
PROVINCIAL NOTICE

NOTICE 10 OF 2003**PROVINCE OF THE EASTERN CAPE****PROVINCIAL NOTICE****DEPARTMENT OF EDUCATION****SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT NO. 84 OF 1986):
AMENDMENT OF PROVINCIAL NOTICE NO. 32 OF 1999**

The Member of the Executive Council responsible for Education in the Province of the Eastern Cape, acting in terms of section 9(3) of the South African Schools Act, 1996 (Act No. 84 of 1996), hereby amends Regulations Relating to behaviour by learners in public schools which may constitute serious misconduct, the Disciplinary Proceedings to be followed and Provisions of due process safeguarding interests of the learner and any other party involved in disciplinary proceedings, determined by him in Provincial Notice No. 32 and published in the Provincial Gazette Extraordinary of 25 June 1999 by the substitution for the Schedule thereto of the Schedule hereto.

**STONE SIZANI
MEMBER OF THE EXECUTIVE COUNCIL
RESPONSIBLE FOR EDUCATION**

SCHEDULE

GENERAL EXPLANATORY NOTE

[]. Words in bold type in square brackets indicate omissions from existing regulations.

_____ Words underlined with a solid line indicate insertions in existing regulations.

1. *DEFINITIONS*

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

“code” means the code of conduct of a school;

“disciplinary committee” means a disciplinary committee established by the governing body of a school in terms of section 30 (1) (a) of the Act;

“investigator” means the principal or an educator appointed by the principal to collect and present evidence against a learner;

“learner” means any person receiving education or obliged to receive education in terms of the Act;

“representative” means any person representing a learner during a misconduct hearing;

“serious misconduct” means conduct contemplated in regulation 2 which may lead to the suspension of a learner from attending school as a correctional measure, or the expulsion of a learner from a school; and

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

2. ***[REGULATIONS RELATING TO] BEHAVIOUR BY LEARNERS WHICH CONSTITUTE SERIOUS MISCONDUCT***

Serious Misconduct

A learner at a school who –

- (a) has been convicted by a court of a criminal offence;
- (b) used or had in his or her possession intoxicating liquor or drugs during a school activity;
- (c) is guilty of assault, theft, gross insubordination or immoral conduct;
- (d) has been repeatedly absent without leave from school and / or classes;
- (e) intentionally and without just excuse –
 - (i) seriously threatens, disrupts or frustrates teaching or learning in a class;
 - (ii) engages in a conspiracy to disrupt the proper functioning of the school;
 - (iii) insults the dignity of a staff member;
 - (iv) cheats in a test or examination;
 - (v) distributes any test or examination material that may enable another person or himself or herself to gain an unfair advantage;
 - (vi) sexually harasses another person;
 - (vii) is found in possession of or distributes pornographic material;
 - (viii) supplies false information or falsifies documentation to gain an unfair advantage at school;
 - (ix) is in possession of a dangerous weapon or uses it to threaten any person;
 - (x) engages in any act of public indecency;

- (f) endangers the safety and violates the rights of others;
- (g) fight, swears or falsely identifies himself or herself;
- (h) threatens fellow learners or educators;
- (i) uses hate speech, makes himself or herself guilty of racism or applies harmful graffiti;
- (j) vandalises, destroys or defaces school property;
- (k) repeatedly violates school rules or the code of conduct;
- (l) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner; or
- (m) is guilty of offensive or oppressive behaviour,

may be found guilty of serious misconduct.

3. ***DISCIPLINARY PROCEEDINGS TO BE FOLLOWED***

PRELIMINARY INVESTIGATION

- (1) If a learner is accused of serious misconduct the principal may appoint a person as an investigator. The investigator [will] must collect evidence to enable the principal to determine whether there are grounds for a disciplinary hearing. The investigator [will] must submit a written report to the principal. The principal [will] must decide whether the transgression warrants a disciplinary hearing.

DISCIPLINARY HEARING IN A CASE OF SERIOUS MISCONDUCT

- (2) The investigator [will] must draw up a charge setting out all the particulars of the transgression. The charge must be accompanied by a written notice calling on the learner and his or her parents to attend a disciplinary hearing. The date, place and time of the hearing must be stipulated in the notice. This must be determined in consultation with the disciplinary committee. The notice must contain sufficient particulars of the date and nature of the alleged misconduct to enable the learner to identify the incident and to respond to it. At least five school days must be allowed between the handing over of the notice and the hearing. The investigator must also notify all witnesses to be present at the hearing.
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HEARING BY DISCIPLINARY COMMITTEE

- (3) [The governing body will appoint a disciplinary committee. The committee will consist of five members and shall comprise –
- (i) two parent members of the governing body in a secondary school and three parent members of the governing body in a primary school;
 - (ii) one educator member of the governing body;
 - (iii) one learner member of the governing body in a secondary school and the principal of the school concerned.

