



# GUIDELINES

## RELATING TO DISCIPLINARY PROCEDURES, SUSPENSION AND EXPULSION OF LEARNERS AT PUBLIC SCHOOLS



**basic education**  
Department:  
Basic Education  
REPUBLIC OF SOUTH AFRICA



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## SECTION A: DEFINITIONS AND CONTEXT

### 1. Definitions

<b>Constitution</b>	The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); [Definition of “Constitution” substituted by s. 1 (b) of Act No. 100 of 1997.];
<b>Council of Education Ministers</b>	The Council of Education Ministers established by the National Education Policy Act, 1996 (Act No. 27 of 1996);
<b>Dangerous object</b>	(a) any explosive material or device; (b) any firearm or gas weapon; (c) any article, object or instrument that may be employed to cause bodily harm to a person or damage to property, or to render a person temporarily paralysed or unconscious; or (d) any object that the Minister may, by notice in the Gazette, declare to be a dangerous object for the purpose of this Act;
<b>Education department</b>	the department established by section 7 (2) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), which is responsible for education in a province;
<b>Educator</b>	any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school;
<b>Governing body</b>	a governing body contemplated in section 16 (1) of SASA;
<b>Grade</b>	that part of an educational programme which a learner may complete in one school year, or any other education programme which the Member of the Executive Council may deem to be equivalent thereto;
<b>Head of Department</b>	the head of an education department;

<b>Drug</b>	<p>(a) any intoxicating or stupefying substance that has a psychological or physiological effect;</p> <p>(b) substance that has the effect contemplated in paragraph (a) and that is possessed contrary to the code of conduct of a school or contrary to the laws of the Republic;</p> <p>(c) substance, the possession or use of which, or the dealing in which, is prohibited without a medical prescription or legal authorisation; or</p> <p>(d) performance-enhancing drug, prohibited performance-enhancing substance, dependence-producing substance, dangerous dependence-producing substance, undesirable dependence-producing substance, unlawful substance, prohibited substance, illicit substance, illicit drug, or scheduled substance, contemplated in any South African legislation that deals with the control of medicines and related substances, with drug trafficking, substance abuse in general, and with substance abuse in sport and in any programmes or policies aimed at curtailing social and sport-related substance abuse, and in any international instruments that deal with such matters and to which South Africa subscribes or is a party.</p>
<b>Member of the Executive Council</b>	the Member of the Executive Council of a province who is responsible for education in that province;
<b>Minister</b>	the Minister of Basic Education;
<b>Parent</b>	<p>(a) the biological or adoptive parent or legal guardian of a learner;</p> <p>(b) the person legally entitled to custody of a learner; or</p> <p>(c) the person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) and (b) towards the learner's education at school;</p>
<b>Principal</b>	an educator appointed or acting as the head of a school;
<b>Province</b>	a province established by section 124 of the Constitution;
<b>Public school</b>	a school contemplated in Chapter 3 of SASA;
<b>School</b>	a public school or an independent school which enrolls learners in one or more grades from grade R (Reception) to grade twelve; and
<b>School activity</b>	any official educational, cultural, recreational or social activity of the school within or outside the school premises

## 2. The purpose of the Guideline

The purpose of this Guideline is to assist public schools when dealing with learner disciplinary procedures and Provinces when developing legislation on learner disciplinary procedures.

The DBE recognises that there can be legitimate variations between Provinces regarding the governance of school discipline. This Guideline will assist Provinces in ensuring that their school discipline legislation and policies meet the minimum requirements of procedural fairness and are consistent with the Constitution and other applicable laws.

## 3. Background

Disciplinary proceedings in schools are governed by sections 8 and 9 of the South African Schools Act no. 84 of 1996 ('SASA'), read together with other national and provincial laws. Disciplinary proceedings are to be held in order to determine whether a learner has committed serious misconduct and, if so, what corrective measures should be put in place. These proceedings must follow the requirements of due process: they must be substantively and procedurally fair. The disciplinary proceedings referred to in this subsection must be age-appropriate, conducted in the best interests of the learner, must adhere to the principles of natural justice, fairness and reasonableness prescribed by the Constitution.

