
**WHYALLA SPECIAL EDUCATION CENTRE GOVERNING
COUNCIL INCORPORATED**

CONSTITUTION

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Caroline Fishpool
Lead Director, Conditions for Learning
Schools and Preschools Division
Department for Education

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GOVERNING COUNCIL MODEL CONSTITUTION
(School without a school-based preschool)

1 NAME

The name of the council is Whyalla Special Education Centre Governing Council Incorporated.

2 INTERPRETATION

In this constitution, unless the contrary intention appears:

'the Act' means the *Education and Children's Services Act 2019* as amended.

'administrative instructions' means administrative instructions issued pursuant to section 9 of the Act.

'administrative unit' means a government department or attached office.

'adult' means a person who has attained 18 years of age.

'affiliated committee' means a committee affiliated with the governing council operating under the model constitution for affiliated committees or a constitution approved by the Minister in accordance with section 36 and 39 of the Act.

'chairperson' means the presiding member of the governing council as referred to in section 35 (3) of the Act.

'Chief Executive' means the Chief Executive of the Department for Education.

'governing council' means the Whyalla Special Education Centre Governing Council established under section 34 of the Act.

'council member' are the members of the governing council.

'department' means the Department for Education.

'financial year' means the year ending 31 December or as varied by administrative instruction.

'general meeting' means a public meeting of the school community.

'government school' means a school established under the Act, or a repealed Act and includes (other than for the purposes of Part 5 of the Act) a special purpose school.

'majority' means more than half the total number.

'Minister' means the person to whom the administration of the Act is committed, pursuant to the *Administrative Arrangements Act 1994*.

'parent' - the Act uses the term "person responsible for a child or student". In this constitution, the term "parent" will be used instead. This term includes parents, guardians, and persons standing *in loco parentis* to a student or child, but excludes any person whose custody or guardianship of a student or child, or whose responsibility for a student or child, has been excluded under any Act or law (for example, the *Family Law Act 1975* (Cth)).

'principal' means the person for the time being designated by the Chief Executive as the principal of the school.

'regulations' means the *Education and Children's Services Regulations 2020*.

'school' means a school at which primary or secondary education or both is, or is to be, provided (whether or not preschool education is also provided at the school).

'school community' means parents, students enrolled in or children who are to attend the school, staff of the school and all other persons who have a legitimate interest in or connection with the school.

'school improvement plan' means the agreement signed by the principal and the presiding member of the council that summarises the school's contribution to improving student learning at the site.

'special resolution' of the council means a resolution passed by a duly convened meeting of the council where:

- (1) at least 14 days written notice has been given to all council members specifying the intention to propose the resolution as a special resolution; and
- (2) it is passed by a majority of not less than three quarters of council members who vote in person or by proxy at that meeting.

'student' is a person enrolled in the school or approved learning program.

3 OBJECT

The object of the council is to involve the school community in the governance of the school to strengthen and support public education in the community.

4 POWERS OF THE GOVERNING COUNCIL

- 4.1 In addition to the powers conferred under the Act, the council may:
- 4.1.1 employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the Chief Executive
 - 4.1.2 enter into contracts
 - 4.1.3 construct any building or structure for the benefit of the school, or make any improvements to the premises or grounds of the school, with the approval of the Chief Executive
 - 4.1.4 purchase or take a lease or licence of premises for student residential facilities, and enter into any other agreements or arrangements for the establishment, management, staffing and operation of such facilities;
 - 4.1.5 establish and conduct, or arrange for the conduct of, facilities and services to enhance the education, development, care, safety, health or welfare of children and students.
 - 4.1.6 do all those acts and things incidental to the exercise of these powers.
- 4.2 The Council's powers must be exercised in accordance with legislation, administrative instructions and this constitution.

5 FUNCTIONS OF THE COUNCIL

- 5.1 In the context of the council's joint responsibility with the principal for the governance of the school, the council must perform the following functions:
- 5.1.1 involve the school community in the governance of the school by:
 - (i) providing a forum for the involvement of parents and others in the school community
 - (ii) determining the educational needs of the local community, and their attitude towards educational developments within the school

- (iii) ensuring that the cultural and social diversity of the community is considered and particular needs are appropriately identified.

