for appointing a person in a state-funded educator post on the staff establishment of a public school in South Africa

### Provincial Minister / MEC for Education

- ✓ Creating educator posts in the service of the Provincial Education Department for allocation to the staff establishment of public schools in the province

### Education District Offices

- ✓ Providing resource support to the governing bodies of public schools engaged with the filling of vacant educator posts funded by the State

### Head of the Provincial Education Department

- ✓ Allocating educator posts created by the Provincial Minister / MEC for Education to public schools
- ✓ Appointing educators in the service of the Provincial Education Department to the staff establishments of public schools in the province

### Union Representatives

- ✓ Observing the processes and protocols followed by the governing body of a public school engaged with the filling of a vacant educator post funded by the State

### Provincial Competency Testing Centre

- ✓ Conducts competency-based assessments in respect of candidates shortlisted for appointment in posts on the Senior Management Team of a public school
- ✓ Provides feedback to the governing body of a public school (via its Selection Committee) on the candidates as evaluated against the profile of the relevant post vacancy

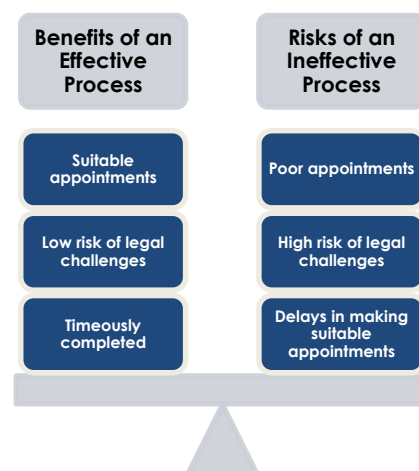
**Notes**

## CHAPTER 2: Overview of the Recruitment, Selection and Appointment Process

### WHAT MAKES AN EFFECTIVE PROCESS? WHY IS IT NECESSARY?

An effective recruitment, selection and appointment process is one that enables the Head of the Provincial Education Department to appoint the right candidate in a lawful and fair manner without increasing the risks of:

- Making a poor appointment;
- Having any act or omission on the part of the Provincial Education Department being the subject of legal proceedings and being declared unlawful; and
- Delaying the appointment of a suitable candidate.



AN EFFECTIVE RECRUITMENT, SELECTION AND APPOINTMENT PROCESS	AN INEFFECTIVE RECRUITMENT, SELECTION AND APPOINTMENT PROCESS
✓ All applications for a vacant educator post are processed <b>consistently, transparently, efficiently and within clear timeframes</b>	✗ The processing of applications for a vacant educator post is inconsistent, unpredictable and often fraught with significant delays and procedural irregularities
✓ The <b>expectations</b> of candidates applying for a vacant educator post are <b>managed effectively</b> by informing them <u>in advance</u> of: <ul style="list-style-type: none"> <li>o the post requirements that must be met to be eligible for the vacant post;</li> <li>o the selection criteria that will be used to shortlist and select candidates;</li> <li>o what processes will be followed (including but not limited to what selection tools may be used);</li> <li>o what information and documents are required from candidates;</li> <li>o their rights; and</li> <li>o the obligations that must be fulfilled by the successful candidate(s)</li> </ul>	✗ Candidates are not in a position to know in advance what is required of them and what they can expect from the process
✓ <b>All communications</b> with candidates applying for a vacant educator post are in <b>clear but simple language</b> so that the processes involved in filling a vacant educator post are <b>easy to understand</b> and <b>easy to follow</b>	✗ Communications with candidates applying for a vacant educator post are vague, inconsistent and open to various interpretations



### Who appoints educators in state-funded posts?

The **appointment** of any person as an educator on the staff establishment of a public school in the service of the Provincial Education Department is made by the **Head of the Provincial Education Department**.

Source: Section 6(1)(b) of the Employment of Educators Act, 1998 (Act 76 of 1998)

### How should an appointment of an educator in a state-funded post be made?

The appointment must be made:

- on the recommendation of the governing body of the public school concerned;
- in accordance with the procedure and requirements determined by the Minister of Basic Education; and
- subject to the provisions of the Employment of Educators Act, the Labour Relations Act and applicable collective agreements concluded by the Education Labour Relations Council.

Source: Sections 6(2) and 6(3)(a) of the Employment of Educators Act, 1998 (Act 76 of 1998)

### Who pays the salary of an educator in a state-funded post?

An educator appointed in a substantive post in the service of a Provincial Education Department on the staff establishment of a public school would **receive his/her salary via the Provincial Education Department** and not from the public school direct.

### Who are the relevant role-players when appointing an educator in a state-funded post at a public school?

In terms of the applicable legal framework, the recruitment, selection and appointment of an educator in a state-funded post at a public school is carried out by a number of different role-players who each have a specific function or set of responsibilities to perform.

The **table on the next page** provides an overview of the process that should be followed by the relevant stakeholders when recruiting and selecting candidates for appointment in educator posts at public schools within the service of the Provincial Education Department.

**16 STEPS TO RECRUITING, SELECTING AND APPOINTING AN EDUCATOR  
IN A STATE-FUNDED POST AT A PUBLIC SCHOOL**

NO.	STEPS TO BE TAKEN	BY WHOM?
1.	Establishment of the public school's Selection Committee	The governing body of the public school
2.	Identification of a vacant/substantive post	The school principal should report any post vacancy to the school governing body
3.	Determination of the post requirements	The school principal (together with the school management team and in consultation with the school governing body)
4.	Determination of the public school's selection criteria in line with the post requirements and, in respect of vacant principal, deputy principal and HOD posts, determination of the selection tools to be utilised (e.g. competency assessments)	The Selection Committee of the public school
5.	Determination of the interview questions that will be directed at all candidates who are shortlisted	The Selection Committee of the public school
6.	Development and issuing of the vacancy advertisement in line with the post requirement, selection criteria and interview questions	The principal on behalf of the governing body of the public school subject to the approval of the relevant Education District Office and the Recruitment and Selection component within the Provincial Education Department
7.	Receiving applications from candidates	The Recruitment and Selection component within the Provincial Education Department
8.	Sifting of all applications received	The Recruitment and Selection component within the Provincial Education Department (subject to checks conducted by the governing body of the public school)
9.	Shortlisting of candidates who meet the post requirements	The Selection Committee of the public school
10.	Interviewing of shortlisted candidates	The Selection Committee of the public school
11.	Referral of shortlisted candidates to the Provincial Competency Assessment Centre for assessment (for Senior Management Team posts only)	The Selection Committee of the public school
12.	Feedback provided to the Selection Committee on the shortlisted candidates who presented themselves for the competency assessment (for Senior Management Team posts determined by the Western Cape Education Department only)	A psychologist from the Provincial Competency Assessment Centre
13.	Selection of preferred candidates (in line with the selection criteria and with reference to the information sourced via the applications, the interviews, the selection tools and, where applicable, the results of the competency assessments)	The Selection Committee of the public school
14.	Approval of the Selection Committee's list of preferred candidates	The governing body of the public school
15.	Submission of recommendations to the Head of the Provincial Education Department for final approval	The governing body of the public school
16.	Appointment of the successful candidate	The Head of the Provincial Education Department

Each step detailed above must be followed carefully and with due regard to the applicable requirements and procedures. This practical guide will deal with each step in more detail and provide practical ways of giving effect to each step.

## Notes

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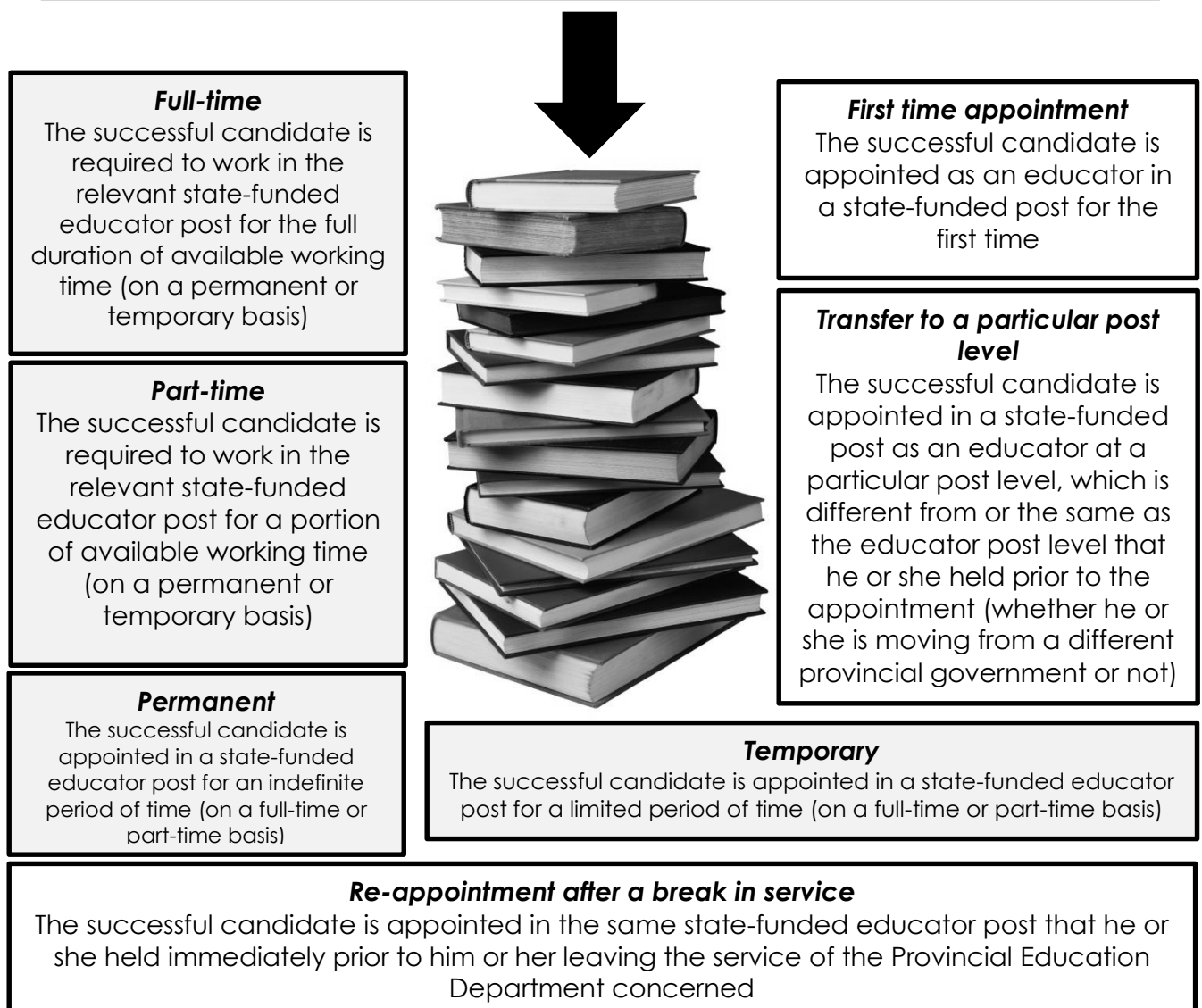
## CHAPTER 3: Educator Appointments in the Public Schooling System

The appointment of an educator in a state-funded post at a public school can take different forms, including:

- Appointment to a full-time post;
- Appointment to a part-time post;
- First time appointment;
- Transfer to a higher, an equal or a lower post level within the same Provincial Education Department or from one Provincial Education Department to another; or
- Re-appointment after a break in service.

These appointments may be:

- Permanent; or
  - Temporary for a fixed period of time (whether in a vacant post or as a substitute for an educator who is temporarily on leave).
- Source: Paragraph B.3.1 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016)



## Notes

[illegible]

## CHAPTER 4: *Preparing public schools for the recruitment, selection and appointment of educators at public schools in state-funded posts*

A number of steps can be taken by public schools to ensure that they are ready to perform their functions concerning the recruitment, selection and appointment of educators in state-funded posts.

Any delay in the filling of a vacant educator post may have a negative effect on the teaching and learning process at a public school.

It is therefore important that a public school takes the following steps to ensure that it is ready to assist with the recruitment, selection and appointment of educators as and when necessary:

1

The **governing body of the public school must be properly constituted and trained**, so that it can take a number of decisions that are important to the recruitment, selection and appointment of educators

2

The **governing body of the public school must establish a Selection Committee** to:

- Determine the post requirements and selection criteria;
- Prepare the post advertisement; and
- Attend to the shortlisting, interviewing and selection of preferred candidates



### ENSURING THE GOVERNING BODY IS PROPERLY CONSTITUTED

#### WHY IS IT IMPORTANT THAT THE GOVERNING BODY OF A PUBLIC SCHOOL IS PROPERLY CONSTITUTED?

The governing body of a public school needs to be **properly constituted before it can take decisions that are valid and legally binding**.

Subject to the notable proviso on page 14, any decision of the governing body of a public school taken at a time when that governing body was not properly constituted will not be valid.

It is important to the integrity and validity of all decisions taken in relation to the recruitment, selection and appointment of educators that the governing body of the public school concerned be properly constituted, particularly given that the governing body of a public school stands in a position of trust towards that school.



These decisions include but are not limited to the following:

- The establishment of the school's Selection Committee; and
- Making recommendations to the Head of the Provincial Education Department.

In making these decisions, the governing body of a public school must also ensure that it complies with all substantive and procedural requirements applicable to the recruitment, selection and appointment of educators in state-funded posts.

Should any of these decisions be legally challenged on the basis that the governing body of the public school concerned was not properly constituted when the decision was taken, there could be delays in making the necessary appointments. This is an outcome that should be avoided, particularly given that these delays can undermine the quality of teaching and learning at a school.

## ENSURING THE GOVERNING BODY IS PROPERLY CONSTITUTED CONT.

**WHEN IS THE GOVERNING BODY OF A PUBLIC SCHOOL IS CONSIDERED TO BE PROPERLY CONSTITUTED?**

The governing body of a public school is considered to be properly constituted in relation to a particular matter when the following conditions have been met:

### 5 CONDITIONS FOR A PROPERLY-CONSTITUTED GOVERNING BODY

Membership Composition	Lawful Election of Members	Term of Office	No Conflict of Interest	Meeting Requirements
<ul style="list-style-type: none"> <li>The membership composition requirements applicable to the governing body of the public school must have been met</li> </ul>	<ul style="list-style-type: none"> <li>All elected members of the governing body must have been appointed to that governing body after following a lawful election process</li> </ul>	<ul style="list-style-type: none"> <li>All members of the governing body of the public school must not have exceeded their respective terms of office</li> </ul>	<ul style="list-style-type: none"> <li>Any member of the governing body of a public school who has a personal interest in the matter concerned must have withdrawn from all discussions and decision-making processes relating to such matter</li> </ul>	<ul style="list-style-type: none"> <li>All applicable meeting requirements (including notice and quorum requirements) must have been met</li> </ul>

#### NOTABLE PROVISIO:

A decision taken by a governing body or an action taken on the authority of a governing body will not be invalid merely because (i) a vacancy existed on that governing body; or (ii) a person who was not entitled to sit as a member of that governing body sat on that governing body as such a member, at the time when the decision was taken or the action authorised, provided that the decision was taken or the action was authorised by more than 50% of the members of the governing body who were then present and entitled to sit as members.

Source: Regulation 2(7) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

### CONDITION 1: MEMBERSHIP COMPOSITION OF A GOVERNING BODY OF A PUBLIC SCHOOL

The membership composition of a governing body of a public school will vary depending on the type of public school. This practical guide focuses on two types of public schools, namely:

**ORDINARY PUBLIC SCHOOLS**

**PUBLIC SCHOOLS FOR LEARNERS WITH SPECIAL EDUCATION NEEDS**

## MEMBERSHIP COMPOSITION OF A GOVERNING BODY OF AN ORDINARY PUBLIC SCHOOL

The **governing body of an ordinary public school** consists of:

- **elected members;**
- the **school principal** in his/her official capacity; and
- **co-opted members** (if required).

Source: Section 23(1) of the South African Schools Act, 1996 (Act 84 of 1996)

### THE FOLLOWING REQUIREMENTS APPLY IN THE WESTERN CAPE (WITH EFFECT FROM 18 AUGUST 2017):

#### Ordinary Primary Schools

In the Western Cape, the **governing body of an ordinary primary school** must include the following:

- **5 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school);**
- **2 educators** employed at the school by the Head of the Provincial Education Department or the governing body of the school in a contract or permanent capacity;
- **1 staff member (non-educator)** employed in a contract or permanent capacity at the school by the Head of the Provincial Education Department or governing body of that school; and
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department), or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department.

