

**GN 315 of 5 July 2012: Regulations relating to the Disciplinary Proceedings Dealing with Misconduct of Learners
(Provincial Gazette No. 7014)**

(Editorial Note: Foreword as per original *Provincial Gazette*.)

REGULATIONS

I, Raymond Boikanyo Elisha, the Member of the Executive Council for Education in the North West Province has in terms of section 9 (3) of the South African Schools Act, 1996 (Act No. 84 of 1996) promulgated the regulations as set out in the Schedule.

(Signed)

Raymond Boikanyo Elisha
MEC for Education, North West Province

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1. Definitions.-(1) Subject to sub-regulation (2) and unless the context indicates otherwise, a word which is defined in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996), and the North West Schools Education Act, 1998 (Act No. 3 of 1998), respectively, shall have the same meaning in these Regulations.

(2) In these Regulations, unless the context indicates otherwise-

"any law" includes these Regulations;

"Bill of Rights" means the Bill of Rights as contained in the Constitution of South Africa Act No. 108 of 1996;

"code" means the code of conduct of a school;

"disciplinary committee" means a disciplinary committee appointed in terms of regulation 6;

"Head of Department" means the head of the department responsible for education and training in the North West Province;

"learner" means a person subject to the discipline of a school as contemplated by regulation 2 (2);

"responsible Member" means the Member of the Executive Council responsible for education and training in the North West Province;

"parent" means a parent as defined in section 1 of the South African Schools Act 1996;

"prosecutor" means the Principal or any person appointed in writing by him or her to present the case against a learner;

"serious misconduct" means the misconduct set out in Schedule 1 and in respect of which a punishment of suspension or expulsion may be imposed if found guilty.

2. Application.-(1) These Regulations and any code made in terms thereof apply to a person who was at the time of the misconduct alleged against him or her subject to the discipline of a public school.

(2) A person is subject to the discipline of a school if he or she is registered as a learner at that school.

3. Code of Conduct.-(1) Subject to any applicable law, a governing body of a school shall draw and adopt a code for that school after consultation with the learners, parents and educators of the school.

(2) A code shall conform to the following principles-

- (a) the code shall not be in conflict with but protect the rights of learners as enshrined in the Bill of Rights, the South African Schools Act, 1996, the North West Schools Education Act, 1998, and any applicable law;
- (b) any learner accused of contravening the code-
 - (i) shall be presumed innocent until proven guilty;
 - (ii) shall be given a fair hearing on the charges alleged against him or her;
- (c) the code must specify which punishment may be imposed in respect of the different categories of misconduct if a learner is found guilty: Provided that corporal punishment shall be prohibited;
- (d) the code must identify who may adjudicate over charges of misconduct falling into each category;
- (e) notwithstanding paragraph (c) above, the code shall include prevention, pro-active advice, counselling and corrective measures.

(3) Subject to the provisions of any applicable law, discipline at a school shall be regulated in terms of the code of the school.

4. Suspension of learner pending criminal proceedings.-(1) The Principal may recommend to the Head of Department that a learner who has been charged with a criminal offence arising out of a misconduct specified in Schedule 1, be suspended from his or her school until the criminal proceedings against him or her have been finalised: Provided that internal misconduct proceedings against the learner be commenced with as soon as possible.

(2) In exercising his or her discretion under sub-regulation (1), the Head of Department must have regard to the following factors-

- (a) the right of the suspended learner to education;
- (b) the need to protect the safety of learners and educators at the school;
- (c) the need to protect the property of the school;
- (d) the potential duration of such criminal proceedings;
- (e) the seriousness of the offence; and
- (f) the need to maintain general learner discipline at the school.

(3) The acquittal or the conviction of a learner by a Court of Law on a charge of any offence arising out of misconduct, shall not preclude the taking of disciplinary steps against the learner in terms of these Regulations and the code of conduct, even if the facts set out in the charge of misconduct, should they be proven, would constitute the offence set out in the charge on which the learner was so acquitted or convicted or any other offence on which the learner could have been convicted in the trial on the former charge.

5. Institution of disciplinary proceedings.-In respect of serious misconduct, only the Principal may institute disciplinary action against a learner if after an investigation, there is *prima facie* evidence of a contravention of the code.

6. Disciplinary committee for serious misconduct.-(1) Upon the advice of the Principal that he or she has instituted disciplinary action against a learner in terms of regulation 5, the governing body must appoint an *ad hoc* Disciplinary Committee if no Permanent Disciplinary Committee exists at the school to hear the allegation of serious misconduct.

(2) Subject to sub-regulation (3), the Disciplinary Committee appointed by the governing body must be comprised of a minimum of three persons who are members of the governing body and at least one person who is eligible to be elected as a member of the governing body.

(3) The appointment of persons to a Disciplinary Committee is subject, but not limited, to the following conditions-

- (a) the Chairperson of the Disciplinary Committee must be a member of the governing body;
- (b) the remaining members of the Disciplinary Committee shall not be the Principal or a learner at the school; and
- (c) no person shall be appointed to the Disciplinary Committee if he or she has personal knowledge of any matter that may be in dispute at the hearing.