5.1.2 strategic planning for the school including:

- (i) developing, monitoring and reviewing the objectives and targets of the strategic plan
- (ii) considering, approving and monitoring human resource and asset management plans.

5.1.3 determine local policies for the school.

5.1.4 determine the application of the total financial resources available to the school including the regular review of the budget.

5.1.5 present plans and reports on the council's operations to the school community and Minister.

5.2 The council must be responsible for the proper care and maintenance of any property owned by the council.

5.3 The Council may perform such functions as necessary to establish and conduct, or arrange for the conduct of:

5.3.1 facilities and services to enhance the education, development, care, safety, health or welfare of children and students;

5.3.2 residential facilities for the accommodation of students.

5.4 The council may raise money for school related purposes.

5.5 The council may perform other functions as determined by the Minister or Chief Executive.

5.6 The council may do all those acts and things incidental to the exercise of these functions.

5.7 The council's functions must be exercised in accordance with legislation, administrative instructions and this constitution.

6 FUNCTIONS OF THE PRINCIPAL ON COUNCIL

The functions of the principal on council are undertaken in the context of the principal's joint responsibility with the council for the governance of the school.

- 6.1 The principal is answerable to the Chief Executive for providing educational leadership in the school and for other general responsibilities prescribed in the Act and regulations.
- 6.2 The principal must also:
- 6.2.1 implement the school's strategic plan, the school improvement plan and school policies
 - 6.2.2 provide accurate and timely reports, information and advice relevant to the council's functions
 - 6.2.3 report on learning, care, training and participation outcomes to council
 - 6.2.4 supervise and promote the development of staff employed by the council
 - 6.2.5 be responsible for the financial, physical and human resource management of the school
 - 6.2.6 be an *ex-officio* member of council with full voting rights
 - 6.2.7 be the returning officer for the election, nomination and appointment of council members
 - 6.2.8 chair the first meeting of the council held for the purpose of receiving nominations from nominating bodies, the direct appointment of council members by the council and the election of office holders
 - 6.2.9 contribute to the formulation of the agenda of council meetings.

7 MEMBERSHIP

- 7.1 The Whyalla Special Education Centre Governing Council must comprise 6 council members including:
- 1 Principal of the school (ex officio)
 - 4 Elected parent members
 - 1 Community member appointed by the council
- 7.2 The majority of council members must be elected parents of the school.
- 7.3 At the time of election, nomination or appointment, persons who are on the staff of a government school, persons who are

employees of an administrative unit for which the Minister is responsible, and those appointed under the Act or the *Technical and Further Education Act, 1975*, must not comprise the majority of elected parent members and must not comprise the majority of council members.

- 7.4 In considering any nominations to the council by a nominating body or direct appointments by the council, the council must observe the requirements of 7.3.
- 7.5 A person is not eligible for election, appointment or nomination to the council, if the person:
- 7.5.1 is an undischarged bankrupt or is receiving the benefit of a law for the relief of insolvent debtors;
 - 7.5.2 has been convicted of any offence prescribed by administrative instruction;
 - 7.5.3 is subject to any other disqualifying circumstances a prescribed by administrative instruction.

8 TERM OF OFFICE

- 8.1 Elected parent members will be appointed for a term not exceeding two years, except in the case of the first council only, where one-half (or, if the total number of council members to be elected is odd, the highest integer that is less than one-half) of the parent members elected at the Annual General Meeting of the school will be elected for a term not exceeding one year.
- 8.2 A council member nominated by an affiliated committee will be nominated for a term not exceeding two years, subject to the provisions that:
- 8.2.1 for the first council only, where two or more affiliated committees each nominate a council member, one will be appointed for a term not exceeding one year. The person so appointed must be determined by agreement between the affiliated committees, or on failure to agree, by lot.
 - 8.2.2 the nomination may be revoked, in writing, by the affiliated committee.
- 8.3 Any council member nominated by the Student Representative Council (or equivalent) or elected by the body of students will hold office for a term not exceeding one year or until the nomination is revoked, in writing, by the nominating body.

- 8.4 A council member elected by the staff of the school will hold office for a term not exceeding one year subject to being a member of the staff of the school.
- 8.5 Each council member directly appointed by the council, will serve for a period not exceeding two years.
- 8.6 Upon expiry of term of office, each council member will remain incumbent until the position is declared vacant at the Annual General Meeting.
- 8.7 Council members are eligible for subsequent re-election, re-nomination or re-appointment.

