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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Deputy Directors, Heads: Management and Governance, Circuit Managers, Principals and Members of governing bodies at public schools

Short summary: The role of a minor who is an enfranchised member of a governing body.

Subject: The role of a minor who is an enfranchised member of a governing body

1. In terms of the Children's Act, 2005 (Act 38 of 2005), Chapter 2, section 17, a child, whether male or female, becomes a major upon reaching the age of 18 years. This means that a child with an age of less than 18 years is still a minor.
2. It is important to note that a minor may serve on the governing body of a public school, on condition that the minor is enrolled at a school and attends a grade higher than grade 7 at that school.
3. If a minor is an enfranchised member of the governing body, he/she may attend all the special, mandatory and regulatory meetings of the governing body. A minor also helps to establish or determines the quorum at a governing body meeting.
4. A minor who is an enfranchised member of the governing body may also attend all meetings of the committees of the governing body of which he/she is a member.
5. A minor who is an enfranchised member of the governing body may never be required or instructed to leave a governing body meeting or a committee meeting of the governing body of which he/she is a member, only on the basis that he/she is a minor, unless he/she must recuse himself/herself from the meeting in terms of section 26 of the South African Schools Act (SASA), 1996 (Act 84 of 1996). In terms of section 26 of the SASA, a member of a governing body must withdraw from a meeting of the governing body for the duration of the discussion and decision- making on any issue in which the member has a personal interest.

6. If a minor, who is an enfranchised member of a governing body, and/or any other person who is an enfranchised member of the governing body must leave a governing body meeting for whatever reason and, after he/she had left the meeting, those enfranchised members left in the meeting do not constitute a quorum, then the meeting must not be allowed to continue.
7. Note, a contract is a written or spoken agreement that is intended to be enforceable by law and it defines as well as governs the rights and duties between or among its parties; by implication it is a formal and legally binding agreement.
8. In terms of section 32 (1) of the SASA, a member of a governing body, who is a minor, may not contract on behalf of a public school. Furthermore, subsection 2 states that a member of a governing body, who is a minor, may not vote on resolutions of a governing body which impose liabilities on third parties or the school. The two said subsections imply that an enfranchised member of the governing body does not have the legal right to enter into an enforceable agreement on behalf of the public school and/or may not propose a motion in a governing body meeting which may impose liabilities on third parties or the school. Additionally, a minor may not second a motion in a governing body meeting which may impose liabilities on third parties or the school and/or may not vote on resolutions of a governing body which impose liabilities on third parties or the school.
9. However, a governing body member, who is a minor, must be allowed to discuss, debate and give input on any matter in a governing body meeting, despite what is contemplated in point 8 *supra*, i.e., the stipulations in point 8 do not circumscribe the right of the minor to debate issues related to contracts, liabilities, etc.
10. By implication, a minor, who is an enfranchised member of a governing body, may serve on or even chair an interviewing committee, may take part in the debate and deliberations of the governing body to recommend the employee to the Western Cape Education Department and/or to employ the individual at the school; however, when the contract is negotiated with the employee, the minor may not take part in the decision making process.
11. A member of a governing body, who is a minor, can incur no personal liability for any consequence of his/her membership of the governing body.
12. Principals are kindly requested to bring the contents of this circular to the attention of all governing body members.

SIGNED: B WALTERS

HEAD: EDUCATION

DATE: 2022-01-05