In addition to the above:

- If the school is located on private property, the **owner of the property** (or his or her nominee) **may be co-opted** by the governing body; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(2) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

In the Western Cape, the **governing body of an ordinary primary school with a staff establishment of 1 educator and 1 staff member (non-educator)** must include the following:

- **3 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school);**
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department), or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department; and
- **1 staff member (non-educator)** employed in a contract or permanent capacity at the school by the Head of the Provincial Education Department or governing body of that school.

In addition to the above:

- If the school is located on private property, the **owner of the property** (or his or her nominee) **may be co-opted** by the governing body; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(4) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

In the Western Cape, the **governing body of an ordinary primary school with a staff establishment of 1 educator** must include the following:

- **2 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school);** and
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department), or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department.

In addition to the above:

- If the school is located on private property, the **owner of the property** (or his or her nominee) **must be co-opted** by the governing body; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(3) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

In the Western Cape, the **governing body of an ordinary primary school with a staff establishment of 2 educators and 1 staff member (non-educator)** must include the following:

- **4 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school);**
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department), or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department;
- **1 educator** employed at the school by the Head of the Provincial Education Department or the governing body of the school in a contract or permanent capacity; and
- **1 staff member (non-educator)** employed in a contract or permanent capacity at the school by the Head of the Provincial Education Department or governing body of that school.

In addition to the above:

- If the school is located on private property, the **owner of the property** (or his or her nominee) **may be co-opted** by the governing body; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(5) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017



## Ordinary Secondary Schools, Intermediate Schools and Combined Schools

In the Western Cape, the **governing body of an ordinary secondary school, intermediate school or combined school** must include the following:

- **7 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school);**
- **2 educators** employed at the school by the Head of the Provincial Education Department or the governing body of the school in a contract or permanent capacity;
- **1 staff member (non-educator)** employed in a contract or permanent capacity at the school by the Head of the Provincial Education Department or governing body of that school;
- **2 learners in Grade 8 or higher elected by the representative council of learners from its own ranks;** and
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department) or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department.

In addition to above:

- If the school is located on private property, the **owner of the property** (or his or her nominee) **may be co-opted** by the governing body; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(1) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## MEMBERSHIP COMPOSITION OF A GOVERNING BODY OF A PUBLIC SCHOOL FOR LEARNERS WITH SPECIAL EDUCATION NEEDS

The **governing body of a public school for learners with special education needs** must include members of the following categories:

- **parents of learners at the school, if this is reasonable and practicable;**
- **educators** at the school;
- **staff members** at the school who are not educators;
- in the case of a **high school, learners in Grade 8 or higher** at the school, if this is reasonable and practicable;
- **representatives of sponsoring bodies (if applicable);**
- **representatives of organisations that serve the interests of parents who have learners with special education needs (if applicable);**
- **representatives of organisations that serve the interests of persons with disabilities (if applicable);**
- **persons with disabilities (if applicable);**
- **experts in appropriate fields of special needs education;** and
- the **school principal** in his/her official capacity.

Source: Section 24(1) of the South African Schools Act, 1996 (Act 84 of 1996)

## THE FOLLOWING REQUIREMENTS APPLY IN THE WESTERN CAPE (WITH EFFECT FROM 18 AUGUST 2017):

### Public Schools for Learners with Special Education Needs

In the Western Cape, the **governing body of a public school for learners with special education needs** must include the following:

- **7 parents of learners at the school (who are not employed at the school by the Head of the Provincial Education Department or governing body of that school) (if reasonably practicable);**
- **2 educators** employed at the school by the Head of the Provincial Education Department or the governing body of the school in a contract or permanent capacity;
- **1 staff member (non-educator)** employed in a contract or permanent capacity at the school by the Head of the Provincial Education Department or governing body of that school;
- **2 learners in Grade 8 or higher elected by the representative council of learners from its own ranks (if reasonably practicable);**
- The **principal** in his or her official capacity (representing the Head of the Provincial Education Department) or, if the principal is disqualified, an official authorised by the Head of the Provincial Education Department;
- **1 representative of sponsoring bodies (if applicable);**
- **1 representative of organisations of parents of learners with special education needs (if applicable);**
- **1 representative of organisations of disabled persons (if applicable);**
- **1 disabled person (if applicable);** and
- **1 expert in appropriate fields of special education needs.**

In addition to the above, the following persons may be **co-opted** by the governing body:

- The **owner of the property** (or his or her nominee) if the school is located on private property; and
- **A member or members of the community, or a person or persons, may be co-opted** by the governing body to assist in fulfilling specified responsibilities.

Source: Section 24 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulations 2(6) and 2(8) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## MEMBERS WITH VOTING RIGHTS

**All elected members (including parents, educators, staff members who are not educators and learners) have voting rights. The principal also has voting rights.**

**As a general rule, parents who have voting rights must comprise the majority of members who have voting rights on a governing body.** The number of parent members must therefore be at least one more than the combined total of the other members of the governing body who have voting rights (i.e. educators, staff members who are not educators and learners).

If the number of parent members is not at least one more than the combined total of other members of the governing body that have voting rights, the governing body must temporarily co-opt parents with voting rights.

In such a case, the co-option ceases when the vacancy has been filled through a by-election (which must be held within 90 days after the vacancy has occurred). If the by-election is not held within this time period, the governing body can co-opt a parent for a further 30 days from the date of the expiration of the 90-day period. Reference to "days" is a reference to any day, including Saturdays, Sundays, public holidays and a day falling on school holiday.

A co-opted member will also have voting rights where he or she is co-opted to fill a temporary vacancy on the governing body created by a member of the governing body with voting rights who is absent from three consecutive meetings of the governing body with a valid reason but who will resume his or her functions after his or her temporary absence.

Sources:

- Sections 23(2)-(3), 23(9)-(12) and 29(1)-(2) of the South African Schools Act, 1996 (Act 84 of 1996); and
- Regulations 2(9) to 2(11) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## OFFICE BEARERS

The governing body of a public school (excluding a public school for learners with special education needs) must elect from its members at least the following office bearers:

- a chairperson;
- a treasurer; and
- a secretary.

The chairperson and deputy chairperson (if any) must be parent members who are not employed at the school. Any educator, non-educator or parent member (including a co-opted parent member) may serve as secretary or treasurer.

No member may hold more than one office of the governing body simultaneously.

The principal must preside over the election of office bearers and ensure compliance with the requirements set out in the sources referred to below.

Sources:

- Sections 29(1)-(2) of the South African Schools Act, 1996 (Act 84 of 1996)
- Regulation 22 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## CO-OPTED MEMBERS

**Co-opted members do not generally have voting rights** on the governing body of a public school, unless (i) they are parent members who are temporarily co-opted with voting rights where the number of parent members is less than or equal to half the combined total of other members of the governing body that have voting rights; or (ii) they have been co-opted to fill a temporary vacancy on the governing body created by a member of the governing body with voting rights who is absent from three consecutive meetings of the governing body with a valid reason but who will resume his or her functions after his or her temporary absence.

Source:

- Sections 23(5)-(6) and 24(8) of the South African Schools Act, 1996 (Act 84 of 1996); and
- Regulations 2(9) to 2(11) and 5(6) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## DISQUALIFICATION OF MEMBERS OF A GOVERNING BODY OF A PUBLIC SCHOOL

**In the Western Cape, the following categories of persons do not qualify to be nominated, be elected, be appointed or continue to hold office as a member of a governing body of a public school:**

- Any person who has been convicted by a court of law of an offence for which he or she received a suspended prison sentence without the option of a fine, or was sentenced to imprisonment without the option of a fine, unless he or she received a free pardon, or the period of his or her suspension or imprisonment has expired at least three years prior to the date of his or her nomination election as a member of the governing body concerned;
- Any person who has been declared unsuitable to work with children in terms of the Children's Act, 2005 (Act 38 of 2005), or the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 76 of 2007);
- Any person who is mentally ill and has been declared so by a competent court;
- Any person who is an unrehabilitated insolvent;
- Any educator appointed in a state-funded educator post in terms of the Employment of Educators Act, 1998 (Act 76 of 1998) (including, for example, a principal) who has been found guilty of misconduct and has received a fine, been suspended without pay, been demoted, or received a combination of these sanctions, unless the period of his or her sanction has expired at least three years prior to the date of his or her nomination or election as a member of the governing body concerned;
- Any staff member who is not an educator and who has been appointed in a state-funded post in terms of the Public Service Act, 1994, or who has been appointed by the governing body, and who has been found guilty of misconduct and been suspended without pay, been demoted or received a combination of these sanctions, unless the period of his or her sanction has expired at least three years prior to the date of his or her nomination or election as a member of the governing body concerned;
- In the case of a parent member, any person who does not have a child enrolled as a learner at the school concerned; or
- Any person who has been removed from office as a member of a governing body of a public school by the Head of the Western Cape Education Department for a breach of the code of conduct for governing bodies during the previous three years.

Source: Regulation 3 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## DIFFERENT COMPOSITION OF THE GOVERNING BODY OF A PUBLIC SCHOOL

In the Western Cape, the Head of the Western Cape Education Department may, upon application by the governing body of a public school (with written reasons therefor) or where an interim governing body is to be established for a new school, approve a composition of the relevant governing body that differs from the composition detailed on pages 15-17. The different composition must be in the interest of education at the school concerned. The Head of the Western Cape Education Department may at any time and in his or her discretion withdraw any approval given in this regard and dissolve the interim governing body concerned whereupon a new governing body will be composed. At all times, the number of parent members must comprise one more than the combined total of other members who have voting rights.

Source: Regulations 2(19) to 2(21) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## CONDITION 2: LAWFUL ELECTION OF MEMBERS OF A GOVERNING BODY OF A PUBLIC SCHOOL

The **RIGHT PEOPLE** need to participate and the **RIGHT PROCESSES AND PROCEDURES** need to be followed when **nominating and electing governing body members** for such election to be **lawful**.

Included below is an overview of who needs to participate in the nomination and election of governing body members and why.

### REMEMBER:

Elected members of a governing body include:

- Parent members
- Non-educator members
- Learner members

### Who nominates and elects who?

- Parents at the school concerned must nominate and elect **parent members**.
- Educators employed at the school concerned must nominate and elect the **educator members**.
- Staff members who are not educators and who are employed at the school concerned must nominate and elect the **non-educator members**, provided that if the school has only one non-educator, that member is automatically elected.
- The representative council of learners must nominate and elect the **learner members**.

Source: Regulations 2(13) to 2(17) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

Where an interim governing body needs to be established to perform the functions of a governing body to facilitate the establishment of a new public school, the district director, in consultation with the principal of the school (if applicable), must submit to the Head of the Western Cape Education Department the names and particulars of sufficient persons to perform all the functions of the governing body. Where there is a vacancy in an interim governing body, the Head of the said Department must appoint a member in the vacancy.

Source: Regulations 2(22) and 5(2)(a) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

ELECTED MEMBERS:	NOMINATED AND ELECTED BY:	VOTES:
Parent Members	Every parent who has one or more learners at the school, whose name appears in the school's admissions register as a parent or who can show proof that he or she is a parent of one or more learner(s) enrolled in the school, and who is on the voters' roll*	<p>A parent may vote only once for a particular nominee.</p> <p>A parent has a maximum number of votes equal to the number of parent members to be elected.</p> <p>A maximum of two parents per learner may vote.</p>
Educator Members	Every educator employed at the school (including the principal) and who is on the voters' roll*	<p>An educator may vote only once for a particular nominee.</p> <p>An educator has a maximum number of votes equal to the number of educator members to be elected.</p>
Non-educator Members	Every staff member who is not an educator, who is employed at the school and who is on the voters' roll*	<p>A non-educator may only vote once.</p> <p>If the school only has one non-educator, that non-educator is automatically elected as the non-educator member.</p>
Learner Members (being learners on the representative council of learners)	Every member of the representative council of learners who is on the voters' roll*	<p>A member of the representative council of learners may vote only once for a particular nominee.</p> <p>A member of the representative council of learners has a maximum number of votes equal to the number of learner members to be elected.</p>

Source: Regulations 7 and 11 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

#### \* THE VOTERS' ROLL

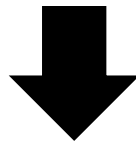
- The principal of the school concerned must make a voters' roll for each category of voter as follows:
  - The voters' roll for parents must be based on the school admission register;
  - The voters' roll for educators must consist of all educators employed at the school;
  - The voters' roll for non-educators must consist of all non-educators employed at the school; and
  - The voters' roll for learners must consist of all learners duly elected onto the learners' representative council.
- Each voter's roll must contain the names of the relevant parents, educators and non-educators.
- The voters' roll for parents must be made available for scrutiny at least 14 days (including any day, school holidays, Saturdays, Sundays and public holidays) prior to the election meeting.

Source: Section 23 of the South African Schools Act, 1996 (Act 86 of 1996) read with Regulation 11 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

### Who must conduct all nomination and election processes?

- A **school electoral officer** must be appointed in writing by the relevant district director to conduct the nomination and election of parent, educator and non-educator members to the governing body of a public school. This includes presiding at any meeting held for the election of members of a governing body.
- The school electoral officer must be the principal, or deputy principal (if necessary), of another public school, provided that (i) the principal or deputy principal does not have children enrolled at the school for which he/she is being considered for appointment as a school electoral officer; and (ii) the principal or deputy principal has been trained and certified as a school electoral officer.
- The school electoral officer may appoint one or more persons to assist at a nomination and election meeting, provided that such person is not a parent of a learner at the school conducting the nomination and election.
- The school electoral officer must decide and settle all matters connected with the nomination of candidates and the election of members so that the elections may be declared undisputed.
- Any decision of the school electoral officer during the nomination and election process is final.
- The elections must go ahead should the school electoral office not be able to resolve a dispute.

Source: Regulations 8 and 19 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017



### How are decisions of the school electoral officer challenged?

- A senior district official in the relevant education district office must be appointed as a **district electoral officer** to oversee and manage the election of governing body members at public schools in his or her district.
- Any person wishing to lodge an objection against a decision of a school electoral officer must lodge such objection in writing with the district electoral officer within seven days (including any day, school holidays, Saturdays, Sundays and public holidays) after the relevant election. Within seven days (including any day, school holidays, Saturdays, Sundays and public holidays) of receiving the objection, the electoral district officer must consider the objection, decide on the matter and respond to the objection in writing.
- The decision of the district electoral officer may be taken on appeal to the Provincial Minister for Education within 21 days (including any day, school holidays, Saturdays, Sundays and public holidays) after the decision of the district electoral officer. The Provincial Minister must consider the appeal and make a decision to uphold or dismiss the appeal within 21 days (including any day, school holidays, Saturdays, Sundays and public holidays) of receiving such appeal.
- Outgoing governing members retain their membership until any objections or appeals have been resolved.

Source: Regulation 20 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

In addition to ensuring that the **RIGHT PEOPLE** participate in the nomination and election process, it is important that the **RIGHT PROCESSES AND PROCEDURES** are followed in respect of nomination and election meetings.

The following pages include an **overview of the RIGHT PROCESSES AND PROCEDURES to be followed** in respect of nomination and election meetings that are held for the election of parent, educator, non-educator and learner members of a governing body.

## PROCESSES AND PROCEDURES: NOMINATION AND ELECTION OF PARENT MEMBERS

The school electoral officer must determine a **date, time and place for the nomination and election meeting** and must inform the principal thereof.

In the case of a new school, the meeting must be held within 90 days of the opening of the school to learners. This period may be extended up to six months with the permission of the Head of the WCED.

Parent members are the **last category of elected members to be nominated and elected**

**Notice of the nomination and election meeting** (including a **nomination form**) must be prepared by the school electoral officer and must be issued to parents by the principal at least 21 days prior to the meeting. **The format and content of the notice and nomination form, as well as how they are distributed, must meet the requirements set out in the provincial regulations.** In particular, the notice must remind parents to bring a form of identification to the meeting and must indicate the date and time of a **follow-up meeting** that will be held should the initial meeting not have the necessary quorum. No quorum requirement applies to the follow-up meeting.