9 OFFICE HOLDERS AND EXECUTIVE COMMITTEE

9.1 Appointment

- 9.1.1 The office holders of the council are the chairperson, deputy chairperson, secretary and treasurer who must be elected by the council from amongst its council members within one month of the Annual General Meeting.
- 9.1.2 The chairperson must not be a member of the staff of the school, a person employed in an administrative unit for which the Minister is responsible.
- 9.1.3 The treasurer must not be a member of the staff of the school.
- 9.1.4 The council may appoint an executive committee comprising the office holders and the principal, which is to
 - (i) meet to carry out business delegated or referred by the council; and
 - (ii) report to subsequent council meetings.

9.2 Removal from office

- 9.2.1 The position of any office holder absent for three consecutive executive committee meetings without leave of absence automatically becomes vacant. Acceptance of an apology at the executive committee meeting will be deemed a grant of such leave.

9.2.2 An office holder of the council may be removed from office, but not from membership of the council, by special resolution of the council, provided that:

- (i) at least 14 days written notice is given to all council members and to the office holder concerned of any proposed resolution, giving reasons for the proposed removal;
- (ii) the office holder is given the right to be heard at the council meeting;
- (iii) voting on the special resolution is by secret ballot.

9.3 The chairperson

9.3.1 The chairperson must:

- (i) call and preside at the meetings of the council and the executive committee;
- (ii) in consultation with the principal and secretary, prepare the agenda for all council meetings;
- (iii) include on the agenda any item requested by the principal;
- (iv) facilitate full and balanced participation in meetings by all council members and decide on the manner in which meetings are conducted and matters of order;
- (v) report at the Annual General Meeting on the proceedings and operations of the Council for the period since the date of the previous Annual General Meeting.

9.3.2 The chairperson must act as spokesperson on behalf of the council unless an alternative spokesperson has been appointed by the council. The spokesperson may only comment on council matters.

9.3.3 In the chairperson's absence or inability to act, the deputy chairperson must undertake any role or function normally fulfilled by the chairperson.

9.3.4 If the chairperson and deputy chairperson of the council are absent or unable to preside at a meeting, a council member elected by the council must preside.

9.4 The secretary

9.4.1 The secretary must ensure that notices of meetings are given in accordance with the provisions of this constitution.

- 9.4.2 The secretary is responsible for ensuring the maintenance and safekeeping of:
- (i) the constitution of the council and the code of practice;
 - (ii) official records of the business of the council and a register of minutes of meetings;
 - (iii) copies of notices, a file of correspondence and records of submissions or reports made by or on behalf of the council;
 - (iv) the register of council members;
 - (v) contracts or agreements entered into by the council;
 - (vi) copies of policies of the council.
- 9.4.3 The secretary must ensure that copies of the constitution and the code of practice are available for public inspection at the school during normal school hours, and that any copies requested are provided.
- 9.4.4 The secretary must ensure the safekeeping of the common seal and must ensure a record is kept of every use of the common seal.
- 9.4.5 Prior to each meeting, the secretary must ensure that a copy of the meeting agenda is forwarded to each council member.
- 9.4.6 The secretary must conduct the official correspondence of the council.
- 9.4.7 The secretary must ensure that the minutes of meetings are recorded and forwarded to each council member prior to the next meeting.

9.5 The treasurer

- 9.5.1 The treasurer must be the chairperson of the Finance Advisory Committee of the council and preside at the meetings of this committee.
- 9.5.2 The treasurer must:
- (i) ensure that the council's financial budgets and statements are prepared
 - (ii) submit a report of those finances to each council meeting;
 - (iii) present the council's statement of accounts to the Annual General Meeting.