If a learner is found guilty of serious misconduct, the school governing body may suspend the learner for a maximum of seven school days, impose an alternative sanction contemplated in the school code of conduct, or recommend to the Head of Department ('HOD') that the learner should be expelled from the school.

In recent years, the Department of Basic Education (DBE) has received an unacceptably high number of complaints relating to unlawful or irregular disciplinary proceedings at public schools across all provinces where learners are unfairly excluded from school either by way of suspension or expulsion. Suspension and expulsion directly impacts on a learner's right to basic education as enshrined in terms of section 29(1) of the Constitution, 1996 (Constitution). School exclusion for learners can be detrimental to their life prospects. Indeed, research shows that learners who have been expelled or suspended are more likely to come into contact with the criminal justice system. Such extreme forms of sanction must be approached with considerable caution.

The rights of an individual learner should be balanced against the interests of the wider school community and there will be circumstances where infractions of the school code of conduct warrant the most severe sanctions. However, procedural rules exist precisely to ensure that this balance is struck. Further, it is important to note that behavioral issues in schools exist on a spectrum. Incidents, amongst others, range from flouting the school uniform policy, being late for class, violence, assault, rape and murder. Where the seriousness of the incident sits towards the lower end of the spectrum, schools sometimes fail to follow proper disciplinary procedures, thereby disrupting learners' education and excluding them from attending school.

Where suspension or expulsion is the appropriate sanction, it is vital that learners continue receiving access to education. The sanction does not suspend a learner's right to education under section 29 of the Constitution, but merely their right to be physically present at a particular school for a defined period. When a learner is suspended, schools must provide learners with access to education through worksheets and assessments and may provide them with a catch-up plan upon their return to school, if required. The parent and the school should find the best way for the learners to receive such assistance.

## **4. Key role-players and stakeholders**

### **4.1 Disciplinary procedures in schools involve the following role-players:**

- Provincial Education Departments
- Education Districts
- Governing Bodies
- School Management Teams
- Representative Council of Learners
- Parents
- Learners

### **4.2 Further details are set out below in Section B.**

## **5. Legislative framework**

The applicable laws and policies governing disciplinary proceedings in schools are as follows:

### **5.1 The Constitution of South Africa, 1996**

Section 28(2) of the Constitution stipulates that “a child's best interests are of paramount importance in every matter concerning the child”. This means that, in disciplinary proceedings, the learner's interests must be prioritised, including the interests of both the alleged accused learner and any potential victim.

Section 29 of the Constitution gives everyone the right to basic education. As confirmed in the Constitutional Court case of *Pridwin*, this right includes aspects of procedural fairness. Disciplinary proceedings should be conducted in a way that is consistent with the right to basic education. The proceedings must be procedurally fair, and any corrective measures imposed should not disproportionately interfere with a learner's schooling. The procedural fairness aspect of the right to basic education is also buttressed by section 33 of the Constitution, which gives everyone the right to administrative action that is lawful, reasonable and procedurally fair.

### **5.2 South African Schools Act, 1996 (Act 84 of 1996) ('SASA').**

Disciplinary proceedings in schools are governed primarily by sections 8 and 9 of SASA. We refer to the relevant provisions in SASA throughout this document. Broadly speaking, SASA determines who may impose sanctions such as suspension and expulsion; the process that must be followed; and the timeframes.

SASA also emphasises the need for due process in disciplinary proceedings and support measures for the learners involved.

Under section 9(3) of SASA, the Member of the Executive Council ('MEC') must determine by notice in the Provincial Gazette: the behaviour by a learner at a public school which may constitute serious misconduct; disciplinary proceedings to be followed in such cases; and provisions of due process safeguarding the interests of the learner and any other party involved in disciplinary proceedings.

### **5.3 National Education Policy Act, 1996 (Act 24 of 1996) ('NEPA').**

Under section 3(4)(n) of the NEPA, the Minister for Basic Education may determine national policy for control and discipline of learners at education institutions, provided that no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any education institution.

### **5.4 Provincial regulations on discipline in schools**

In accordance with section 9(3) of SASA, most provinces have published school discipline regulations.