The principal must **draw up the voters' roll** (as discussed earlier in this practical guide) and **make it available for scrutiny** at least 14 days prior to the nomination and election meeting

**Nominations for parent candidates must be lodged by parents** by (i) submitting a duly completed nomination form (using the prescribed form issued with the notice of the meeting) not more than seven days before the date of the nomination and election meeting OR (ii) be proposed by a parent during the nomination period of the nomination and election meeting determined by the school electoral officer (where the meeting has the necessary quorum) and supported by a duly completed nomination form (using the prescribed form)

**If there is a quorum** at the nomination and election meeting and a poll must be held, the school electoral officer must **issue every parent who is present and eligible to vote with an approved ballot paper on which an official mark or stamp appears**

If the total number of parent candidates whose nominations have been accepted is more than the number of parent members required for the governing body, a poll must be held

If the total number of parent candidates whose nominations have been accepted is equal to the number of parent members required for the governing body, the school electoral officer must declare every accepted parent candidate to be a duly elected member of the governing body

If the total number of parent candidates whose nominations have been accepted is less than the number of parent members required for the governing body, a new meeting will need to be held at which additional parent candidates must be nominated and elected

Once the nomination period of the meeting has expired, the school electoral officer must **consider the nominations, reject those nominations that are invalid and announce the names of the parent candidates whose nominations have been accepted**

For a nomination and election meeting to take place, there must be a **minimum of 10% of the total number of parents on the voters' roll present** (i.e. the quorum for a nomination and election meeting)

**A parent candidate cannot be nominated by himself or herself.** He or she needs to ensure that there is a **proposer and seconder**

**If there is no quorum** at the meeting, the school electoral officer must notify the principal of this and indicate that the **follow-up meeting** must be held. The principal must within 2 days of the first meeting distribute notice of the follow-up meeting to all parents via the prescribed methods. Prior nominations carry over to the follow-up meeting and additional nominations may be made in respect of the follow-up meeting. No quorum requirement applies to the follow-up meeting (see Regulation 12(5) of the source referenced below)

Every parent who is issued an approved ballot paper must **record his or her vote** on such paper and **may call on the school electoral officer for assistance** in this regard

Once all votes have been cast, the school electoral officer must, in the presence of every parent candidate who wishes to be present, **reject any ballot paper that is not official, that contains more votes than there are candidates, and/or that is uncertain for which parent candidate a vote was recorded**

The school electoral officer, together with his or her electoral team, must then:

- (i) **Count the votes recorded for every parent candidate** (in the presence of every parent candidate who wishes to be present);
- (ii) **Declare the determined number of parents for whom the greatest number of votes was recorded to be duly elected governing body members;**
- (iii) **State the number of votes recorded for every parent candidate;**
- (iv) **Safeguard all documents** used in the nomination and election process and **preserve for three years**, in line with the provincial regulations; and
- (v) **Notify each elected member of his/her election and notify the principal and district electoral officer** of the names and addresses of the newly-elected members.

### DEVIATING FROM THIS PROCESS...

The governing body may apply to the relevant district director for approval to deviate from the single nomination and election meeting (as described above). This deviation may be approved where it would (i) allow for maximum participation of parents who wish to vote; (ii) promote the best interest of the school community and school concerned; (iii) ensure the parents' ability to vote for candidates; (iv) ensure that potential voters are not the subject of unfair discrimination; (v) ensure a fair nomination process; and (vi) ensure that parents will be duly informed of the particulars of candidates. More detail regarding an application for a deviation is set out in Regulation 14 of the source cited below.

**No proxy votes are allowed**

Should there be a **tie between any two parent candidates that affects the result of the election**, the school electoral officer must **draw lots** to determine which of these parent candidates is successfully elected

Source: Regulations 9 to 14 and 21 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## PROCESSES AND PROCEDURES: NOMINATION AND ELECTION OF NON-EDUCATOR MEMBERS

Non-educator members must be elected using the same nomination and election procedures followed for educator members (with the necessary changes).

Source: Regulation 17 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## PROCESSES AND PROCEDURES: NOMINATION AND ELECTION OF LEARNER MEMBERS

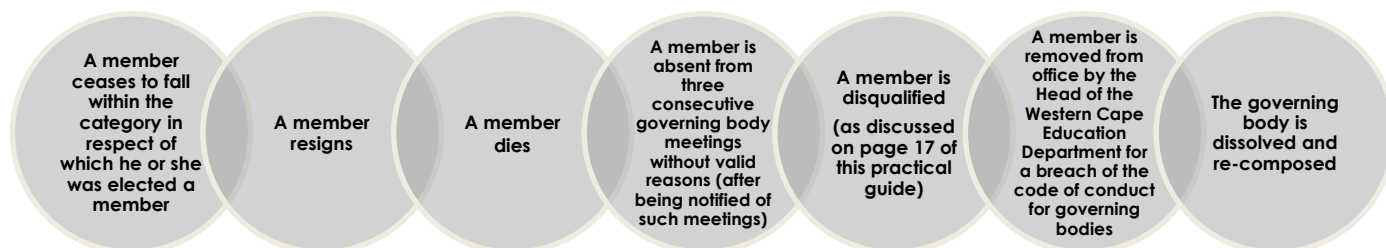
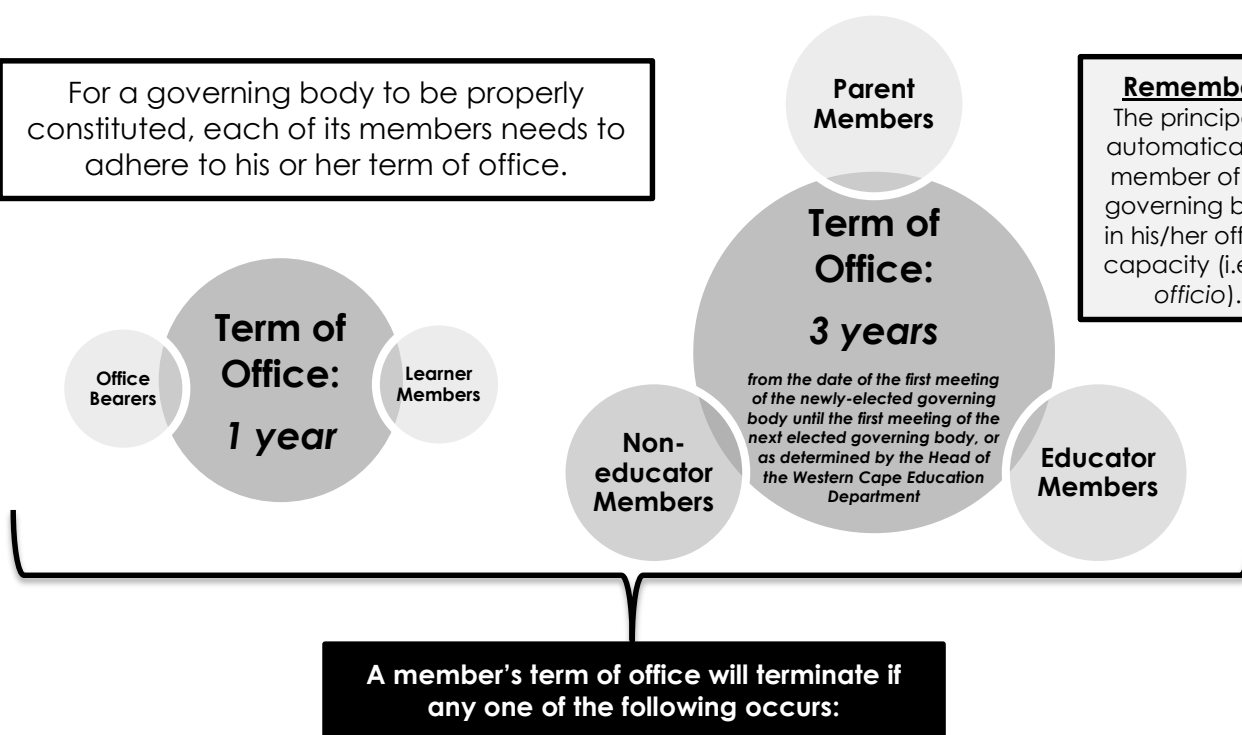
Learner members must be elected by and from the ranks of the representative council of learners of the school concerned (in accordance with provincial requirements).

Source: Regulation 18 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## CONDITION 3: ADHERENCE TO PRESCRIBED TERMS OF OFFICE

For a governing body to be properly constituted, each of its members needs to adhere to his or her term of office.

**Remember:**  
The principal is automatically a member of the governing body in his/her official capacity (i.e. ex officio).



Source: Regulations 4 to 5 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## RE-ELECTION OR CO-OPTION OF MEMBERS AND OFFICE-BEARERS

A member and an office-bearer of a governing body may be re-elected or co-opted as such by that governing body after he or she ceases to be a member or office-bearer of the governing body (as the case may be), provided he or she qualifies to be re-elected or co-opted.

Source: Section 31 of the South African Schools Act, 1996 (Act 84 of 1996) read with Regulation 4(5) of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## FILLING MEMBER VACANCIES OCCURRING IN A GOVERNING BODY

When a member vacancy occurs in a governing body, the member vacancy must be filled in one of the following ways (depending on the nature of the vacancy):

- The Head of the Western Cape Education Department must appoint an eligible person in the member vacancy where the composition of an interim governing body was determined by the Head of the said Department to facilitate the establishment of a new public school;
- The governing body must fill a parent vacancy within 90 days after the vacancy occurring by holding a by-election and, in the interim, must temporarily co-opt a parent member with voting rights; and
- The governing body must fill an educator, non-educator or learner vacancy through a by-election within 14 days (including any day, school holidays, Saturdays, Sundays and public holidays) of that vacancy occurring.

Any person who is appointed or elected to fill a member vacancy in a governing body obtains membership with voting rights for the unexpired period of the term of office of his or her predecessor.

The principal of the school concerned must be informed in writing of the name of the person who is no longer a member of the governing body and of the name and address of that person's successor.

Source: Regulation 5 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## ELECTING OFFICE-BEARERS

Office-bearers must be elected at the first meeting of a newly elected governing body. This meeting must be convened and presided over by the principal within seven days (including any day, school holidays, Saturdays, Sundays and public holidays) after the principal receives notice of the newly elected governing body.

As a minimum requirement, the newly elected governing body must elect a chairperson, a treasurer and a secretary from among its members.

The following requirements apply to office-bearers of a governing body:

- Only a parent member may serve as chairperson or deputy chairperson of a governing body of a public school other than a public school for learners with special education needs;
- Any educator, non-educator or parent member, including a co-opted member, may serve as treasurer or secretary; and
- No member may hold more than one office of the governing body simultaneously.

Office-bearers are elected for a term of 12 months from their election and are required to perform their functions until their respective successors is duly elected. An office-bearer may be re-elected or co-opted as an office-bearer after the expiry of his or term of office, provided that he or she qualifies to be re-elected or co-opted.

Should the office of an office-bearer become vacant, the governing body must fill the vacancy by way of an election held at its first meeting after the vacancy has occurred. This election must be presided over by the principal. Any person who is elected to fill an office-bearer vacancy in a governing body holds that position for the unexpired period of the term of office of his or her predecessor.

The principal of the public school must notify the Head of the Western Cape Education Department after any meeting of the governing body at which any office-bearer has been elected in accordance with the requirements of the regulations referred to below.

Source: Regulation 22 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017



## DISSOLVING AND RE-COMPOSING A GOVERNING BODY

A governing body may be dissolved by the Head of the Western Cape Education Department on one of the following grounds:

- In the case of a merger of public schools, the division of a public school or other re-organisation of school facilities, a governing body may be dissolved where, in the opinion of the Head of the said Department, this is necessary to afford parents of the school(s) concerned an opportunity to elect members of a new governing body that will be properly representative of the parents of learners attending the school(s) after such merger, division or re-organisation;
- A governing body may be dissolved where it has failed to perform its functions satisfactorily or has acted in a manner that is not in the best interests of the school concerned; or
- A governing body may be dissolved with the support of at least 60% of all parents entitled to vote at a parents' meeting concerned upon at least 14 days' (including any day, school holidays, Saturdays, Sundays and public holidays) written notice in favour of a motion of no confidence in the governing body concerned. This notice must be sent by post to all parents or by handing the notice to each learner with the oral instruction to hand it to his or her parents. This meeting must be convened by the chairperson of the governing body concerned within 14 days (including any day, school holidays, Saturdays, Sundays and public holidays) after being requested to do so by at least 30% of the parents entitled to vote.

A governing body that has been dissolved becomes inoperative on a date determined by the Head of the said Department.

Once a governing body becomes inoperative, the Head of the Western Cape Education Department must appoint sufficient persons from a list of names submitted to him/her by the relevant district director to perform the functions of the governing body for a period not exceeding three months (which period may be extended for further three-month periods but the total period must not exceed one year). Such persons must be eligible to be appointed as members of the governing body.

A new governing body must be duly elected in the ordinary course within a year of the appointment of such persons. The Head of the Western Cape Education Department must notify the principal of the names and addresses of the members appointed in this regard.

Source: Regulation 6 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## CONDITION 4: NO CONFLICTS OF INTEREST

A member of a governing body has a **duty to act fairly, without prejudice, in good faith and in the best interests of the school concerned** at all times.

Source: Paragraph 5 of the Code of Conduct for Members of School Governing Bodies of Public Schools in the Western Cape, Western Cape Provincial Gazette 6982 dated 13 April 2012

A member of a governing body must **act with fidelity, care, honesty, integrity, accountability and in the best interests of the school concerned when administering, controlling and managing the finances, equipment and property of that school.**

He or she must ensure that **every Rand spent produces maximum benefits** for the school and must ensure that **all school transactions are performed ethically and lawfully.**

Source: Paragraph 8 of the Code of Conduct for Members of School Governing Bodies of Public Schools in the Western Cape, Western Cape Provincial Gazette 6982 dated 13 April 2012

**Every governing body member must therefore ensure that he or she acts in a way that does not conflict with his or her duties.**

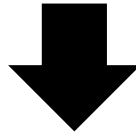
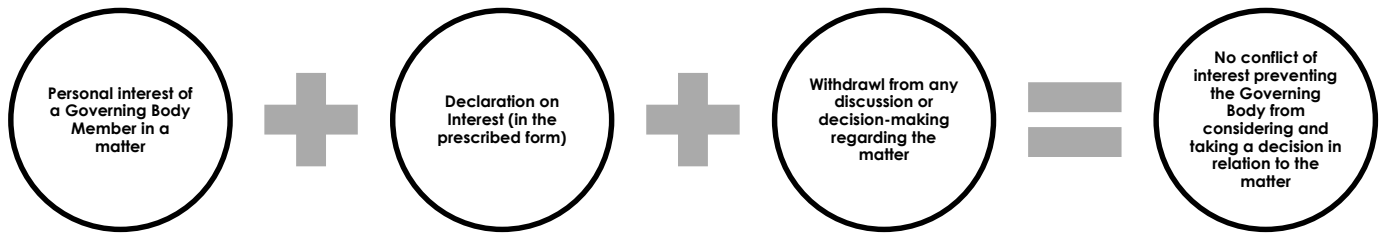
**How?**

A member of a governing body must **declare any vested interest, direct or indirect, personal or financial, that he or she may have in a matter in connection with that governing body's business.** Such declaration must be recorded in writing. A member of a governing body who has declared a vested interest in a matter must **recuse himself or herself from any governing body meeting, or committee meeting, while the relevant matter is under discussion and/or while a decision or vote regarding such matter is being taken.** The recusal must be recorded in the relevant minutes.

Source: Paragraph 10 of the Code of Conduct for Members of School Governing Bodies of Public Schools in the Western Cape, Western Cape Provincial Gazette 6982 dated 13 April 2012 read with Section 26 of the South African Schools Act, 1996 (Act 84 of 1996)

**A governing body may not take a decision on a matter if it has knowledge that a governing body member who is present has a personal interest in that matter, unless the member has withdrawn (as required).**

Source: Paragraph 2(5) of the Regulations on the Declaration of Personal Interests of Members of Governing Bodies in the Procurement of Goods and Services for Public Schools, Western Cape Provincial Gazette Extraordinary 7197 dated 18 November 2013



### **DECLARING PERSONAL INTERESTS IN MATTERS CONCERNING THE BUSINESS OF A PUBLIC SCHOOL OR ITS GOVERNING BODY**

A member of a governing body must declare any direct or indirect **personal interest** that he or she has in a matter relating to the business of the public school concerned or its governing body by completing the prescribed form (attached to the Regulations referred to below) and submitting this form to the chairperson of the governing body.