10 VACANCIES

- 10.1 Membership of the council ceases when a council member:
- 10.1.1 dies;
 - 10.1.2 in the case of an elected council member or a council member nominated or appointed for a term, completes a term of office and is not re-elected, re-nominated or re-appointed;
 - 10.1.3 ceases to hold office in accordance with 8.2.2 and 8.3;
 - 10.1.4 in the case of a member nominated by the staff of the school, is no longer a staff member of the school;
 - 10.1.5 resigns by written notice to the council;
 - 10.1.6 is removed from office by the Minister in accordance with section 44 of the Act;
 - 10.1.7 is declared bankrupt or applies for the benefit of a law for the relief of insolvent debtors;
 - 10.1.8 has been convicted of any offence prescribed by administrative instruction;
 - 10.1.9 is subject to any disqualifying circumstance as prescribed by administrative instruction; or
 - 10.1.10 is absent from three consecutive council meetings without leave of absence approved by the council. Acceptance of an apology at a council meeting will be deemed a grant of such leave.
- 10.2 The council may appoint a person to temporarily fill a casual vacancy in its membership until a council member can be elected, nominated or appointed in accordance with this constitution.

11 MEETINGS

11.1 General meetings of the school community

- 11.1.1 Subject to 13.2, all persons within the school community are eligible to attend general meetings of the school community and vote on any matters proposed for resolution.

11.1.2 The chairperson of the council must call and preside at general meetings of the school community, the timing to be agreed between the chairperson and the principal of the school.

11.1.3 At least 14 days written notice of the meeting must be given to the school community by the means generally used to communicate with the school community. The notice must specify the date, time and place of the meeting.

11.1.4 A general meeting must be held:

- (i) at least once annually (the Annual General Meeting) to present reports, to elect parents to the council and/or declare election results;
- (ii) for any other reason relating to the affairs, functions or membership of the council, determined by agreement between the chairperson and the principal.

11.1.5 The period between each Annual General Meeting must not exceed 16 months.

11.1.6 A general meeting must be held to elect council members, to discuss the finances of the council or for any other reason relating to the affairs or functions of the council:

- (i) at the request of the Chief Executive;
- (ii) by the resolution of the council;
- (iii) at the request of 20 parents or one half of the parents of the school, whichever is less.

11.1.7 A conference by telephone or other electronic means will be taken to be a general meeting of the school community provided that all procedures in this constitution relating to general meetings are complied with and each participating member is capable of communicating with every other participating member during the conference.

11.2 Council meetings

11.2.1 The council must meet at least twice in each school term.

11.2.2 Notice of meetings must be given at the previous council meeting or by at least 7 days written notice distributed to all council members or in an emergency by such other notice as the council may determine.

11.2.3 A conference by telephone or other electronic means between the council members will be taken to be a meeting of the council provided that all procedures in this constitution relating to council meetings are complied with and each participating member is capable of communicating with every other participating member during the conference.

11.3 Extraordinary council meetings

11.3.1 The chairperson of the council must call an extraordinary meeting of the council by written request from at least 3 council members.

11.3.2 Notice of meeting must be given by written notice to all council members within a reasonable time, setting out the time, date, place and object of the meeting.

11.3.3 The business of any extraordinary meeting must be confined to the object for which it is convened.

11.4 Voting

11.4.1 Voting must be by show of hands, or in the case of a meeting held pursuant to 11.1.7 and 11.2.3, by voices or in writing, but a secret ballot must be conducted for:

- (i) a contested election; or
- (ii) a special resolution to remove an office holder from office.

11.4.2 For the purposes of voting on a special resolution, each council member is entitled to appoint another council member as their proxy.

12 PROCEEDINGS OF THE COUNCIL

12.1 Meetings

12.1.1 The quorum for a council meeting is a majority of the filled positions of the council.

12.1.2 If at the expiration of 30 minutes after the appointed time for the meeting there is no quorum present, the meeting must stand adjourned to such time and place as those council members present determine.

- 12.1.3 Except in the case of a special resolution, a decision of the majority of those council members present and eligible to vote is the decision of the council.
- 12.1.4 The chairperson must have a deliberative vote only. In the event of an equality of votes, the chairperson does not have a second or casting vote and the motion must be taken to be defeated.
- 12.1.5 The council or any committee of council may, at its discretion, allow non-members who have special interests or knowledge relevant to the council to attend its meetings as observers and, if it agrees, take part in discussions on particular issues. Non-members cannot vote. This clause does not apply to the finance advisory committee.
- 12.1.6 Where there are one or more vacancies in the membership of the council, the council is not prevented from acting by the requirement that the majority of its members must be elected parents of the school or by any other requirement of membership (except the requirement as to quorum).
- 12.1.7 The council may from time to time determine procedures to facilitate and expedite its business.