Other relevant laws and policies include:

- Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (Act 4 of 2000).
- Policy on Screening, Identification, Assessment and Support, 2014 ('SIAS').
- Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners, published in Government Gazette No. 18900 dated 15 May 1998.
- Devices to be Used for Drug Testing and the Procedure to be Followed, published in Government Gazette No. 31417 dated 19 September 2008.
- National School Safety Framework.
- Regulations for Safety Measures at Public Schools, published in Government Gazette No. 22754 dated 12 October 2001 and as amended by Government Gazette No. 29376 dated 10 November 2006.

## SECTION B: ROLES AND RESPONSIBILITIES OF KEY ROLE PLAYERS

## 1. Provincial Education Departments ('PEDs')

- PEDs are responsible for the promulgation of provincial school discipline legislation. The PED legislation should be lawful and in line with existing laws and policies, including SASA and the Constitution. They must also be consistent with principles of due process.
- PEDs should review school discipline legislation periodically to ensure that they are achieving their intended purpose. The review should take place once every three years, or whenever necessary (for example, when new national legislation relating to school discipline is passed).
- PEDs should also ensure that their school discipline legislation are implemented across all public schools in the province.
- PEDs should ensure that schools' codes of conduct are in line with existing laws and policies and that they are implemented in a manner that upholds learners' rights, including the right to basic education.
- PEDs are responsible for developing the content of provincial school discipline frameworks and for training the relevant district officials. PEDs are ultimately responsible for ensuring quality training at district and school level.
- Importantly, the Head of Department ('HOD' MEC) is also a key role-player in the disciplinary process, given that the Head of Department has final decision-making authority in relation to learner expulsions. The Head of Department must ensure that decisions are made within the 14-day timeframe prescribed in SASA.
- It is imperative that the Head of Department ensures continued access to education of learners pending the outcome of a recommendation for expulsion or an appeal.
- Appeals against the Head of Department's decision to expel a learner resides with the Member of the Executive Council.

## 2. Education Districts

- Districts are responsible for conducting training of governing bodies ('governing bodies). This includes the training of new governing bodies and continued training of existing governing bodies.
- Districts are often the first point of call for parents and caregivers when lodging complaints about irregular and unlawful disciplinary procedures in schools and should investigate complaints and take appropriate measures where necessary action.

### 3. Governing Bodies

- Governing bodies are responsible for adopting a code of conduct, after consultation with all stakeholders including learners, parents, educators, and the representative council of learners.
- School codes of conduct must be regularly reviewed to ensure fairness and consistency with national and provincial laws and policies. In particular, definitions of misconduct and serious misconduct must be reasonable and fair and must not create risks of disproportionate sanction.
- The code of conduct must be aimed at establishing a disciplined and purposeful school environment dedicated to the improvement and maintenance of quality learning outcomes.<sup>8</sup> The code of conduct must promote proper and good behaviour and set standards for positive discipline.
- Governing bodies must ensure that parents are informed of the school's code of conduct.
- Governing bodies may institute disciplinary proceedings against a learner who is in contravention of the code of conduct and must do so in a lawful manner.
- Governing bodies must safeguard learners' rights and interests during the disciplinary process.

The responsibility for imposing suspension lies with the governing body. Only the governing body is empowered to suspend a learner as a precautionary measure or as a sanction after a disciplinary hearing. Only the governing body is empowered to recommend expulsion to the Head of Department.

#### 4. School Management Team

- The School Management Team is responsible for ensuring that all parents (especially new parents) are aware of the school's code of conduct and understand its purpose.
- School principals are often first responders when incidents occur at school and must implement the school's code of conduct in a lawful manner, safeguarding the rights and interests of all learners involved.
- The School Management Team is the link between disciplinary committees and learners and must ensure that due process is followed at all times and that learners and parents are informed of their rights and responsibilities.

School principals must assist the governing body in handling disciplinary matters pertaining to learners by causing an investigation to be carried out; determine grounds for the hearing and report the misconduct to the GB Head of Department governing body.

# SECTION C: PRELIMINARY POINTS REGARDING PROCEDURAL AND SUBSTANTIVE FAIRNESS

This section sets out some preliminary points regarding procedural and substantive fairness. This includes definitions of serious misconduct; the concepts of suspension and expulsion and their parameters; the importance of positive discipline; and the need for schools to keep record of the disciplinary measures they have implemented, for monitoring and accountability purposes.