A personal interest may relate to the following:

- Any business, commercial or financial activities undertaken by the governing body or the school;
- Any financial or other obligation to any individual or organisation that might seek to influence the performance of any function or obligation of the governing body; or
- Any matter to be discussed at a meeting of the governing body or a committee of that governing body which may entail a possible conflict of interest with the governing body or committee concerned.

The chairperson of a governing body must:

- ensure that each governing body member submits a declaration in the prescribed form;
- file all declarations for safe-keeping; and
- compile, maintain and annually update a register of all personal interests declared by governing body members and committee members.

Source: Paragraphs 2-4 of the Regulations relating to the Declaration of Personal Interests of Members of Governing Bodies, Western Cape Provincial Gazette Extraordinary 7039 dated 31 January 2013

### DECLARE FIRST, THEN DECIDE

Until such time as the necessary declarations have been made, a governing body may not take a decision on any matter if it has knowledge of a conflict of interest involving one of its members in relation to that matter.

### RECUSAL

A governing body member who has declared a personal interest in a matter concerning the business of a public school must **recuse** himself or herself from any meeting during which a discussion on the matter is held, a decision on the matter is taken and/or a vote on the matter takes place. A recusal from the recruitment and selection process, for example, means a recusal from the entire recruitment, selection and appointment process.

### BREACH OF THE CODE OF CONDUCT FOR GOVERNING BODY MEMBERS

A governing body member who contravenes or fails to comply with any of these requirements will be regarded as having **breached the code of conduct for governing body members** and may, after due process, have their membership of the governing body suspended or terminated by the Head of the Western Cape Education Department. A governing body member whose membership is terminated or suspended may appeal against the decision of the Head of the Western Cape Education Department to the Provincial Minister for Education.

### COMMITTEES OF A GOVERNING BODY AND COMMITTEE MEMBERS

The declaration of personal interests requirements set out above apply, with the necessary changes, to **committees of a governing body and to committee members**. A governing body may, after due process, suspend or terminate the membership of a committee member who fails to comply with the requirements set out above.

Source: Paragraphs 2-4 of the Regulations relating to the Declaration of Personal Interests of Members of Governing Bodies, Western Cape Provincial Gazette Extraordinary 7039 dated 31 January 2013

### FAILURE TO COMPLY = BREACH OF THE CODE OF CONDUCT

A governing body member's failure to declare a personal interest in a matter relating to the business of the governing body and to withdraw from any discussions and decision-making in relation to that matter may constitute a breach of the code of conduct of governing bodies of public schools and, as such, may result in their membership being suspended or terminated. Due process must be followed when disciplining a governing body member for a breach of the said code of conduct.

Source: Paragraphs 12-14 of the Code of Conduct for Members of School Governing Bodies of Public Schools in the Western Cape, Western Cape Provincial Gazette 6982 dated 13 April 2012

## CONDITION 5: COMPLIANCE WITH ALL MEETING REQUIREMENTS

**A decision of a governing body must only be taken after all relevant meeting requirements have been met.**

### QUORUM REQUIREMENTS

The majority of governing body members with voting rights must be present at a meeting for that meeting to be quorate (i.e. more than 50% of all members with voting rights must be present before the meeting may be held).

### NOTICE REQUIREMENTS

The **date, time and place** of a meeting of the governing body must be determined by the chairperson of that governing body.

The secretary of the governing body must give **written notice of the meeting to all governing body members not less than 14 days (including any day, school holidays, Saturdays, Sundays and public holidays) prior to the meeting.**

A **matter requiring urgent attention** may be **called upon 24 hours' notice**. The urgency of the matter must be determined by the chairperson of the governing body.

Any **person who is not a member of the governing body** may be invited to attend a meeting of that governing body. He or she may participate in discussions held as part of that meeting but may not vote or be present when decisions of the governing body are taken.

A governing body may **require any staff member of the school concerned (including any educator or non-educator) to attend** a meeting of that governing body in connection with any matter relating to the functions of the governing body.

### OTHER RULES AND PROCEDURES

A governing body must determine and comply with its own rules and procedures for its meetings.

### IT IS IMPORTANT THAT ACCURATE MINUTES OF ALL GOVERNING BODY MEETINGS ARE KEPT AND MAINTAINED

- ✓ Minutes of every governing body meeting must be recorded in writing by the secretary of governing body.
- ✓ Minutes must be accurate and provide a clear record of all rules followed, procedures followed, discussions held and decisions taken.
- ✓ The secretary of the governing body must provide each member of the governing body with a copy of the minutes at least 14 days prior to the next meeting.
- ✓ The secretary of the governing body must, on reasonable request and for a specific purpose, provide a copy of the minutes to the Head of the Western Cape Education Department or any person designated by him/her.
- ✓ The secretary of the governing body must provide, upon request, a parent of a learner, an educator or non-educator at the school a copy of those parts of the minutes relevant to the protection of the rights or interests of the parent or his/her child, the educator or non-educator (as the case may be), provided that:
  - The provision of the minutes or any part thereof does not violate the rights of third parties; and
  - The provision of the minutes or any part thereof does not breach confidentiality in a manner that is not in the best interests of the school or member of the governing body, member of staff, parent or learner at the school.
- ✓ The minutes of a meeting of the governing body or a committee thereof must at the next meeting of the governing body or the relevant committee be submitted for approval.
- ✓ All minutes and other documents of a governing body must be handed to the principal of the school concerned upon the dissolution of that governing body or upon the expiry of its term of office.
- ✓ At the closure of a school, the principal must hand over all minutes and other documents of the governing body or any committee thereof to the Head of the Western Cape Education Department for safekeeping.

Source: Regulations 23 and 24 of the Procedures for the Establishment and Election of Governing Bodies at Public Schools Regulations, Western Cape Provincial Gazette 7810 dated 17 August 2017

## TRAINING OF GOVERNING BODIES

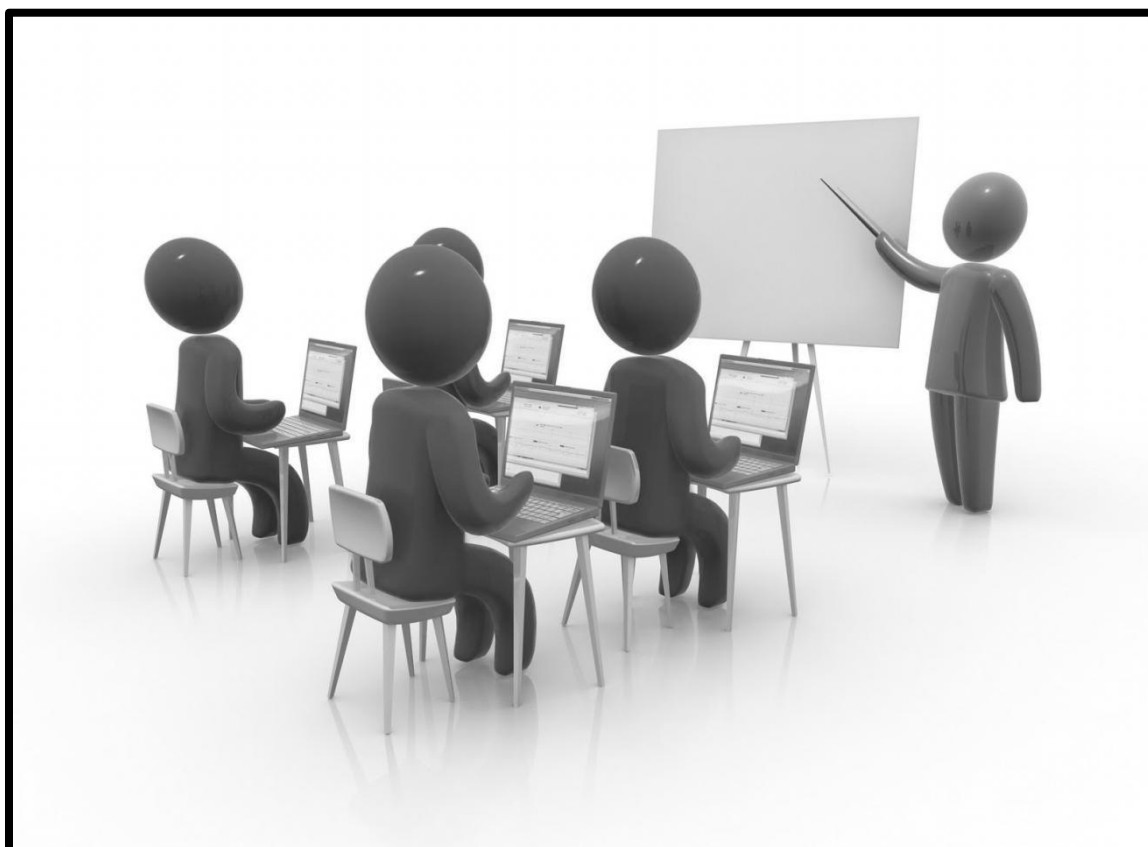
In addition to being properly constituted, a governing body needs to **know** and have a **clear understanding** of the following:

- ✓ The **processes and procedures** that must be followed; and
- ✓ The **substantive requirements** that must be met;

when recruiting, selecting and recommending candidates for appointment as educators in state-funded posts.

This requires each member of a governing body to receive training on all aspects of this practical guide on a regular basis.

Members of governing bodies should contact the relevant education district office and any recognised governing body organisation to which their governing body is affiliated for more information regarding the availability of training opportunities in this regard.



Once the governing body is properly constituted and trained, it needs to establish a Selection Committee.



## ESTABLISHING A PUBLIC SCHOOL'S SELECTION COMMITTEE

### WHY IS IT IMPORTANT THAT THE GOVERNING BODY OF A PUBLIC SCHOOL ESTABLISH A SELECTION COMMITTEE?

A governing body must establish a Selection Committee to assist it in carrying out its legal responsibilities insofar as the filling of state-funded educator posts is concerned.



The Selection Committee should be responsible for the following:

Determining the selection criteria and related tools that will be applied when filling an educator vacancy (including competency-based assessments for candidates shortlisted for posts on the Senior Management Teams of public schools determined by the Western Cape Education Department)

Shortlisting candidates for interviews

Interviewing all shortlisted candidates

Referring candidates shortlisted for posts on the Senior Management Team of a public school to the Provincial Competency Assessment Centre for the competency-based assessment

Selecting preferred candidates for possible recommendation for appointment

Submitting a list of preferred candidates to the governing body concerned so that a final recommendation may be made by that governing body to the Head of the Western Cape Education Department for final consideration and approval

The shortlisting of candidates and the interviewing and selection of candidates may be conducted by two separate committees (e.g. a shortlisting committee and an interviewing and selection committee), provided that all members of each committee are present throughout the process for which that committee is responsible. It is important to the integrity of the shortlisting process and the integrity of the interviewing and selection process that there is continuity in the committee responsible for each of these processes. Any reference to the Selection Committee in this guide includes both of these committees, unless the context indicates otherwise.

### 3 WAYS TO ESTABLISH A SELECTION COMMITTEE

The governing body of a public school is responsible for establishing the school's Selection Committee. The Selection Committee can be established in one of three ways, namely:

1. The Selection Committee could be a **sub-committee** of the governing body of the school;
2. The Selection Committee could be **made up of members that are co-opted** onto the governing body; or
3. The Selection Committee could be **established by the Western Cape Education Department upon request** of the governing body.

- The governing body may wish to establish the Selection Committee on an annual basis at the beginning of a school year to ensure that the school is ready to respond to any post vacancy that may arise during the course of that school year.
- The decision to establish the Selection Committee must be recorded in writing and form part of the minutes for the relevant meeting of the governing body.

### IMPORTANT TO REMEMBER

In each case, the governing body of a public school must ensure the following:

- ✓ It is properly constituted when it makes a decision on the establishment of the Selection Committee; and
- ✓ The decision to establish the Selection Committee in one of the three ways described above must be recorded in writing in the minutes of the relevant meeting.

### WHO SHOULD BE APPOINTED ONTO THE SCHOOL'S SELECTION COMMITTEE?

The **table on the next page** sets out who should be appointed onto a public school's Selection Committee and why. It also sets out whether each person has voting rights and the degree of involvement required of each person in relation to the recruitment, selection and appointment of educators in a vacant state-funded post. It is important that all stakeholders understand and appreciate the roles and responsibilities allocated to them in this regard.

Source: Paragraph B.5.4.2 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016)

The Selection Committee **may not include any person who has applied for the post vacancy in question.**

For example, the school principal should ordinarily be a member of the Selection Committee, unless he/she has applied for the relevant post vacancy. In such a case, a representative from the Western Cape Education Department may be substituted for the school principal to serve on the Selection Committee.

Source: Paragraph B.5.4.2.2 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016)

Each Selection Committee must appoint a **chairperson** and a **secretary** from amongst its members.

Source: Paragraph B.5.4.3 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 3.3 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998

The **chairperson** will be responsible for the following:

- ✓ Ensuring that all **processes** relating to the filling of a vacant educator post are followed properly in accordance with the law; and
- ✓ **Presiding over all meetings** relating to the shortlisting, interviewing and selection of candidates.

The **secretary** will be responsible for the following:

- ✓ Attending to all **administrative aspects** of the recruitment, selection and interview process; and
- ✓ Keeping a **complete record of all meetings held and decisions taken** by the Selection Committee in relation to the process.

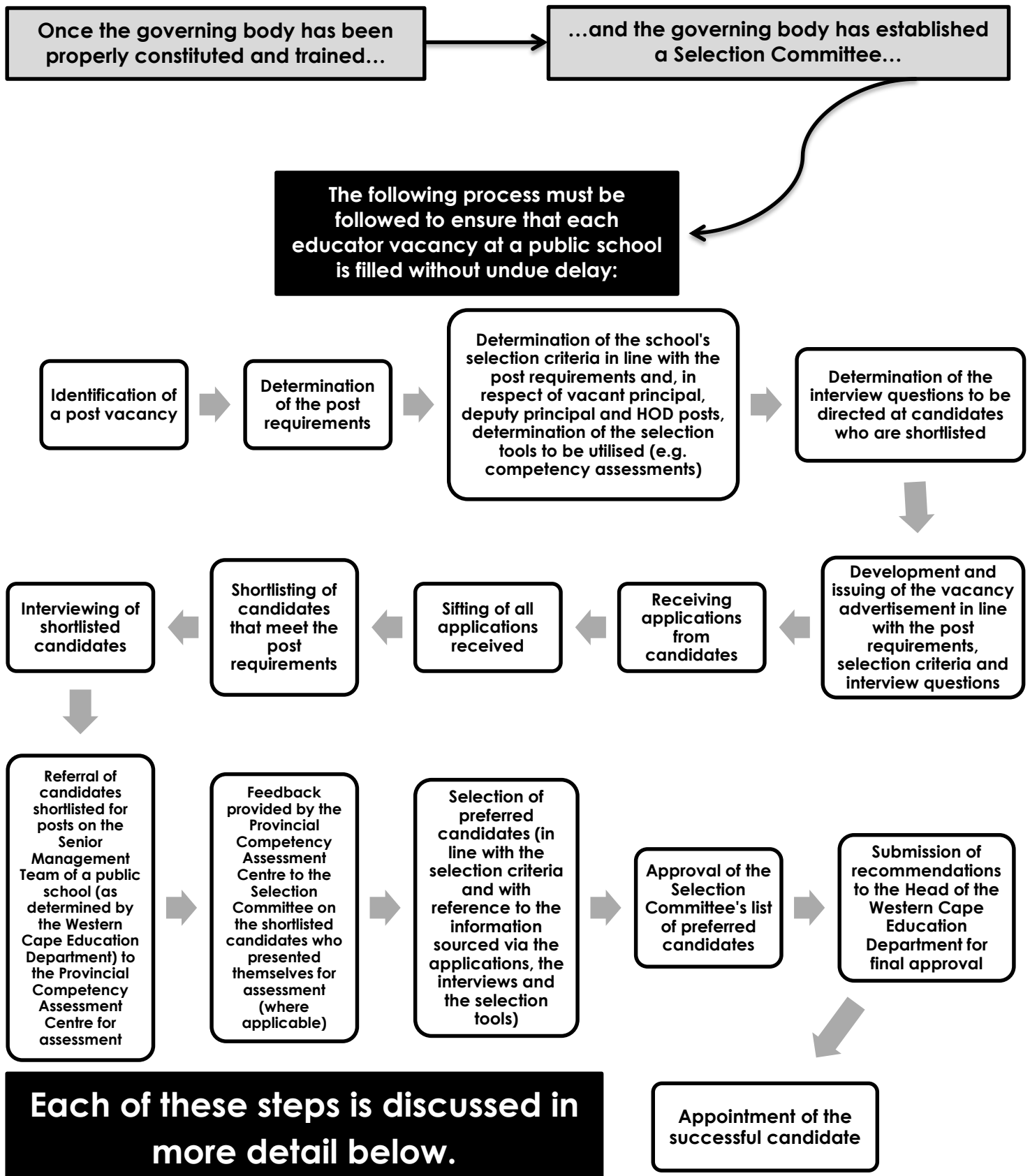
Once the Selection Committee has been established, every member of the Selection Committee should sign a **confidentiality declaration** before the Committee begins to conduct the shortlisting, interviewing and selection proceedings. This is an important step in preserving the integrity of any recruitment, selection and appointment process.