The committee will be presided over by a chairperson. The chairperson must be a parent member of the governing body. The learner accused of misconduct has the right to appoint two of the aforesaid five members of the disciplinary committee. The learner does not have the right to appoint the chairperson of the disciplinary committee.]

(a) The governing body of the school concerned must appoint a disciplinary committee to conduct the hearing.

(b) The majority of members of the disciplinary committee must be members of the school governing body.

(c) In a secondary school one member of the disciplinary committee must be a learner selected by the accused learner.

(d) The disciplinary committee must be chaired by a member of the school governing body who is not an employee or member of staff of the school concerned.

(e) For the purposes of ensuring a fair hearing and that due process takes place -

- (i) no person who has anything to do with the investigation of the charge of misconduct, including the principal, may serve on the disciplinary committee or be present at the meeting of the school governing body when the report or

recommendations of the disciplinary committee are discussed and a decision is taken on punishment; and

- (ii) no person who is a relative of the accused learner or has a personal interest in the hearing may serve on the disciplinary committee or be present when the school governing body discusses the report of the disciplinary committee.

PROCEDURE AT DISCIPLINARY HEARING

(4) [(1)] (a) The investigator [will] must adduce evidence and arguments in support of the charge. He or she [will] must also put questions to any person who has given evidence in rebuttal of the charge.

[(2)] (b) At a hearing a learner [will] must have the right to be present, to be represented by a representative, to give evidence and –

[(a)] (i) to be heard;

[(b)] (ii) to call witnesses;

[(c)] (iii) to put questions to any person called as a witness in support of a charge; and

[(d)] (iv) to inspect documents submitted in evidence.

[(3)] (c) If a learner or his or her parents fail to attend the proceedings without just cause, the hearing may be conducted in their absence.

[(4)] (d) No person other than the learner, his or her representative, his or her parents and the members of the disciplinary committee [and the investigator] may be present at the hearing.

[(5)] (e) At the conclusion of the hearing the disciplinary committee [will] must submit the record of the hearing to the governing body together with its findings with regard to the learner's guilt or not and where appropriate recommendations as to corrective measure to be imposed, including suspension or suspension with a view to expulsion, and consequent expulsion.

[(6)] (f) The governing body [shall], must after considering the findings and recommendations of the disciplinary committee, impose a penalty of summary suspension if it considers it appropriate, or make recommendations to

the head of Department on the appropriate action to be taken in terms of [regulation] paragraph [3(6)4] (d).

[(7)] (g) A proper record must be kept of the proceedings.

SUSPENSION AS A CORRECTIONAL MEASURE

- (5) Where the governing body imposes a penalty of summary suspension as a correctional measure, it must, within five days, in writing inform the learner and his or her parents of the period of suspension, which period [shall] must not exceed five school days. In the case of a hotel inmate, the suspended learner [shall] must vacate the hostel premises during the period of suspension. The disciplinary committee [shall in writing] must advise the district manager of the suspension in writing.

SUSPENSION WITH A VIEW TO EXPULSION

- (6) [(1)] (a) Where the governing body suspends a learner with a view to expulsion by the head of Department, it must in writing inform the learner and his or her parents –

[(a)] (i) of the suspension from attending school;

[(b)] (ii) of the reason for the suspension and that the matter has been referred to the head of Department with a recommendation that the learner be expelled;

[(c)] (iii) that the suspension takes immediate effect and will last until the head of Department has decided whether or not to expel the learner; and

[(d)] (iv) that they have the right to make written representations to the head of Department concerning the findings of the disciplinary committee.

[(2)] (b) Upon suspension with a view to expulsion learners who are boarders in a hostel must be removed by their parents.

[(3)] (c) The principal must within three school days submit to the head of Department, via the district office, a report which must include the following:

[(a)] (i) The full particulars of the learner;

[(b)] (ii) The record of the proceedings;

- {(c)} (iii) The learner's past disciplinary record;
- {(d)} (iv) A copy of the school's rules and disciplinary code;
- {(e)} (v) Proof that the disciplinary committee complied with the provisions of [sub] paragraph [3.6 (1)] (4); and
- {(f)} (vi) Reasons why expulsion is the appropriate punishment in the circumstances.