## 1. Definitions of serious misconduct

1.1 Serious misconduct can lead to sanctions of suspension or expulsion.

1.2 Any sexual contact between an adult and a minor, regardless of consent.

1.3 Definitions of serious misconduct should not include vague and highly subjective descriptions, such as 'conducting oneself in an improper or unbecoming manner' or behaving 'offensively'.

### 1.4 Definitions of serious misconduct may include:

- Cheating in examinations;
- Insulting the dignity of or defaming any learner or any other person connected with the school. This includes racist, sexist, ableist, homophobic, and transphobic speech and any other speech denigrating a person on the basis of a protected characteristic. It also includes speech via social media;
- Harassment or bullying of any learner or any other person connected with the school, including via social media;
- Seriously threatening, disrupting, hindering or frustrating teaching or learning in a class, intentionally and without just cause;
- Engaging in a conspiracy to disrupt the proper functioning of the school through collective action, intentionally and without just cause;
- Acts of violence, including the assault or murder of any person.

## 2. Definitions of suspension and expulsion

2.1 Suspension is a disciplinary measure involving the temporary removal of a learner from classes or school-approved activities for a specified period of time.

2.2 Suspension can be a precautionary measure (imposed prior to disciplinary proceedings) or a corrective measure (imposed following a finding of serious misconduct at a disciplinary hearing).

2.3 Suspension, whether as a precautionary measure or a corrective measure, is not the suspension of the right to basic education itself. A learner must be given continued access to education (for example, in the form of worksheets) during the period of suspension.

2.4 Expulsion is the permanent removal of a learner from their usual education setting due to serious misconduct (as specified in the school code of conduct).

2.5 Again, expulsion from a particular school or education setting does not terminate a learner's right to basic education. Hence, the Head of Department should find a school place for all expelled learners and must do so in the case of an expelled learner who is of compulsory school-going age.

### **3. Positive discipline**

3.1 When dealing with cases of serious misconduct, all role-players must consider the importance of promoting:

- A school environment which is dedicated to the improvement and maintenance of a quality teaching and learning process.
- The principle and values of the Constitution in particular the Bill of Rights.
- Positive forms of discipline in schools.
- A balance between maintaining discipline in schools and ensuring that learners' rights to dignity and integrity are upheld.
- Restorative justice rather than retributory or punitive measures.
- The effectiveness of disciplinary measures.

### **4. Keeping a record of disciplinary measures implemented at each school**

1.1 Schools must keep records of the disciplinary cases and measures implemented and ensure that schools and PEDs keep track of the rate of expulsion or other disciplinary measures.

1.2 The governing body must report all the decisions to suspend and the nature of the suspension of the learners to the District Director Head of Department who shall keep a register of all such suspensions.

1.3 If a school has an unusually high rate of disciplinary cases or a prevalent type of disciplinary sanction, an investigation should be conducted by the PED who must implement intervention strategies to assist schools, where necessary.

# SECTION D: STAGES OF A FAIR AND LAWFUL DISCIPLINARY PROCEDURE

## 1. Preliminary investigations

1.1 When a learner is accused of serious misconduct, a preliminary investigation must be conducted before a learner is formally charged and disciplinary action is taken.

1.2 The purpose of a preliminary investigation is to determine whether the allegation has merit and sufficient evidence exists to proceed with the hearing.

1.3 The preliminary investigation may require a search to be conducted. A search can only be conducted when there is a fair and reasonable suspicion is established. Searches must be carried out in a fair and respectful manner in accordance with section 8A of SASA.

1.4 The preliminary investigations must take into account the principles of procedural fairness.

1.5 Principles of procedural fairness and rules of natural justice require that the school principal must not be the prosecutor and judge.

1.6 In order to ensure procedural fairness, and where it is necessary to do so, the school principal may delegate the preliminary investigation of the alleged serious misconduct to the deputy principal. Alternatively, the school principal may, where it is necessary to do so and with the approval of the governing body, appoint an independent investigator to gather evidence and prepare a written report. The choice of whether or not to appoint an independent investigator should be based on a collective agreement between the school principal, the learner concerned and their parent or representative. On the basis of the investigator's report, the governing body may decide whether a disciplinary hearing is warranted.