7. Procedure of hearing before a Disciplinary Committee for serious misconduct.-(1) A learner charged with serious misconduct shall be entitled to a fair hearing before the Disciplinary Committee.

(2) A learner charged with serious misconduct must be given not less than five (5) school days' written notice of the hearing into his or her alleged misconduct.

(3) The notice contemplated by sub-regulation (2) must-

- (a) contain sufficient details relating to the date, place and nature of the alleged misconduct to enable the learner to respond thereto;
- (b) inform the learner of the place and time of the hearing; and
- (c) inform the learner of his or her rights in terms of these Regulations.

(4) The governing body shall give the notice contemplated in sub-regulation (2) to the learner and deliver a copy thereof to the learner's parents or legal guardian and such notice shall be signed to acknowledge receipt thereof.

(5) If the learner is younger than 18 years, he or she shall be accompanied by one of his or her parents or legal guardian at the hearing.

(6) The Disciplinary Committee shall inform the learner of his/her right to represent himself or herself or be represented by his or her parents or legal guardian, or by a legal representative.

(7) At the beginning of the hearing the Chairperson of the Disciplinary Committee must inquire whether a member of the Disciplinary Committee, the learner, his or her parent, legal guardian or representative, requires the services of an interpreter.

(8) Before any witness commences to testify at the hearing, the Chairperson of the Disciplinary Committee must inquire whether the services of an interpreter will be required by the witness.

(9) If a member of the Disciplinary Committee, the learner, his or her parent or representative, or a witness requires an interpreter, the Disciplinary Committee may not proceed with the hearing until an interpreter competent in the relevant languages has been made available, provided that it shall not be necessary to make available a formally qualified interpreter.

(10) The Prosecutor must commence proceedings at the hearing by setting out the charge to the learner.

(11) The Chairperson of the Disciplinary Committee must ask the learner whether he or she admits or denies the charges as set out, and in case of a failure by the learner to respond, such failure shall be deemed as a denial of the charge.

(12) If the learner admits to the charge, the following procedure must be followed:

The Disciplinary Committee must question the learner with reference to the alleged facts constituting misconduct as outlined by the Prosecutor in order to satisfy itself that the learner is indeed guilty of the charge.

(13) If the learner denies the charge-

- (a) the Prosecutor may call witnesses, who will be required to take an oath or affirmation, and may present any other or additional evidence in respect of the allegations against the learner;
- (b) the learner, or his or her representative, may question any witness and examine any evidence presented by the Prosecutor;
- (c) after all the evidence has been led against the learner, the learner or his or her representative may call witnesses or present other evidence in support of his or her denial of the charge;
- (d) the Prosecutor may question any witness and examine any evidence presented by the learner;
- (e) the Disciplinary Committee may question any witness or examine any evidence at any time;
- (f) after all the evidence has been presented, the Prosecutor and then the learner or his or her representative may address the Disciplinary Committee if they so wish; and
- (g) the Disciplinary Committee must thereafter adjourn the hearing, and during which adjournment the Disciplinary Committee must decide whether the learner has been proven guilty or not guilty of the

charge: Provided that the adjournment shall not be for more than two school days.

(14) If the learner is found not guilty of the charge, the Disciplinary Committee must, if the learner so requests, publish its findings in the school in accordance with the learner's request.

(15) If the learner has been found guilty of the charge, the Prosecutor and the learner or his or her representative may present evidence and argument including, but not limited to, the learner's personal circumstances, general record of past conduct at the school, the nature and seriousness of the misconduct in question and the interests of the school community in mitigation or aggravation of the penalty that the Disciplinary Committee is empowered to impose in terms of the code and these Regulations.

(16) The learner or his or her representative shall be informed in writing of the decision and recommended penalty by the Disciplinary Committee.

(17) Notwithstanding anything to the contrary in this regulation, the Chairperson may direct on good cause shown that-

- (a) the proceedings and the finding of the Disciplinary Committee be held and remain in camera;
- (b) a learner who is required to testify, do so through an intermediary.

(18) If the Disciplinary Committee decides that the learner should be expelled from the school, it may in consultation with the Head of Department suspend the learner from the school pending the decision of the Head of Department on whether the learner is to be expelled or not.

8. Further provisions on suspension or expulsion as a correctional measure.-(1) If the Disciplinary Committee imposes on a learner a penalty of suspension as a correctional measure, it must, in writing inform the learner or his or her representative as well as the Principal of the period of suspension, which may not exceed one week.

(2) Where a Disciplinary Committee in terms of regulation 7 (18) suspends a learner from attending school with a view to expulsion by the Head of Department, the Disciplinary Committee shall in writing-

- (a) inform the learner, his or her parents and his or her representative-
 - (i) of the suspension of the learner from attending school and the reason therefore;
 - (ii) that the matter has been referred to the Head of Department with a recommendation that the learner be expelled;
 - (iii) that the suspension will take immediate effect and will last until the Head of Department has decided whether or not to expel the learner;
 - (iv) that if the learner is a boarder in a school hostel, he or she must be removed by his or her parent or legal guardian.