12.2 Conflict of interest

- 12.2.1 In accordance with section 37 of the Act, a council member who has a direct or indirect pecuniary interest in a contract or proposed contract with the council must:
- (i) disclose the nature of the interest to the council as soon as the council member becomes aware of the interest;
 - (ii) not take part in deliberations or decisions of the council with respect to that contract;
 - (iii) not vote in relation to the contract; and
 - (iv) be absent from the meeting room when any such discussion or voting is taking place.
- 12.2.2 A disclosure of such an interest, and any associated actions taken to mitigate the disclosed interest, must be recorded in the minutes of the council.

12.2.3 If a council member discloses an interest in a contract or proposed contract:

- (i) the contract is not liable to be avoided by the council on any ground arising from the fiduciary relationship between the council member and the council; and
- (ii) the member is not liable to account for the profits derived from the contract.

13 ELECTION OF COUNCIL MEMBERS

13.1 Eligibility for nomination for election

Subject to 7.5, all people who are parents of the school are eligible to nominate for election as a council member.

13.2 Eligibility to vote

Only parents of the school may vote to elect parent council members.

13.3 Conduct of elections for parent council members

The principal must conduct elections for parent council members by *one* of the following methods, as determined by the council:

- (i) an election at a general meeting of the school community;
- (ii) a postal ballot of the parents of the school.

13.4 Notice of election

13.4.1 The timetable for an election must be determined by the council, in consultation with the principal.

13.4.2 Notice of the date and time for an election must be specified by the principal by the means generally used to communicate with the school community.

13.4.3 The notice must:

- (i) fix the period during which nominations for election as council members must be accepted and outline the process to be followed;
- (ii) fix the date and time of the general meeting for the election (not being less than 14 days from publication of the notice); and

- (iii) in the case of the postal ballot:
 - (a) fix the date by which ballot papers must be available and advise how they may be obtained; and
 - (b) fix the date by which ballot papers must be returned and advise how they must be lodged.

13.4.4 In consultation with the council, the principal must determine the form for nominations and the period during which nominations will be accepted.

13.4.5 A nomination for election as a council member must be:

- (i) in a form approved by the principal; and
- (ii) received by the principal at or before the time the nomination is due.

13.5 Election without ballot

If the number of persons nominated is the same or less than the number of vacancies to be filled by election, the principal may declare that the vacancy or vacancies has or have been filled by the person or persons nominated.

13.6 Contested elections

13.6.1 If the number of persons nominated is greater than the number of vacancies to be filled, the ballot conditions apply.

13.6.2 A contested election must be conducted by secret ballot.

13.7 Scrutineers

The principal must permit such scrutineers, who are independent of the election, to be present at the counting of votes as the principal sees fit. A candidate in the election cannot be a scrutineer.

13.8 Declaration of election

13.8.1 The principal must declare the candidate or candidates elected to fill the vacancy or vacancies:

- (i) at a general meeting of the school community; or
- (ii) in the form generally used to communicate with the school community.

13.8.2 The new council comes into operation at the declaration of the election.

13.9 Further nomination for unfilled positions

After the result of an election has been declared and if the required number of positions of elected parent council member positions has not been filled, parents present at a general meeting may be invited to nominate and be elected by a further ballot to the remaining vacancies.

13.10 Nomination and appointment of council members

13.10.1 As soon as is practicable after the declaration of the results of an election, the principal must call and preside at the first council meeting for the purpose only of:

- (i) receiving the nominations from nominating bodies and determining the direct appointment of members of the community; and
- (ii) electing office holders.

13.10.2 The first meeting of the council must be adjourned to a date decided by the meeting if the purpose of the meeting cannot be achieved.

13.10.3 If upon the resumption of the meeting the appointment of community members or receiving nominations cannot be resolved, the council may proceed to the election of office holders.

14 MINUTES

14.1 Proper minutes of council meetings, the Annual General Meeting and general meetings of the school community must be appropriately kept.

14.2 The minutes must be confirmed at the next respective annual, general or council meeting and signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the subsequent meeting.

14.3 Upon reasonable notice, copies of the minutes of any meetings must be made available for inspection by any council member.

15 SUBCOMMITTEES

15.1 Committees

The council may appoint committees, comprised of council members or both council members and non-council members, which will meet as directed by the council and report to the council at subsequent council meetings. Any committee must consist of at least three people and at least one of those must be a council member.