## 2. Precautionary suspensions

2.1 (a) The governing body may, on reasonable grounds and as a precautionary measure, suspend a learner who is suspected of the following type of serious misconduct from attending school, but may only enforce such suspension after the learner has been granted a reasonable opportunity to make representations to it in relation to such suspension:

- physical assault of a learner, employee, or other person related to the school, with the intention to cause grievous bodily harm, or the imminent threat to commit such an act, while on school premises or during any school activity, or in any circumstance that could reasonably be connected to the school;
- any form of harassment, including sexual harassment of a learner, employee or other person related to the school, including via electronic and social media;
- repeated offences related to bullying, or the imminent threat to commit such an act;
- the illegal possession of a drug or liquor;
- the repeated disruption of the school programme, or the imminent threat to commit such an act;

- serious transgressions relating to any test, examination or examination paper;
- fraud;
- theft or any other dishonest act to the prejudice of another person;
- the possession of a dangerous object while on school premises, or during any school activity, or in any circumstance that could reasonably be connected to the school;
- the possession or distribution of pornographic material;

(b) On the following type of serious misconduct, which occurs on a school premises or at a school activity, and the learner has been formally charged by the South African Police Service, the governing body must suspend such learner immediately without granting the learner an opportunity to make representations in relation to the accusation of such serious misconduct:

- (engaging in sexual activity on school premises or committing an act of sexual assault, or the imminent threat to commit such an act; and
  - any other serious act contemplated in Schedule 1 to the Criminal Procedure Act that prejudices the constitutional rights of learners, employees, or other persons related to the school, such learner may be suspended only after the learner has been granted a reasonable opportunity to make representations in relation to the accusation of such serious misconduct;
- or

(c) where a learner is accused of committing the following acts of serious misconduct—

- murder and attempted murder;
- culpable homicide;
- any sexual offence including rape;
- robbery;
- theft;
- assault with intent to do grievous bodily harm;
- breaking or entering any premises with an intent to harm a person;
- any offence under any law relating to the illicit possession of any dependence-producing drugs; or
- the conveyance or supply of dependence-producing drugs at school and to learners.

2.2 Precautionary suspension should be for the shortest time reasonably practicable. It must not exceed seven school days. If a disciplinary hearing is not held within seven school days and the governing body wishes to extend the period of precautionary suspension, this must be approved by the Head of Department through an application by the governing body.

2.3 The letter of precautionary suspension must be issued to the learner and must inform the learner of all matters pertaining to the precautionary suspension.

### 3. Notice, charge and evidence

3.1 The governing body must notify the learner and the learner's parents and representative in writing that disciplinary proceedings will be instituted against the learner. The notice should:

- Provide at least seven school days' notice of the disciplinary hearing;
- Inform the learner and the parents of the learner that disciplinary proceedings will be instituted against the learner;
- Contain sufficient particulars of the nature of the alleged serious misconduct to enable the learner to identify the incident and to respond thereto at the disciplinary hearing;
- Contain the date, time and venue of the disciplinary hearing;
- Advise the learner of his or her right to—
  - be accompanied and represented at the hearing, by his or her parents, or by a representative chosen by the parents;
  - access documents or information produced in evidence;
  - ask questions, cross-examine, lead evidence, call witnesses and produce documentary evidence to clarify issues pertaining to the allegation;
  - request the services of an interpreter where required at least 24 hours prior to the disciplinary hearing; and
  - Inform the learner, where applicable, of the precautionary suspension and the nature of academic support to be provided by the school during the period of suspension.

3.2 The principal must cause the notice to be delivered to the learner and their parents.

3.3 Along with the notice, the learner and the learner's parents or representative must be provided with copies of the evidence the school intends to rely on.

3.4 If, after having given the notice, the school decides that it will rely on additional evidence, this evidence must be made available to the learner and the learner's parents/caregivers and/or representative as soon as reasonably practicable and no later than two school days before the disciplinary hearing.