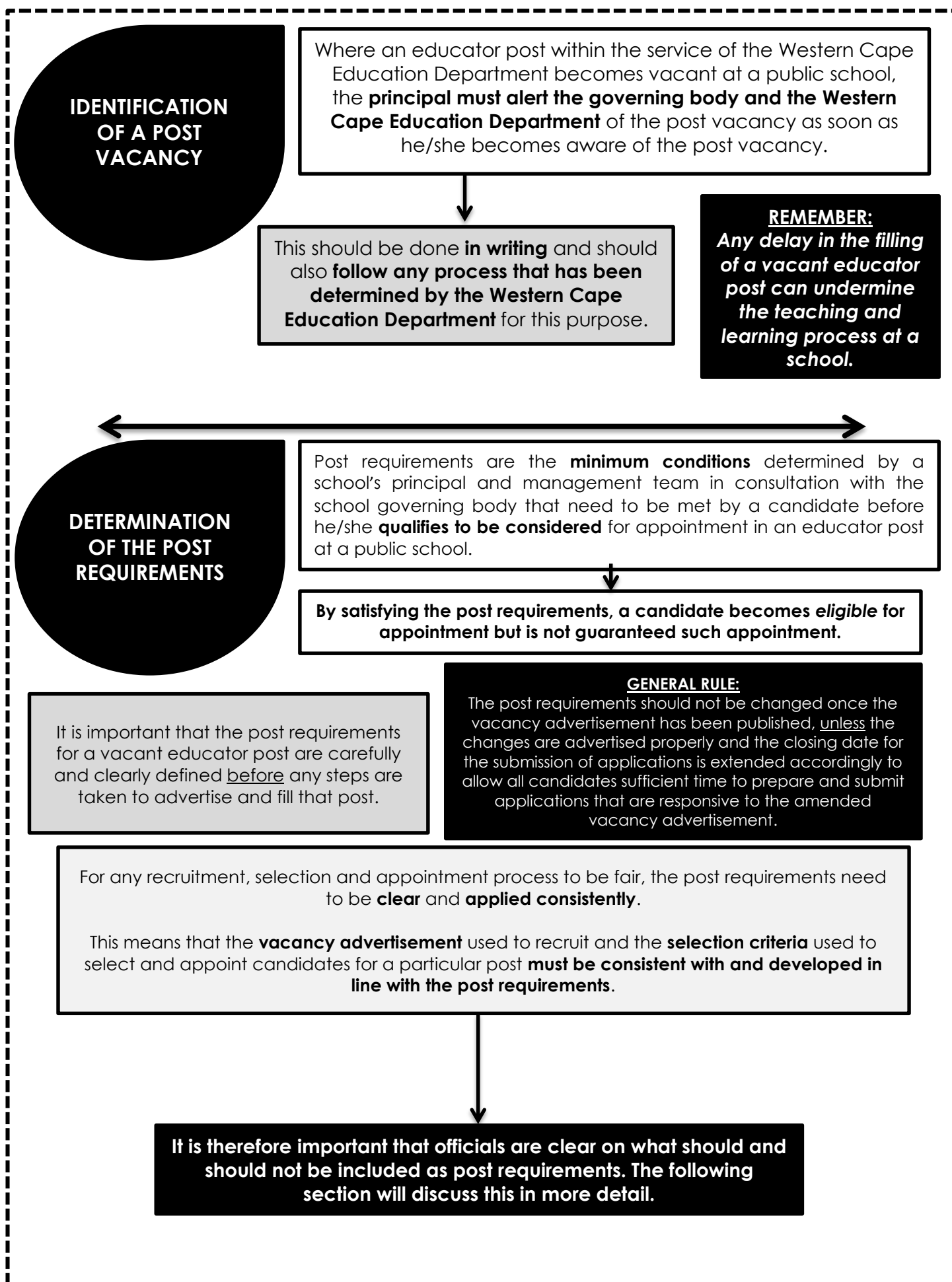
MEMBER	MEMBER STATUS	FUNCTION	LEVEL OF INVOLVEMENT
One <b>representative from the Western Cape Education Department who is adequately trained in respect of the filling of vacant educator posts</b> (including, for example, the principal of the public school concerned, a district official, Circuit Manager or a principal or deputy principal from another public school)	Observer and Resource Support <i>[No voting rights]</i>	Non-voting member of the Selection Committee responsible for: <ul style="list-style-type: none"> <li>observing the process of shortlisting, interviewing and selecting candidates for appointment; and</li> <li>providing resource support to the Selection Committee</li> </ul>	<ul style="list-style-type: none"> <li>Must be invited to attend all shortlisting, interviewing and selection proceedings</li> <li>If he/she is unable to attend any part of the shortlisting, interviewing and selection proceedings for the filling of an educator post due to unforeseen circumstances, the Selection Committee must decide whether to continue with the relevant proceedings in the absence of the departmental representative or to adjourn such proceedings to a date and time when that representative can be present</li> <li>The relevant proceedings must be adjourned where the shortlisting, interviewing and selection proceedings relate to the filling of a school principal post and the departmental representative is unable to attend those proceedings</li> </ul>
One <b>union representative</b> per union that is a recognised party to the provincial chamber of the Education Labour Relations Council	Observers <i>[No voting rights]</i>	Non-voting members of the Selection Committee responsible only for observing the process of shortlisting, interviewing and selecting candidates for appointment	<ul style="list-style-type: none"> <li>Must be invited to attend all shortlisting, interviewing and selection proceedings</li> <li>If he/she is unable to attend any part of the shortlisting, interviewing and selection proceedings, his/her absence will not interrupt or invalidate these proceedings</li> </ul>
<b>School principal</b> (in his/her official capacity, provided that he/she is not a candidate who has applied for the relevant post vacancy and provided that he/she is not the departmental representative)	Active Member <i>[Voting rights]</i>	Voting member of the Selection Committee responsible for shortlisting, interviewing and selecting candidates for appointment	<ul style="list-style-type: none"> <li>If the school principal is a candidate who has applied for the post vacancy, he/she must be replaced by an official from the Provincial Education Department or the deputy principal of the school</li> <li>The school principal or his/her replacement must be invited to attend and must attend all shortlisting, interviewing and selection proceedings</li> <li>If the school principal or his/her replacement is unable to attend all parts of the shortlisting, interviewing and selection proceedings, his/her absence will invalidate these proceedings</li> </ul>
<b>Members of the school's governing body</b> (excluding educator members who are candidates who have applied for the relevant post vacancy but including a parent member who is co-opted to replace another parent member who is no longer serving on the governing body)	Active Members <i>[Voting rights]</i>	Voting members of the Selection Committee responsible for shortlisting and/or interviewing and selecting candidates for appointment	<ul style="list-style-type: none"> <li>The relevant members of the school's governing body must be invited to attend and must attend all shortlisting, interviewing and selection proceedings (i.e. where there is one Selection Committee responsible for shortlisting, interviewing and selection). If any of these members are unable to attend all parts of the shortlisting, interviewing and selection proceedings, their absence will invalidate these proceedings</li> <li>The relevant members of the school's governing body must be invited to attend and must attend all shortlisting or all interviewing and selection proceedings, as the case may be (i.e. where there is one committee responsible for shortlisting and another committee responsible for interviewing and selection). If any of these members are unable to attend all parts of the shortlisting proceedings or all parts of the interviewing and selection proceedings (as the case may be), their absence will invalidate these proceedings</li> </ul>



[illegible]

## CHAPTER 5: *Moving to recruit, select and recommend preferred candidates for appointment*





## WHAT MUST BE INCLUDED AS POST REQUIREMENTS?

To be eligible for appointment as an educator on the staff establishment of a public school, a candidate must meet the following post requirements:

- ✓ The candidate must submit a **complete application**. An application will be considered complete where:
  - It is **submitted online via the E-Recruitment System for Educators** operated by the Western Cape Education Department and the **online declaration box is ticked**;
  - It contains all **information** required from the candidate; and
  - It is accompanied by all **supporting documents** required from the candidate as prescribed by the Western Cape Education Department. Where expressly required, certain supporting documents prescribed by the Western Cape Education Department must be **submitted to the interview panel by shortlisted candidates on the day of their interviews**. Where applicable, these documents must be certified by a Commissioner of Oaths as being true copies of the originals.
- ✓ The candidate must be **registered as an educator with the South African Council of Educators (SACE)**;
- ✓ The candidate must **not have been found guilty of an offence against a child** in terms of the Sexual Offences Act, 2007 (Act 32 of 2007) or the Children's Act, 2005 (Act 38 of 2005). Prior to the sifting of applications, the principal must arrange, via the Western Cape Education Department's Directorate: Recruitment and Selection, for **each candidate to be screened against the National Child Protection Register and the Sexual Offenders Register**. It is an offence to allow someone access to children if he/she has been declared unsuitable to work with children. A person found unsuitable to work with children may be dismissed if he/she does not disclose that information to the Head of the Provincial Education Department;
- ✓ The candidate must meet any **applicable experience requirements** determined for the post in question (including the applicable actual experience and appropriate experience requirements); and
- ✓ The candidate must have the **approved qualifications** required for the post in question and must be able to provide proof of this qualification subject to the following: A candidate that does not have an approved qualification required for a post may be appointed as an educator in a temporary capacity for a specified period of time if the Head of the Provincial Education Department deems the appointment necessary and in the interest of education.

Source:

- *Section 20(7) of the South African Schools Act, 1996 (Act 84 of 1996) read with Sections 3 and 27 of the South African Council for Educators Act, 2000 (Act 31 of 2000)*
- *Regulation 2 of the Regulations regarding the Terms and Conditions of Employment of Educators (Government Notice R1743, Government Gazette 16814 of 13 November 1995, as amended)*
- *Sections 23-26 of the Children's Act, 2005 (Act 38 of 2005)*
- *Guidelines to School Governing Bodies regarding the Management of Child Abuse, Deliberate Neglect and Sexual Offence published by the Western Cape Education Department as Annexure H to the Department's Abuse No More Protocol, 2014*



The post requirements must also be drafted with reference to the substantive requirements set out in Section 6(3) of the Employment of Educators Act, 1998 (Act 76 of 1998), which require the post requirements to **adhere and have regard to equality, equity and the other democratic values and principles set out in Section 195(1) of the Constitution of the Republic of South Africa, 1996**, including:

- The **ability of each candidate**; and
- The **need to redress the imbalances of the past in order to achieve broad representation**.

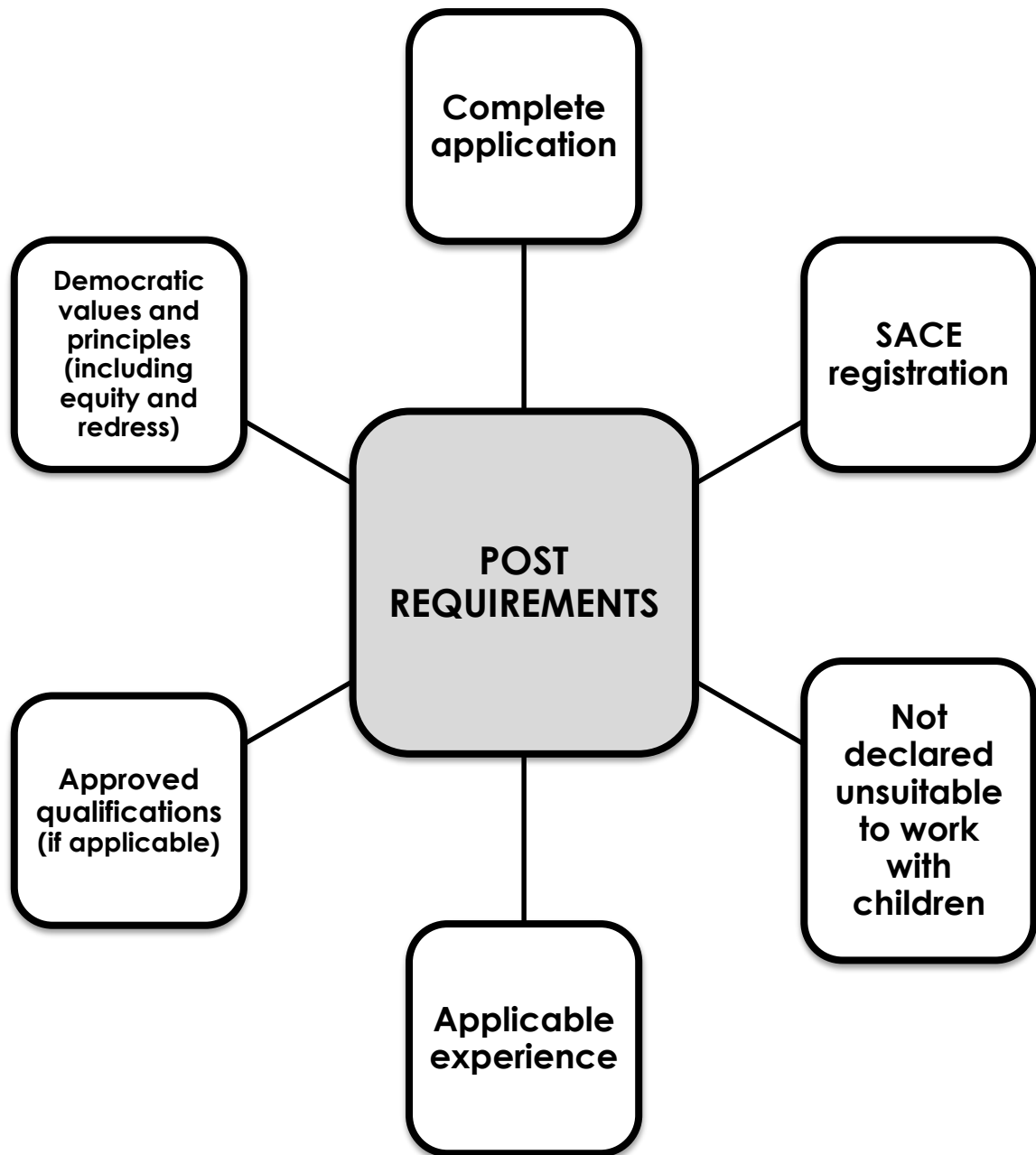
The requirements contemplated by Section 195(1) of the Constitution of the Republic of South Africa, 1996 are discussed in more detail on page 4 of this practical guide.

**In giving effect to the requirements of equity and redress, it will be important for the post requirements to be drafted in line with the employment equity plan of the relevant Provincial Education Department.**

Where a recommendation made to the Head of a Provincial Education Department by the governing body of a public school regarding the filling of a vacant educator post does not comply with these requirements, the Head of the Provincial Education Department concerned is required to decline the recommendation. This is discussed in more detail on pages 52-53 of this practical guide.