15.2 Terms of reference

The council must specify terms of reference for its committees.

15.3 Finance Advisory Committee

15.3.1 The council must establish a Finance Advisory Committee to advise the council on budgetary and financial matters, including the preparation of the preliminary budget showing:

- (i) the anticipated income available for the ensuing twelve months (both from normal transactions and from fund-raising activities);
- (ii) the proposed expenditure to be made; and
- (iii) details of any funds held for special purposes.

15.3.2 The membership must be determined by the council and must include

- (i) the treasurer;
- (ii) the principal or nominee.

15.3.3 The Finance Advisory Committee must meet at least once each school term to examine receipts and payments and review the school budget.

16 FINANCE AND ACCOUNTS

16.1 The council must ensure that proper accounts are kept of its financial affairs, and in controlling any account must ensure proper books and accounts are kept of all funds paid to that account, together with details of any dealing involving those funds.

16.2 All accounts must be operated on the basis of the designated finance year, which is a calendar year ending on 31 December.

16.3 All accounts must be kept in accordance with provisions of the Act, regulations, this constitution and administrative instructions.

16.4 The funds of the council must only be expended for school related purposes.

16.5 The council may transfer funds as it thinks fit to:

16.5.1 an affiliated committee;

16.5.2 another existing or proposed Government school.

17 AUDIT

17.1 The Council must make available to the Chief Executive or the Auditor-General any accounts under its control, including all relevant records and papers connected with an account, for inspection or audit at any time.

17.2 The council may arrange for accounts to be audited at such other intervals as the council determines, by a person appointed by the council.

17.3 The audit of any accounts under the control of the council must be in accordance with the provisions of the Act, regulations, this constitution and administrative instructions.

18 REPORTING TO THE SCHOOL COMMUNITY AND THE MINISTER

18.1 The council must report to the school community at least once a year, at the Annual General Meeting called by the chairperson.

18.2 At that meeting:

18.2.1 the chairperson must report on:

- (i) strategic and other plans;
- (ii) the proceedings and operations of the council for the period since the date of the previous Annual General Meeting of the school community;
- (iii) the outcomes of those proceedings in relation to the functions of the council; and

18.2.2 the treasurer must present an up-to-date statement of receipts and expenditure with respect to all accounts controlled by the council, and a copy of the statement of receipts and expenditure of the council for the year ended as at the designated financial year.

- 18.3 Where any statement has been subject to an audit, the audited statement is to be subsequently made available for inspection, at the school, as determined at the meeting.
- 18.4 The council must report to the Minister at least once a year, in accordance with administrative instructions.

19 THE COMMON SEAL

- 19.1 The council must have a common seal. The common seal must be affixed only by resolution of the council and in the presence of two council members, one of whom must be the principal or the chairperson of the council.
- 19.2 The council must keep a record of every use of the seal, including date, purpose and any other relevant information.

20 RECORDS

- 20.1 The council is responsible for the safe and proper storage of its records.
- 20.2 The council must make the records available at any time to the Minister or to any person authorised by the Minister and allow those records to be removed by any such person.

21 AMENDMENT OF THE CONSTITUTION

- 21.1 This constitution may be altered, modified or substituted at the direction of the Minister, in accordance with section 40 of the Act.
- 21.2 This constitution may also be amended, altered, modified or substituted by the council by special resolution and approval in writing by the Minister.
- 21.3 An amendment to the constitution has no effect until submitted to and approved by the Minister.

22 CODE OF PRACTICE

Members of the council must comply with the code of practice approved by the Minister.

23 DISPUTE RESOLUTION

The council must participate in a scheme for the resolution of disputes between the council and the department/principal, as prescribed in administrative instruction.

24 PUBLIC ACCESS TO THE CONSTITUTION & CODE OF PRACTICE

The council must keep available for public inspection a copy of its constitution (as in force from time to time) and the code of practice, at the school, during normal school hours.

25 DISSOLUTION

In accordance with section 43 of the Act, the Minister may dissolve the council.

26 PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

The assets and income of the council must be applied exclusively for school related purposes and no portion may be paid or distributed directly or indirectly to council members in their role as a council member, except for expenses incurred on behalf of the council.