{(4)} (d) After considering the report in [regulation 3.6 (3)] sub-paragraph (e) and any other representations made by the learner, his or her representative, or his or her parents, the head of Department must -

- (a) *approve the recommendation of expulsion made in terms of [regulation 3.6 (1) (b)] sub-paragraph (a) (i); or*
- (b) *find that the transgression of the learner does not warrant expulsion and if deemed appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such transgression; or*
- (c) *find the learner not guilty and acquit him or her,*

and notify the governing body, the learner, his or her representative and his or her parents accordingly.

{(5)} (e) A learner, or his or her parents, who wishes to appeal must submit a notice to this effect to the principal of the school. The principal must in turn submit a notice to this effect to the principal of the school. The principal must in turn submit it to the head of Department who must submit it to the MEC. The parents must submit the notice to the principal within five school days after being notified of the decision of the head of Department. The principal must submit the notice to the head of Department within two school days after receipt thereof from the parents of the learner concerned. The head of Department must submit the notice to the MEC within the five school days after receipt thereof from the principal. The notice must be accompanied by the record of the disciplinary proceedings.

{(6)} (f) The lodging of an appeal [will] must suspend the penalty imposed by the head of Department until the MEC has decided the appeal. This will mean that the learner will be allowed back at the school pending the appeal.

[(7)] (g) The MEC may convene an appeal hearing within ten school days of receipt of the notice of appeal. The learner and his or her parent [and the investigator] are entitled to address the MEC at the appeal hearing.

[(8)] (h) After considering the appeal the MEC must –

- (a) dismiss the appeal and confirm the expulsion; or
- (b) find that the transgression of the learner does not warrant expulsion and if deemed appropriate impose or recommend the imposition of a lesser punishment permitted by the code for such transgression; or
- (c) find the learner not guilty and acquit him or her.

[(9)] The decision of the MEC is final.

DUE PROCESS

4. (1) The procedure to be followed at the hearing {will} must be in accordance with the provisions set out in this paragraph. The procedure may be adapted to suit the needs of a particular school. The essential safeguards in order to ensure due process must, however, be complied with.

(2) The Chairperson [shall] must upon the commencement of the disciplinary hearing –

- (a) welcome everybody to the meeting;
- (b) explain the reason for meeting;
- (c) ask the investigator to read the charge;
- (d) ask the learner to react to the charge (plead);
- (e) if the learner pleads guilty –

[(1)] (i) ensure that the learner knows what he or she pleads guilty to and that it is not a stratagem just to get the matter over and done with;

- [(2)] (ii) ask the learner, and the his or her representative or his or her parents whether they wish to say something before a penalty is imposed;
- [(3)] (iii) ask the learner, his or her representative, his or her parents and any other parties, except the members of the disciplinary committee, to leave the room while the committee decides on a suitable punishment;
- [(4)] (iv) decide on an appropriate sentence, keeping in mind the object of correcting the behaviour and what the learner and parents said in [2 above] (ii). This will ensure that the committee applies its mind to the matter.
- [(5)] (v) call the excused parties in and inform them of the punishment;
- [(6)] (iv) remind the parents and learner of his or her right to appeal and the procedure therefore. If the punishment is suspension they must be informed that they can appeal to the head of Department.

(f) If the learner pleads not guilty –

- [(1)] (i) the chairperson requests the investigation to submit evidence – calling of complainant and/or witnesses;
- [(2)] (ii) after each witness has stated his or her case the learner or his or her parent must be given the opportunity to put questions to the witness. The purpose is to give him or her the opportunity to refute the evidence. This is not cross-questioning. Chairperson and committee members may also ask questions to get clarification on uncertainties;
- [(3)] (iii) ask the learner if he or she wishes to say something – this is an opportunity to state his or her case;
- [(4)] (iv) the investigator can ask questions;
- [(5)] (v) the chairperson and committee members may also ask questions to clarify uncertainties;

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- [(6)] (vi) excuse the parents, learner and his or her representative while the committee reviews the evidence and decides on a verdict;
- [(7)] (vii) call parents and learner in and inform them about the committee's decision;
- [(8)] (viii) if the committee finds the learner guilty, ask him or her or his or her representative or the parents whether they wish to say something before a decision is made on appropriate punishment;
- [(9)] (ix) decide on an appropriate sentence, keeping in mind the object of correcting the behaviour and what the learner and parents said in [8 above] (viii) . This will indicate that the committee applied its mind to the matter;
- [(10)] (x) call the learner, his or her representative and his or her parents and inform them of the punishment;
- [(11)] (xi) remind the parents and learner of [his or her] the learner's right to appeal and if the punishment is suspension that they can appeal to the head of Department.
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