Source:

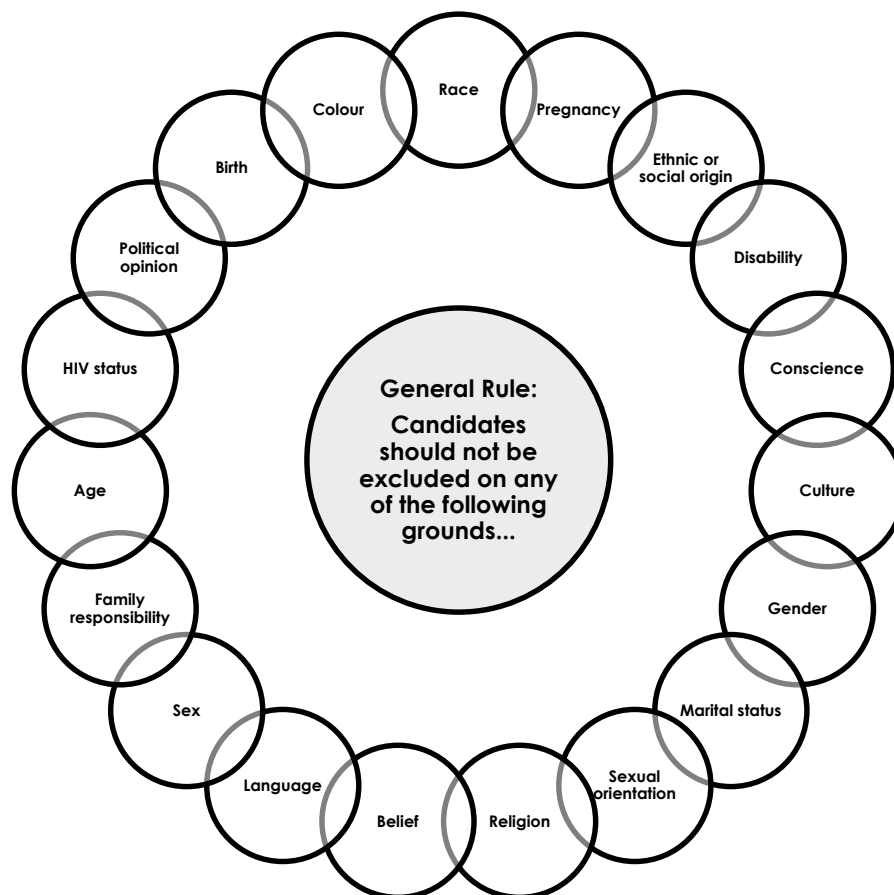
- *Sections 6(3) and 7(1) of the Employment of Educators Act, 1998 (Act 76 of 1998)*
- *Section 195(1) of the Constitution of the Republic of South Africa, 1996*



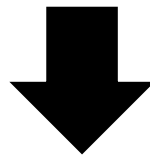
## WHAT MUST NOT BE INCLUDED AS POST REQUIREMENTS?

No candidate may be excluded from applying for an educator post where this amounts to **unfair discrimination**.

As a **general rule**, the post requirements should **not exclude any candidate on any one or more of the following grounds**:



Source: Section 6 of the Employment Equity Act, 1996 (Act 55 of 1996)



It is **not unfair discrimination** to take **affirmative action measures** or to **distinguish, exclude or prefer** any candidate **on the basis of an inherent requirement of the job.**

An ***inherent requirement*** of the job would be some requirement without which the functions attached to that job would not be carried out effectively.

Source: Section 6 of the Employment Equity Act, 1996 (Act 55 of 1996)

## NO TESTING OR ASSESSMENT OF CANDIDATES EXCEPT IN LIMITED CIRCUMSTANCES

The post requirements cannot require candidates to undergo the following testing / assessment as part of the recruitment, selection and appointment process:

- **Medical testing** (including but not limited to questionnaires, written or verbal inquiries and HIV testing), unless:
  - the testing is expressly permitted or required by legislation; or
  - it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job; and/or
- **Psychometric testing or some similar form of assessment**, unless:
  - the test or assessment has been scientifically shown to be valid and reliable (by the Health Professionals Council of South Africa);
  - the test or assessment can be applied fairly to all candidates; and
  - the test or assessment is not biased against any candidate or any category of candidates.

Source: Sections 7-8 of the Employment Equity Act, 1996 (Act 55 of 1996)

### POINT TO REMEMBER:

Candidates shortlisted for posts on the Senior Management Teams of public schools are typically referred to the Western Cape Education Department's Provincial Competency Assessment Centre for assessment.

Should unfair or discriminatory criteria be relied upon in recruiting, selecting and appointing candidates that are unrelated to the inherent requirements of the job, the Western Cape Education Department will be at risk of being the subject of legal proceedings where affected candidates elect to litigate on the matter.

In such a case, the Western Cape Education Department will be required to show that the act or omission that gave rise to the litigation is fair.

Source: Sections 10-11 of the Employment Equity Act, 1996 (Act 55 of 1996)



## DETERMINATION OF THE SCHOOL'S SELECTION CRITERIA

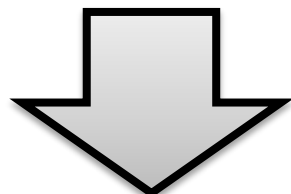
The selection criteria are the factors that will be applied to candidates who have met the post requirements when shortlisting, interviewing and selecting candidates for appointment.

Before the vacancy advertisement is prepared and published, the school's Selection Committee must determine the selection criteria and related selection tools that will apply in respect of the relevant vacancy. Selection tools will be applicable when appointing a principal, deputy principal or school-based head of department and may include, for example, competency assessments.

The selection criteria and related selection tools must be consistent with and supportive of the relevant post requirements.

To ensure that the recruitment, selection and appointment process is consistent and fair as far as possible, the **vacancy advertisement must be developed with specific reference to the post requirements and selection criteria.**

It is important to the integrity of the process that all candidates are able to determine in advance what post requirements and selection criteria and related selection tools will be applied once their applications have been submitted.



## WHAT MUST BE INCLUDED IN THE SELECTION CRITERIA?

By considering what the law requires of educators employed at public schools, we can determine what selection criteria should be taken into account when considering applications for appointments in educator posts in public schools.

The selection criteria should also be alive to:

- the **curricular needs of the school**; and
- **existing obligations towards educators already employed at the school (including serving educators previously displaced as a result of operational requirements).**

Source: Paragraph B.5.4.8 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 3.6 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998

The selection criteria must cover at least the following factors:

- The **ability** of the candidate (including the competencies of the candidate);
- The need to follow **equitable employment practices** that are objective and fair;
- The need to **redress** past injustices; and
- The need for the public service (including the staffing structures of public schools) to be **broadly representative of the South African people.**

Source: Section 20(8) of the South African Schools Act, 1996 (Act 84 of 1996) read with Section 195 of the Constitution of the Republic of South Africa, 1996 and Sections 6(3)(b)(i) and 7(1) of the Employment of Educators Act, 1998 (Act 76 of 1998)



The selection criteria must be **fair, non-discriminatory** and **support the democratic values and principles of the South African Constitution.**

Source: Paragraph B.5.4.7 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016 read with Paragraph 3.6 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998, as well as Sections 6(3)(b)(i) and 7(1) of the Employment of Educators Act, 1998 (Act 76 of 1998), Section 20(8) of the South African Schools Act, 1996 (Act 84 of 1996) and Section 195 of the Constitution of the Republic of South Africa, 1996.

In particular, educators employed at public schools must **uphold the following democratic values and principles** set out in the South African Constitution:

- Display a high standard of professional ethics;
- Ensure that resources provided by the State are used efficiently, economically and effectively;
- Respond to the needs of the communities they serve, including but not limited to the needs of learners;
- Provide quality services impartially, fairly, equitably and without bias;
- Promote accountability within their schools;
- Promote the good management and development of their staff establishments; and
- Provide information to parents and learners on any aspect of the school that is accurate and easy to understand as and when required.

Source: Section 195(1) of the Constitution of the Republic of South Africa, 1996.

### A GENERIC SET OF SELECTION CRITERIA?

- **Before an educator post becomes vacant**, the governing body of the school concerned may wish to establish the Selection Committee and mandate that Committee to develop a **generic set of selection criteria** for approval by the governing body.
- This would **improve the turnaround time involved in filling a vacant educator post.**
- A generic set of selection criteria should be **flexible enough to apply to the filling of any vacant educator post.**
- **Additional selection criteria** could be added depending on the nature of the educator post in question. Consultation with the representative from the Provincial Education Department and the union observers is strongly encouraged when drawing up additional selection criteria.
- The Selection Committee must **formally adopt the selection criteria and the selection tools to be used for the filling of particular post** and **record such adoption in the minutes** of the meeting concerned.

Source: Paragraph 2.8 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

### THE IMPORTANCE OF USING SELECTION CRITERIA THAT ARE OBJECTIVELY MEASURABLE

To ensure that the recruitment and selection of preferred candidates is undertaken in a fair and reasonable manner, it is important that the selection criteria is developed, communicated and applied as follows:

- It must be possible to **know in advance what selection criteria will be applied and how such criteria will be applied** when shortlisting candidates who meet the post requirements.
- The selection criteria should be **made up of objective factors that are weighted appropriately** so that it is easy to measure the degree to which a candidate meets the selection criteria.
- It may be useful to **draw up a scoring matrix** that sets out how compliance with each selection criterion will be measured and scored.
- A **clear summary of the selection criteria and a clear overview of the scoring matrix should be communicated to prospective candidates in advance** so that they have an understanding of how their applications will be assessed.
- The **selection criteria and scoring matrix must be applied fairly and consistently** to all candidates who meet the post requirements.
- Should exceptional circumstances exist that require a change to the selection criteria and scoring matrix, it is strongly recommended that the Selection Committee and governing body concerned seek advice from the Western Cape Education Department on whether and how such change can or should be effected.

## DETERMINATION OF INTERVIEW QUESTIONS FOR CANDIDATES WHO ARE SHORTLISTED

For the selection process to be fair, every candidate who is shortlisted by the Selection Committee should receive similar treatment during the interview process. Standard interview processes mean greater consistency in the way that interviews are conducted.

Source: Paragraph B.5.4.11 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016)

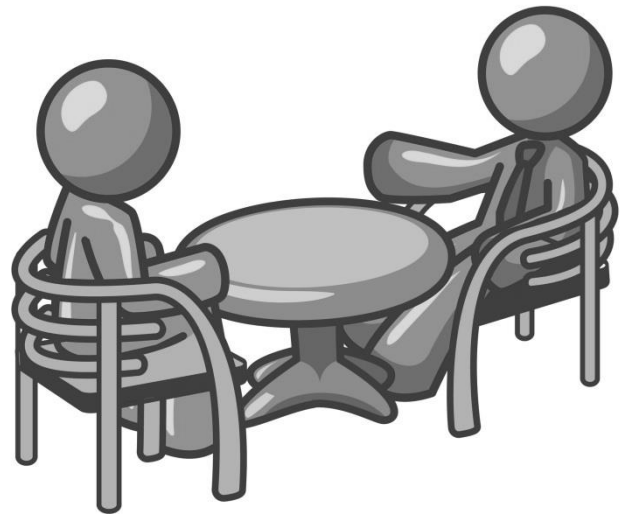
### **CAUTION:**

The interview process will be irregular and could be challenged if one shortlisted candidate were to unduly receive preferential treatment or an unfair advantage over another shortlisted candidate.

The outcome of the shortlisting process should not determine or influence the content of the interview questions put to shortlisted candidates.

To avoid an irregular interview process, it is important that as far as possible the interview questions are:

- **Standardised;**
- **Determined in advance; and**
- **Consistent with and supportive of the post requirements and selection criteria.**



## PREPARING FOR A MEANINGFUL INTERVIEW PROCESS

Each interview should provide the Selection Committee with an opportunity to:

- clarify any information provided by a candidate in his/her application; and
- obtain more information about that candidate's skills, knowledge, expertise, personality, attitudes and interests.

It should also provide each candidate with an opportunity to demonstrate his/her skills, knowledge, expertise and potential.

This means that all interview questions should be focused on gathering information which is relevant to determining the suitability of a candidate for appointment.

The interview process should not be used by any member of the Selection Committee to personally discredit any candidate.

## DEVELOPING AND ISSUING THE VACANCY ADVERTISEMENT

Once the post requirements, selection criteria and interview questions have been determined, the vacancy advertisement must be developed and issued.

For a vacancy advertisement to be effective, it must:

- communicate clearly and accurately the requirements to be met and procedures to be followed by candidates wishing to apply for the post vacancy concerned;
- manage the expectations of all candidates who wish to apply for the post vacancy effectively; and
- contribute to a fair recruitment, selection and appointment process.

WHAT MAKES AN EFFECTIVE VACANCY ADVERTISEMENT?	WHAT MAKES AN INEFFECTIVE VACANCY ADVERTISEMENT?
Written in plain but clear language that it is self-explanatory and easy to understand	Written in vague language that is difficult to understand and that is open to various interpretations
Does not include anything which is discriminatory against any candidate and which undermines the democratic principles and values of the South African Constitution	Includes requirements, criteria and/or procedures that have the effect of unfairly discriminating against certain categories of candidates or undermining the democratic principles and values of the South African Constitution
Clearly sets out the post requirements so that candidates know upfront what requirements must be met for them to be eligible for the post	Candidates are unable to determine in advance the minimum requirements for the post from the vacancy advertisement
Clearly sets out a <u>summary</u> of the selection criteria, scoring matrix and related selection tools that will be applied to all applications that meet the post requirements. This summary is intended to provide prospective applicants with a clear overview of the nature and scope of the selection criteria that will be applied, as well as how scoring for such criteria is broadly weighted and generally what selection tools will be used (e.g. competency assessments). This summary is not intended to include every detail of the selection criteria and interview questions or the entire scoring matrix that will apply	Candidates are unable to determine in advance the nature and scope of the selection criteria, scoring matrix and related selection tools that will apply where they meet the post requirements
Clearly indicates the preferable date of appointment	Candidates are unable to determine the preferable date of appointment from the vacancy advertisement
Clearly sets out what procedures must be followed by candidates when applying for the post vacancy	Provides no clarity on what process candidates should follow when preparing and submitting their application for the post vacancy
Provides a clear indication of the closing date and time for the submission of applications	Provides no clarity on the closing date and time for the submission of applications
Includes the name and contact details of a person who will be available to respond to any queries that candidates may have regarding the application process	Candidates applying for the post vacancy do not know where to direct their application-related queries
Indicates clearly that the Western Cape Education Department is an affirmative action employer (where applicable)	Fails to indicate that the Western Cape Education Department is an affirmative action employer (where applicable)

## WHAT TO INCLUDE IN A VACANCY ADVERTISEMENT

The vacancy advertisement should include full details of the following:

- The **post requirements** for the post vacancy in question (including but not limited to the minimum qualification and experience requirements, as well as details of **information and documents** that must be submitted by a candidate);
- A **clear summary of the selection criteria and related selection tools** that will be applied where a candidate meets the post requirements so that candidates know in advance the nature and scope of selection criteria that will be applied, as well as how such criteria will be assessed;
- The **preferred date of appointment**;
- **How** a candidate should submit his/her application;
- The **closing date and time** for the submission of all applications;
- The **name and contact details** of a person who will be available to respond to queries that candidates may have regarding the application process; and
- A statement that the **Western Cape Education Department is an affirmative action employer**.

**NOTE:** The Western Cape Education Department includes some of the abovementioned information in the foreword / preface to the vacancy lists it publishes from time to time. It is therefore important to check whether a vacancy advertisement for an educator post funded by the Western Cape Education Department, read with the relevant foreword / preface of the departmental vacancy list, complies with the requirements set out above before finalising and publishing a vacancy advertisement. The vacancy advertisement need not duplicate information contained in the foreword / preface of the departmental vacancy list.

Source: Paragraph B.5.2.1 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 1.1 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998.



## HOW SHOULD THE POST VACANCY BE ADVERTISED?

Any educator post vacancy in a public school that is within the service of the Provincial Education Department must be advertised by the Department in a government gazette, bulletin or circular. The gazette, bulletin or circular must be circulated to all educational institutions in the province.

The existence of the gazette, bulletin or circular must be advertised in the print media provincially and nationally. This second advertisement should indicate the offices and addresses where the gazette, bulletin or circular can be accessed, as well as how it can be accessed online (if applicable).