(3) After considering the evidence presented, findings, recommendations and reasons of the Disciplinary Committee and any representations made by the learner or his or her representative, the Head of Department shall, within five (5) days of being informed of the decision of the Disciplinary Committee-

- (a) expel the learner as recommended; or
- (b) impose on the learner a lesser punishment permitted by the code of the school and these Regulations.

(4) If an expelled learner is in Grade 12 and the misconduct of which such learner was found guilty was committed during the third or fourth quarter of the year, the Head of Department may order that such learner be permitted to write his or her examinations on such conditions as shall be determined by the Head of Department in consultation with the Principal: Provided that the learner so found guilty shall not pose a danger to any sector of the schooling community.

(5) If the Head of Department expels a learner, he or she must notify the learner and his or her parents in writing of his or her decision and of their right to appeal against his or her decision to the responsible Member.

(6) If the Head of Department expels a learner who is of compulsory school age, he or she-

- (a) must make an alternative arrangement for such learner's placement at another public school;
- (b) in addition to paragraph (a) above, may require that the learner attend counselling; and
- (c) must procure regular progress reports in respect of any counselling.

(7) If the Head of Department expels a learner who is not of compulsory school age, he or she may order that the learner not be re-admitted to another school within the Province.

9. Appeal against decision of Head of Department to expel a learner.-(1) A learner, his or her parent or

representative may appeal to the responsible Member against-

- (a) any finding of guilt by the Disciplinary Committee in respect of which a penalty of expulsion is recommended;
- (b) a penalty of expulsion endorsed by the Head of Department; and
- (c) any decision made by the head of Department in terms of regulation 8 (3) (b).

(2) A learner, his or her parent, legal guardian or legal representative who wishes to appeal in terms of sub-regulation (1) must, within five (5) days of being notified in terms of regulation 8 (5) of the decision, deliver a Notice of Appeal together with the grounds for the appeal to the responsible Member.

(3) Unless the responsible Member on good cause orders otherwise, the lodging of an appeal shall not have the effect of suspending the penalty imposed by the Head of Department.

(4) Within five (5) days of receiving the Notice of Appeal, the responsible Member must inform the Head of Department, the Prosecutor and the Disciplinary Committee of the lodging of an appeal and provide them with a copy of the Notice of Appeal and grounds for appeal.

(5) Within five (5) days of receipt of the Notice of Appeal from the responsible Member, the Disciplinary Committee shall respond in writing to the Notice of Appeal and state the reasons why the appeal should be dismissed.

(6) After having considered the grounds for appeal contemplated in sub-regulation (2) and the response by the Disciplinary Committee, the responsible Member may-

- (a) dismiss the appeal and confirm both the Disciplinary Committee's findings and the Head of Department's decision; or
- (b) uphold the appeal wholly or in part and set aside or vary the finding and the decision, or substitute for the decision such other decision as the Head of Department, in the opinion of the responsible Member, ought to have taken.

(7) The responsible Member shall cause the learner or his or her representative, the Disciplinary Committee and the Head of Department to be informed in writing of the decision of the appeal.

10. Contravention of hostel rules.-Any contravention of hostel rules is, for the purposes of the application of these Regulations, also regarded as a contravention of school rules.

11. Repeal of Existing Regulation.-(1) The Regulations published under Official Notice No. 5 of 2000 in the *Provincial Gazette* of 7 March 2000 are hereby repealed.

(2) Any misconduct proceedings already instituted, shall be concluded in terms of the repealed Regulation.

Schedule 1

A learner will be guilty of serious misconduct if he or she-

- (a) is found guilty of misconduct not expressly contemplated in this Schedule, but as contemplated in a code of conduct after having been found guilty of the same or similar misconduct on two previous occasions within the preceding 12 months;
- (b) fails to comply with a punishment as a correctional measure;
- (c) forges any document or signature to the potential or actual prejudice of the school;
- (d) trades in any test or examination question paper or in any test or examination material or distributes any test or examination question paper without prior permission from the Principal;
- (e) attempts to bribe or bribes any person in respect of any test or examination to enable himself or herself or another person to gain an unfair advantage therein;
- (f) cheats in a test or examination;
- (g) engages in fraud;
- (h) engages in theft, or otherwise acts dishonestly to the prejudice of another person;
- (i) is in possession of, consumes or deals in any illegal or intoxicating substance;
- (j) is in possession of any dangerous weapon;
- (k) assaults another person with the intent to cause grievous bodily harm;

- (l) holds any person hostage;
 - (m) commits murder;
 - (n) commits rape or sexual harassment;
 - (o) maliciously damages another person's property;
 - (p) disrupts or incites the disruption of the proper functioning of the school through unlawful collective action;
 - (q) practices discrimination on the basis of race;
 - (r) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.
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