Source: Paragraph B.5.2.2 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 1.2 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998.

## THE APPROVAL PROCESS FOLLOWED BY THE WESTERN CAPE EDUCATION DEPARTMENT

- The principal of the school (as delegated by the governing body) must capture the post advertisement on the Western Cape Education Department's advertisement system.
- The Circuit Manager for the school will then approve the advertisement.
- Once approved by the Circuit Manager, the advertisement is carried over to the Western Cape Education Department's online recruitment system where it is checked and finalised by the Department's Directorate: Recruitment and Selection.
- Once finalised, the advertisement is published on the Department's online recruitment system by the Directorate: Recruitment and Selection and in the prescribed media.

## RECEIVING APPLICATIONS FROM CANDIDATES

There must be **appropriate processes and procedures** in place within the Provincial Education Department to **ensure that all applications submitted by candidates for a post vacancy are duly processed** by the Department and **not lost** for any reason.

In the Western Cape, all applications are received via the Western Cape Education Department's online recruitment system.

The integrity and legal validity of a recruitment, selection and appointment process would be compromised where the loss of an application by the Provincial Education Department effectively excludes the relevant candidate from that process.

Upon receipt of an application, the Provincial Education Department should ensure that the candidate receives confirmation that his or her application has been received.

The Western Cape Education Department's online recruitment system sends candidates an automated response when it receives applications.

## SIFTING OF ALL APPLICATIONS RECEIVED

**All applications received in response to the post advertisement need to be assessed to see whether they are eligible to be considered for shortlisting.**

It is the responsibility of the Provincial Education Department concerned to carry out the initial sifting process, i.e. sifting according to the post requirements.

The Provincial Education Department may mandate an independent service provider to carry out the sifting process on its behalf.

In the Western Cape, sifting is currently undertaken by the Directorate: Recruitment and Selection within the Western Cape Education Department.

Source: Paragraph B.5.3.2 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 2.2 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998 and Paragraph 2.3 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

**All applications that meet the applicable post requirements must be considered for possible shortlisting.**

This means that all applications that:

- are complete (i.e. which are submitted in full via the Western Cape Education Department's e-Recruitment for Educators portal and which contain all required information and supporting documentation);
- meet the qualifications and experience requirements attached to the vacant post; and
- meet any other mandatory post requirements attached to the vacant post;

should be referred to the Selection Committee for possible shortlisting.

Source: Paragraph B.5.4.4 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 3.4 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998 and Paragraph 2.3 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

## All applications that do not meet the applicable post requirements should not be considered for possible shortlisting.

This means that:

- all applications that are incomplete (i.e. which are not submitted in full via the Western Cape Education Department's e-Recruitment for Educators portal and/or which do not contain all required information and supporting documentation); and/or
- all applications which do not meet the qualifications and experience requirements attached to the vacant post; and/or
- all applications which do not meet any other post requirements attached to the vacant post;

should not be referred to the Selection Committee for possible shortlisting.

Source: Paragraph B.5.4.4 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 3.4 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998



## UPDATING CANDIDATES ON THE OUTCOME OF THE SIFTING PROCESS

Once the sifting process has been completed, the Western Cape Education Department must issue a written notice or letter to each candidate who applied for the vacant post in question indicating the following:

- Thanking the candidate for his/her application;
- Informing the candidate whether or not the application meets the post requirements;
- Where the application meets the post requirements, informing the candidate that his/her application has been referred to the governing body of the school concerned for further consideration and possible shortlisting; and
- Where the application does not meet the post requirements, informing the candidate of the reasons why the application does not meet the post requirements and that the application will not be referred to the governing body of the school concerned for further consideration and possible shortlisting.

Source: Paragraph B.5.3.1 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 2.1 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998 and Paragraph 2.2 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

## REPORTING ON THE SIFTING PROCESS

The Provincial Education Department must **draw up a register** detailing the names of all candidates who meet the post requirements and all candidates who do not meet the post requirements. This register should also provide reasons why candidates did not meet the post requirements. **A copy of this register must be provided to the relevant unions.**

Source: Paragraph B.5.3.3 of the Personnel Administrative Measures (PAM) determined in terms of the Employment of Educators Act, 1998 (Act 76 of 1998), and the Regulations made in terms thereof (Government Notice 170, Government Gazette 39684 of 12 February 2016) read with Paragraph 2.4 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998

## SHORTLISTING OF CANDIDATES WHO MEET THE POST REQUIREMENTS

### WHAT IS SHORTLISTING?

It is the process followed by the Selection Committee to identify a limited number of candidates to be interviewed for the vacant post, where such candidates have:

1. Met the post requirements attached to the relevant vacant post; and
2. Scored favourably in terms of the selection criteria attached to the relevant vacant post.

The Selection Committee must **apply the selection criteria, scoring matrix and selection tools consistently and fairly and in a manner that is consistent with what was published in the post advertisement**. The Selection Committee should not rely on any criteria not included in the post advertisement when shortlisting.

Where a scoring matrix is applicable, care must be taken by the Selection Committee to ensure that all **scores are calculated, assessed and recorded accurately**.

The governing body of the school concerned must **convene a shortlisting meeting upon five working days' written notice** to all members of the school's Selection Committee (including all members referred to on page 31 of this practical guide).

Source: Paragraph 3.5 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998

**The Selection Committee must not consider any application forms received from the Western Cape Education Department and begin the shortlisting process prior to ensuring that (i) it has all applications provided by the Department, (ii) all conflicts of interest involving members of the Selection Committee have been declared and addressed, and (iii) the selection criteria have been finalised and formally adopted.**

Source: Paragraphs 2.6.1 and 2.8.1 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

The Selection Committee must shortlist educators who are declared in excess but who are suitable to meet the curricular needs of the school concerned.

The governing body of the school concerned must determine how many candidates the Selection Committee may shortlist. Generally, five shortlisted candidates per post is considered sufficient. This depends on the needs of the school.

Source: Paragraphs 2.8.3.1 and 2.8.3.2 of Annexure A to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

Once the shortlisting process has been completed, the Selection Committee should notify all candidates who were considered for shortlisting in writing whether or not they have been shortlisted for an interview.

## INTERVIEWING OF SHORTLISTED CANDIDATES

### REMEMBER

All shortlisted candidates must receive **similar treatment** during the interviews. It is therefore **important that the interview questions and interview processes are standardised**. See page 41 of this practical guide for more information in this regard.

Source: Paragraph 3.8 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998

The interviews must be conducted in accordance with the guidelines agreed upon by parties to the provincial chamber of the Education Labour Relations Council.

### HOW TO ACT BEFORE INTERVIEWING CANDIDATES...

- All members of the Selection Committee and the governing body of the school concerned must not talk about any of the shortlisted candidates outside of any meeting of the governing body or any meeting of the Selection Committee and must not talk to a shortlisted candidate about another shortlisted candidate.
- All members of the Selection Committee must not prejudge any of the shortlisted candidates and must approach the interview process with an open mind.
- All members of the Selection Committee must respect and preserve the confidentiality of any discussions held by the Selection Committee in respect of the recruitment, selection and appointment process.

Source: Paragraph A of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002



### HOW TO PREPARE FOR THE INTERVIEWS...

- The Selection Committee must ensure that all interview questions are determined and finalised before interviews are held. Remember that all interview questions must be consistent with the post requirements and selection criteria. See page 41 of this guide for more information in this regard.
- Each member of the Selection Committee should be given a specific task to perform during the interviews. For example:
  - Introducing the panel to each shortlisted candidate at the start of each interview
  - Explaining the interview process upfront to each shortlisted candidate
  - Asking the interview questions according to a pre-arranged plan
  - Providing each shortlisted candidate with an opportunity to ask questions
- The Selection Committee must ensure that enough time is allocated for each interview. Interviews should not be rushed and the same amount of time should be allocated to each candidate. Remember that each shortlisted candidate must receive similar treatment during the interview process.
- The Selection Committee must schedule the interviews in a way that does not let shortlisted candidates meet or interact with each other.
- The Selection Committee must arrange for someone on duty to receive the shortlisted candidates as and when they arrive for their respective interviews and to escort them off the premises after their respective interviews.
- Members of the Selection Committee must have their annotated copies / summaries of the shortlisted candidates' documents in front of them during the interviews.
- Originals and copies of all documents relating to shortlisted candidates must be kept safe, treated with the strictest confidence and accounted for at all times.

Source: Paragraph B of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002





### HOW TO ACT DURING THE INTERVIEWS...

- The Selection Committee must act in a manner that puts each of the shortlisted candidates at ease.
- The Selection Committee should be punctual and adhere to the agreed interview timetable.
- The Selection Committee must follow the agreed structure for interviews. Each member of the Shortlisted Committee must carry out the task(s) allocated to them.
- The interviews must not be conducted in a rushed manner.
- The Selection Committee must not cross-examine any of the shortlisted candidates during the interview process.
- The Selection Committee must not interrupt any of the shortlisted candidates.
- Members of the Selection Committee may ask a shortlisted candidate to clarify something but may not stray substantively from the agreed set of interview questions.
- Members of the Selection Committee must not prompt or give hints at answers to questions put to the shortlisted candidates.
- The Selection Committee must not create the impression that any of the shortlisted candidates have been or will be successful.
- The Selection Committee must not ask shortlisted candidates questions that are discriminatory, embarrassing or of a very personal nature.
- The Selection Committee must provide each shortlisted candidate with an opportunity to ask questions.
- Before the conclusion of the interview, the Selection Committee must indicate to each shortlisted candidate when and how they will be informed of the final decision.

Source: Paragraph B of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002



### HOW TO PROCEED AFTER THE INTERVIEWS...

- Once all interviews with shortlisted candidates have been completed, the Selection Committee must rank all shortlisted candidates and select their preferred candidates in order of their preference in line with the selection criteria and scoring matrix and with reference to all information obtained in respect of each candidate via the application, the interview and any selection tool (e.g. competency assessment) applied.
- The Selection Committee must complete the ranking process and submit their selection of preferred candidates to the governing body of the school concerned as soon as possible after the interviews have been completed.
- The selection of preferred candidates by the Selection Committee is discussed in more detail below.

Source: Paragraph C of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

### REMEMBER

The Selection Committee must ensure that all shortlisted candidates receive similar treatment throughout the interview process and that the expectations of these candidates are managed effectively. A failure to do so may result in a legal challenge and delay completion of the recruitment, selection and appointment process.

## SELECTION OF PREFERRED CANDIDATES (IN LINE WITH THE SELECTION CRITERIA)

When the Selection Committee members rank all shortlisted candidates and select their preferred candidates in order of their preference, they must ensure that the ranking is done as follows:

- In strict accordance with **all applicable selection criteria**;
- In line with any **scoring matrix** that was published in the post advertisement; and
- With reference to **all information obtained** via the applications, the interviews and selection tools (e.g. competency assessments) applied.

In considering all applications of shortlisted candidates and selecting the preferred candidates, the Selection Committee must ensure that it acts in a manner that will enable the relevant governing body to comply with or adhere to at least the following when it makes a recommendation to the Head of the Provincial Education Department:

Democratic values and principles:  
Equality  
Equity  
Other values and principles contemplated in Section 195(1) of the Constitution of the Republic of South Africa, 1996, including the ability of each candidate and the need to redress the imbalances of the past in order to achieve broad representation  
[Section 6(3)(b)(i)]

Procedures and requirements collectively agreed upon or determined by the Minister of Basic Education for the appointment, promotion or transfer of educators  
[Section 6(3)(b)(ii)-(iii)]

Procedures established to confirm whether each candidate is registered or qualifies for registration as an educator with the South African Council for Educators  
[Section 6(3)(b)(iv)]

Procedures that ensure that the selection of preferred candidates is done without any undue influence being imposed on any member(s) of the Selection Committee  
[Section 6(3)(b)(v)]

Source: Section 6(3)(b)(i)-(v) of the Employment of Educators Act, 1998 (Act 76 of 1998)

For more information on how to give practical effect to Section 6(3)(b) of the Employment of Educators Act, 1998 (Act 7 of 1998), please see pages 29-48 of this practical guide.

The Selection Committee must choose at least three candidates as its preferred candidates and rank these in order of preference.

Fewer than three preferred candidates may be chosen provided that this is done in consultation with the Head of the Provincial Education Department. This consultation should be recorded in writing.

The Selection Committee must compile a **written motivation** (with supporting documents) to justify its list of preferred candidates.

This motivation must **explain the objective basis on which the list of preferred candidates was compiled**. Subjective factors should not be relied upon when compiling the list of preferred candidates.

The Selection Committee must take **minutes** at all of its meetings and **record all of its decisions** in such minutes.



## APPROVAL OF THE SELECTION COMMITTEE'S LIST OF PREFERRED CANDIDATES

### REMEMBER

The governing body of the school concerned must be *properly constituted* when considering and approving the list of preferred candidates compiled by the Selection Committee. See pages 13-28 of this practical guide for more information in this regard.

The governing body of the school concerned must **formally adopt a list of preferred candidates (in order of preference) that will be recommended to the Head of the Provincial Education Department.**

The recommendation of the governing body must be **provided to the Head of the Provincial Education Department within two months from the date on which the governing body was requested to make the recommendation.** In turn, the Head of the Provincial Education Department may appoint any one of the recommended candidates.

The governing body must **comply with the substantive and procedural requirements set out in Section 6(3)(b) of the Employment of Educators Act, 1998 (Act 76 of 1998) (discussed on page 49 of this practical guide) before it submits its recommendation** to the Head of the Provincial Education Department.

Source:

- Section 6(3) of the Employment of Educators Act, 1998 (Act 76 of 1998)
- Paragraph 3.9 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998 read with Paragraph C of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

### WHEN WILL A GOVERNING BODY BE CONSIDERED TO HAVE MADE A VALID RECOMMENDATION?

A valid recommendation will only exist where it contains:

- A list of at least three candidates recommended for appointment (ranked in order of preference) **OR**
- A list of between one and two candidates recommended for appointment (ranked in order of preference), provided that the governing body consulted the Head of the relevant Provincial Education Department before providing a shorter list.

A list of less than three candidates recommended for an appointment that was drawn up and submitted by the governing body without consulting the Head of the relevant Provincial Education Department will not constitute a valid recommendation.

Source:

- Section 6(3)(c) of the Employment of Educators Act, 1998 (Act 76 of 1998)
- *Kimberley Junior School v Head of the Northern Cape Education Department* [2009] ZASCA 58 (28 May 2009) at paras 12-19

**Supporting documents** may include the following:

- ✓ Post advertisement detailing the post requirements, selection criteria and scoring matrix
- ✓ All information and documentation received in relation to each of the shortlisted candidates
- ✓ All information and documentation generated as a result of the interview process (including, for example, scoring sheets and notes taken)
- ✓ Minutes from all meetings held by the Selection Committee
- ✓ Any other documents and information relied upon by the Selection Committee in compiling its list of preferred candidates

The Selection Committee must submit to the governing body of the school concerned the following for consideration and approval as soon as possible after the interview process has been completed:

- ✓ The **list of preferred candidates (i.e. a list of the candidates that the governing body should consider recommending for appointment with the candidates ranked in order of preference); and**
- ✓ The **written motivation** for such list (with **supporting documents**).

The governing body must:

- consider all information and documentation provided to it by the Selection Committee before approving the list of preferred candidates; and
- record the approved list of preferred candidates in writing (i.e. in the minutes of the meeting at which the list is approved).

**SUBMISSION OF  
RECOMMENDATIONS  
TO THE HEAD OF THE  
WESTERN CAPE  
EDUCATION  
DEPARTMENT FOR  
FINAL APPROVAL**

**It is important that the Head of the Western Cape Education Department is provided with all relevant information and documentation required to make an informed decision.**

The governing body of the public school must **submit its list of recommended candidates to the Head of the Western Cape Education Department for final approval as soon as possible** after the completion of the interview process.

Please see page 50 of this practical guide for more information on what constitutes a valid recommendation.

The submission to the Head of the Western Cape Education Department must be in the **prescribed form** and must **include the following documentation**:

- All applications processed by the governing body and its Selection Committee
- A copy of all minutes of the governing body in relation to the recruitment and selection process in question
- A copy of all minutes of the Selection Committee in relation to the recruitment and selection process in question
- Any other supporting documentation that is on record in relation to the recruitment and selection process in question.

**COMMUNICATING THE OUTCOME OF THE INTERVIEW PROCESS  
TO ALL SHORTLISTED CANDIDATES**



The governing body must notify all preferred candidates that they have been recommended for appointment.

This notification must be in writing but **must not state where in the order of preference they rank.**

The governing body must also notify all shortlisted candidates who were interviewed but who were not successful (i.e. those who are not recommended for appointment) of the outcome of the interview process.

This notification must be in writing and must also inform the candidates concerned of their right to request and obtain information about their unsuccessful application.

Source: Paragraph 3.9 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998 read with Paragraph C of Annexure B to Education Labour Relations Council (Western Cape Chamber) Resolution 1 of 2002

**What happens if the governing body fails to provide a recommendation?**

- The Head of the Provincial Education Department may request the governing body concerned to provide the recommendation. This recommendation will need to be provided within two months of the governing body receiving such request.
- The Head of the Provincial Education Department may make an appointment without the recommendation of the governing body where the governing body fails to make such recommendation within two months of specifically being requested to do so. In these circumstances, the Head of the Provincial Education Department must:
  - Consider all applications submitted for the vacant post;
  - Apply the requirements set out in Section 6(3)(b)(i) to (iv) of the Employment of Educators Act, 1998 (Act 76 of 1998); and
  - Appoint a suitable candidate temporarily or re-advertise the post.
- A decision to appoint a suitable candidate temporarily may be taken on appeal to the Provincial Minister / MEC for Education by the governing body. Such an appeal must be finalised by the Provincial Minister / MEC for Education within 30 days.
- The temporary appointment may be converted into a permanent appointment by the Head of the Provincial Education Department where the governing body does not lodge an appeal against the temporary appointment within 14 days of it receiving notice of such appointment. The decision to convert the appointment in this regard must be taken after consultation with the governing body concerned.

Source: Sections 6(3)(l) and 6B of the Employment of Educators Act, 1998 (Act 76 of 1998)

## APPOINTMENT OF THE SUCCESSFUL CANDIDATE

As a general rule, the Head of a Provincial Education Department may only appoint an educator at a public school where:

- The governing body has provided him or her with a **recommendation**; and
- The governing body has met the **substantive and procedural requirements set out in Section 6(3)(b) of the Employment of Educators Act, 1998 (Act 76 of 1998)** (discussed in more detail on page 49 of this practical guide).

In the absence of a **recommendation\*** from the governing body, the Head of the relevant Provincial Education Department has no authority to make an appointment.

**\* REMEMBER:**

A recommendation will only exist where it contains:

At least three candidates recommended for appointment (ranked in order of preference)

OR

Less than three candidates recommended for appointment (ranked in order of preference), provided that the governing body consulted the Head of the relevant Provincial Education Department in this regard before providing a shorter list

Where the governing body provides a recommendation that complies with the requirements set out in Section 6(3)(b) of the Employment of Educators Act...

The Head of the relevant Provincial Education Department may appoint any one of the suitable candidates included in the recommendation provided by the governing body concerned.

Where the governing body provides a recommendation that does not comply with the requirements set out in Section 6(3)(b) of the Employment of Educators Act...

The Head of the Provincial Education Department is obliged to:

- Decline the recommendation as a whole; and
- After considering all applications received for the post and applying the requirements set out in Section 6(3)(b)(i) to (iv) of the Employment of Educators Act, either appoint a suitable candidate temporarily from the applications submitted for the post or re-advertise the post.

Where the Head of the Provincial Education Department declines the recommendation of the governing body and makes a temporary appointment...

- The governing body may appeal to the Provincial Minister / MEC for Education against the decision of the Head of the Provincial Education Department to make a temporary appointment in the circumstances described above.
- This appeal must be lodged within 14 days of the governing body receiving notice of the temporary appointment.
- The appeal must be finalised by the Provincial Minister / MEC for Education within 30 days.
- The Head of the Provincial Education Department may convert the temporary appointment into a permanent appointment if no appeal is lodged by the governing body concerned within the 14-day period.

**Sources for the above:**

- Section 6(3) of the Employment of Educators Act, 1998 (Act 76 of 1998)
- Paragraph 3.9 of Schedule 1 to the Education Labour Relations Council Resolution 5 of 1998
- Kimberley Junior School v Head of the Northern Cape Education Department [2009] ZASCA 58 (28 May 2009) at paras 12-19
- Head of the Western Cape Education Department and Others v Governing Body of Point High School and Others [2008] ZASCA 8 (31 March 2008) at para 10

### HOW SHOULD THE DISCRETION TO MAKE AN APPOINTMENT BE EXERCISED?

- According to the Supreme Court of Appeal:
  - The Head of a Provincial Education Department “is required to **act reasonably** and, by taking into account all of the relevant factors and considering the competing interests involved, to **arrive at a decision which strikes a ‘reasonable equilibrium’**”.
  - The Head of a Provincial Education Department must perform a “**balancing exercise**” by **weighing applicable employment equity considerations against the “ability and suitability” of the candidates** in question with a view to **acting in the best interests of the school concerned**.
  - **If the Head of a Provincial Education Department considers that the governing body has performed its functions properly**, he or she must “**attribute substantial weight to the recommendations submitted**” by the governing body to him or her.

Source: *Head of the Western Cape Education Department and Others v Governing Body of Point High School and Others* [2008] ZASCA8 (31 March 2008) at paras 10, 12 and 14



“reasonable equilibrium”

“balancing exercise”

“employment equity”

“ability and suitability”

“best interests of the school”

### HOW SHOULD EMPLOYMENT EQUITY CONSIDERATIONS BE TAKEN INTO ACCOUNT WHEN MAKING AN APPOINTMENT?

- The Western Cape Education Department's Employment Equity Plan (available on the WCED website as at 2 December 2015) provides that:
  - The recruitment, selection and appointment procedure will be utilised to achieve the goals of representivity
  - The following will be used to create vacancies in the department in line with the objectives of the Employment Equity Plan:
    - natural staff turnover (resignations, retirements, dismissals, etc)
    - transfers and promotions;
    - expansion of the department
    - restructuring the public service
  - All appointments will, however, be based on the inherent requirements of the position. However, where an insignificant gap between possible candidates exists in terms of merit/performance, preference will be given to an employee from a designated group, should the appointment contribute to the improvement of the representation of specific designated groups.
- The Supreme Court of Appeal has held the following in this regard:
  - “**Employment equity provisions should only prevail in circumstances where there is approximate equality between the ability or potential ability of the two candidates**”.
  - The Head of a Provincial Education Department must perform a “**balancing exercise**” by weighing applicable employment equity considerations against any “disparity in ability and suitability” between the candidates recommended by the governing body concerned and the candidates to be appointed with a view to acting in the best interests of the school concerned.

Source: *Head of the Western Cape Education Department and Others v Governing Body of Point High School and Others* [2008] ZASCA8 (31 March 2008) at paras 10, 12 and 14

The Head of the Western Cape Education Department must notify all preferred candidates of the final outcome in writing within eight weeks of the appointment being made.

## Notes

[illegible]

## CHAPTER 6: Ensuring decisions are supported by records

There are many benefits to producing and maintaining a **comprehensive and accurate set of records for each decision-making process** that is followed when filling a vacant educator post.

A comprehensive and accurate set of records offers the following benefits:

- A complete set of records can assist a decision-maker to make an informed decision
- A complete set of records can offer proof of certain facts on which a decision is based
- A complete set of records can be used to explain the basis for a decision (particularly where that decision is being challenged)

Included below is a non-exhaustive list of documents that should be considered for inclusion in a record relating to the filling of a state-funded educator post at a public school:

NO.	PROCESS	RELEVANT DOCUMENTS
1.	<b>Election of governing body members</b>	Minutes from the meeting(s) at which the governing body members were lawfully elected (including meeting notices, voters' roll, attendance registers and any other supporting documents)
2.	<b>Identification of a post vacancy</b>	Correspondence from the school principal to the governing body and the Provincial Education Department notifying it of the post vacancy (if any)
3.	<b>Declaration of personal interests by members of the governing body in the filling of the relevant post</b>	Signed declaration forms for all members of the governing body
4.	<b>Establishment of the public school's Selection Committee</b>	Minutes from the governing body meeting at which the Selection Committee was established and empowered to carry out the recruitment and selection process as set out below
5.	<b>Determination of the post requirements</b>	Minutes from the meeting of the school management team at which the post requirements were approved (including a copy of the post requirements and any supporting documents)
6.	<b>Determination of the public school's selection criteria, scoring matrix and related tools (in line with the post requirements)</b>	Minutes from the meeting of the Selection Committee at which the selection criteria, scoring matrix and related tools were approved (including a copy of the selection criteria, scoring matrix, details of the related selection tools to be applied and any supporting documents)
7.	<b>Determination of the interview questions that will be directed at candidates who are shortlisted</b>	Minutes from the meeting of the Selection Committee at which the interview questions were approved (including a copy of the interview questions and any supporting documents)
8.	<b>Development and issuing of the vacancy advertisement</b>	Minutes from the meeting of the Selection Committee at which the post advertisement was approved and any documents produced by the Provincial Education Department in this regard (including a copy of the vacancy advertisement and any supporting documents)
9.	<b>Receiving applications from candidates</b>	All applications received from candidates (including any supporting documents attached to such applications)
10.	<b>Sifting of all applications received</b>	Documents recording the outcome for the sifting process, including a copy of the register of all applications processed and a copy of all letters/notices issued to candidates in this regard
11.	<b>Shortlisting of candidates who met the post requirements</b>	Documents recording the outcome of the shortlisting process, including a copy of the minutes from the meeting of the Selection Committee at which the list of shortlisted candidates was approved and a copy of the letters/notices issued to all relevant candidates in this regard
12.	<b>Interviewing of candidates</b>	All documents generated during the interviews, including all score sheets, as well as notes and minutes taken in respect of such interviews
13.	<b>Selection of preferred candidates (in line with the selection criteria)</b>	Minutes from the meeting of the Selection Committee at which the preferred candidates were selected (including a copy of the list of preferred candidates and any supporting documents)
14.	<b>Approval of the Selection Committee's list of preferred candidates</b>	Minutes from the governing body meeting at which the list of preferred candidates drawn up by the Selection Committee was approved (including a copy of the motivation drawn up by the Selection Committee in this regard and any other supporting documents)
15.	<b>Submission of recommendations to the Head of the Provincial Education Department for approval</b>	Submission submitted to the Head of the Provincial Education Department by the governing body detailing the approved list of preferred candidates ranked in order of preference and a copy of the notices sent to all shortlisted candidates informing them of the outcome of the shortlisting process (including any supporting documents)
16.	<b>Appointment of the successful candidate</b>	Submission approved by the Head of the Provincial Education Department, the appointment letter issued to the successful candidate by the Head of the Provincial Education Department and a copy of all letters/notices issued to candidates who were not successful



## Notes

[illegible]

## Checklist for filling a vacant educator post

Included below is a checklist that may be used by a governing body of a public school as a guideline when taking steps to fill a vacant state-funded educator post at a public school.

### How to use the checklist:

- Answer each of the questions listed in the checklist.
- For every question that you answer with “No” or “Not sure”, please consult the relevant sections of this manual and adjust the processes and practices in question so that your answer may be converted into a “Yes”.

NO.	QUESTION	PAGE REFERENCE	YES	NO	NOT SURE
1.	Are you familiar with the legal framework applicable to the recruitment, selection and appointment of educators in state-funded posts at public schools?	Pages 3-4			
2.	Do you have clarity on the roles and responsibilities of the following stakeholders in the recruitment, selection and appointment of educators in state-funded posts at public schools? <ul style="list-style-type: none"> <li>• Candidates</li> <li>• School governing body</li> <li>• School's Selection Committee</li> <li>• School principal</li> <li>• Education District Offices</li> <li>• Head of the Provincial Education Department</li> <li>• Provincial Minister / MEC for Education</li> <li>• Minister of Basic Education</li> <li>• Union representatives</li> </ul>	Page 5			
3.	Are you familiar with what makes an effective recruitment, selection and appointment process?	Page 7			
4.	Are you familiar with the full process that needs to be followed when filling a vacant educator post funded by the State at a public school?	Pages 8-9			
5.	Is the governing body in question properly constituted?	Pages 13-28			
	<u>Condition 1:</u> Does the membership composition of the governing body comply with the applicable legal requirements?	Pages 14-18			
	<u>Condition 2:</u> Were all parent members, educator members, non-educator members and learner members on the governing body elected by persons entitled to vote after following the correct processes and procedures and after meeting all applicable legal requirements?	Pages 18-22			
	<u>Condition 3:</u> Are all members of the governing body serving within a valid term of office (i.e. their respective terms of office have not expired) and has the governing body elected the necessary office bearers?	Pages 22-24			
	<u>Condition 4:</u> Have all members of the governing body and all members of any committees established by the governing body completed declarations (in the prescribed form) indicating whether and to what extent they have any personal interest in any matter(s) concerning the governing body or school concerned?	Pages 24-26			
	<u>Condition 5:</u> Have all relevant meeting requirements been met by the governing body prior to it holding a meeting (including, for example, all notice and quorum requirements, together with any rules determined by that governing body, that are applicable)?	Page 27			
6.	Are you familiar with what training should be made available to the governing body of a public school insofar as the recruitment, selection and appointment of educators in state-funded posts are concerned?	Page 28			

NO.	QUESTION	PAGE REFERENCE	YES	NO	NOT SURE
7.	Has the governing body established a Selection Committee in the correct manner to attend to the following: <ul style="list-style-type: none"> <li>• Determining the selection criteria, scoring matrix and related selection tools that will be applied;</li> <li>• Shortlisting candidates for interviews;</li> <li>• Interviewing all shortlisted candidates; and</li> <li>• Selecting preferred candidates for recommendation by the governing body to the Head of the Provincial Education Department for appointment?</li> </ul>	Pages 29-31			
8.	Are you familiar with the roles and responsibilities of each category of members on a Selection Committee? Do you know which members on the Selection Committee have voting rights?	Page 31			
9.	Do the post requirements cover all relevant aspects relating to the post vacancy in question and are these post requirements lawful and prepared in advance of the post advertisement?	Pages 34-38			
10.	Are the selection criteria lawful, objectively measurable, consistent with the post requirements and prepared in advance of the post advertisement and do they cover all relevant aspects relating to the post vacancy in question?	Pages 39-40			
11.	Are the interview questions for shortlisted candidates prepared in advance of the shortlisting process and standardised in line with the post requirements and selection criteria?	Page 41			
12.	Is the post advertisement drafted clearly, comprehensively and consistent with the post requirements and selection criteria determined for the post in question and is it published timeously in the correct manner?	Pages 42-43			
13.	Is there a process in place to prevent applications received from candidates from being lost or misplaced?	Page 44			
14.	Is the sifting of all applications received carried out efficiently and in accordance with the post requirements and captured in a register?	Pages 44-45			
15.	Are all candidates and relevant unions notified of the outcome of the sifting process?	Page 45			
16.	Are candidates who have met the post requirements shortlisted in accordance with the selection criteria (including any scoring matrix included in the post advertisement) and in accordance with applicable resolutions of the Education Labour Relations Council (including its provincial chamber)?	Page 46			
17.	Do all shortlisted candidates receive similar treatment in terms of a standardised interview process?	Pages 46-48			
18.	Are the preferred candidates selected by the Selection Committee in accordance with all applicable selection criteria and in line with any scoring matrix published in the post advertisement?	Page 49			
19.	Is the selection of the preferred candidates supported by a written motivation and recorded in the minutes of the Selection Committee?	Pages 49-50			
20.	Does the Selection Committee provide the governing body with sufficient supporting documentation for it to consider and make a decision on who to recommend to the Head of the Provincial Education Department for appointment?	Pages 49-50			
21.	Is the submission submitted by the governing body to the Head of the Provincial Education Department in the prescribed form and does it include all necessary supporting documentation?	Page 51			
22.	Does the governing body communicate the outcome of the interview process to all shortlisted candidates?	Page 51			
23.	Is the Head of the Provincial Education Department provided with sufficient information and documentation to make an informed decision regarding the filling of the vacant educator post?	Page 51			
24.	Is a comprehensive and accurate set of records for each decision-making process followed when filling a vacant post easily available and kept safe?	Page 55			