### 4. Constitution of the disciplinary committee

4.1 The governing body must conduct the disciplinary hearing or establish a disciplinary committee to do so.

4.2 The governing body must appoint a disciplinary committee to preside over disciplinary proceedings.

If the governing body establishes a disciplinary committee, the disciplinary committee must:

- Comprise at least five persons, at least three whom must be governing body members.
- Be chaired by a member of the governing body, designated by the governing body, who is not an employee or member of staff of the school.

4.3 The disciplinary committee must be objective, impartial, fair and act without favour or prejudice.

4.4 Neither the principal nor any person who has a conflict of interest or has personal knowledge of any matter that may be in dispute is not eligible to be a member of the disciplinary committee. Further, these persons must not be present when the governing body discusses the report or recommendations of the disciplinary committee.

4.5 In appointing members of the disciplinary committee, issues of representation in terms of gender and race should be reflected in the composition of the panel.

## **5. Interpreters and other measures to facilitate participation**

5.1 If a member of the disciplinary committee, the learner, his or her representative or a witness requires an interpreter, the disciplinary committee must not proceed with the hearing until an interpreter competent in the relevant language has been made available, provided that it is not necessary to make use of a formal qualified interpreter.

5.2 Witnesses who may struggle to cope with being involved in the proceedings, an intermediary should be appointed, and all examination, cross examination and re-examination should be conducted through the intermediary.

## **6. The disciplinary hearing**

6.1 At the disciplinary hearing the learner has the right to be present, to be represented, to give evidence and, either personally or through a representative, to:

- State his or her case;
- Call witnesses;
- Put questions to any person called as a witness in support of a charge; and
- Inspect documents submitted in evidence.

6.2 The role of the representative is to represent the interests of the learner and to ensure that due process is followed.

6.3 If the learner or their parents fail to attend the disciplinary hearing without a valid reason, after notice has been given, and after the hearing has been convened for the second time, it is recommended that the hearing may be conducted in their absence.

6.4 The chairperson must, at the start of the disciplinary hearing, explain the reasons for the disciplinary hearing, request the charge or charges to be read, to the learner into the record and ask the learner to plead to the charge.

6.5 If it appears to the governing body or disciplinary committee, as the case may be, that testifying at a disciplinary hearing would expose a complainant or witness under the age of 18 years to undue mental stress or suffering, it may appoint a competent person as an intermediary in order to enable such complainant or witness to give his or her evidence through that intermediary.

6.6 If the learner pleads guilty, the chairperson must ensure that the learner knows and understands what he or she is pleading guilty to and must:

- Ask the learner, representative, or parents of the learner whether anybody wishes to make representations before a suitable sanction is imposed;
- Request the learner, representative and parents of the learner and any other parties, including the school principal, to leave the room while the disciplinary committee deliberates on a suitable sanction;
- Ensure that the disciplinary committee —
  - Decides whether to suspend the learner for a period not longer than seven school days;
  - impose any other sanction contemplated for serious misconduct in the code of conduct;
  - recommend expulsion of the learner to the Head of Department.

6.7 If the learner pleads not guilty, the chairperson must:

- Request that the investigation report to be read and evidence adduced in support of the charge, including the calling of the complainant and witnesses;
- Give the learner, representative or parents of the learner the opportunity to put questions to the complainant and witnesses with the purpose of refuting evidence;
- Afford the committee members an opportunity to ask questions of clarity, where applicable;
- Afford the learner an opportunity to state his or her case and to call witnesses;
- Allow committee members to ask questions of clarity;
- Excuse the learner, representative and parents of the learner while the committee reviews evidence and decides on the recommendation to be made to the governing body.

6.8 If the disciplinary committee finds the learner guilty, the chairperson must ask the learner, representative or parents of the learner and any other parties, except the members of the disciplinary committee, to leave the room while the committee deliberates on a suitable sanction to be recommended to the governing body.

6.9 The disciplinary committee must decide on an appropriate sanction taking all the evidence and representations into account and decide if:

- The learner should be suspended for a period not longer than seven school days; or
- Any other sanction contemplated for serious misconduct in the code of conduct of the public school; or
- The recommendation of expulsion of the learner must be submitted Head of Department to the governing body.
- The governing body must ratify the decision of the disciplinary committee of the recommendation of expulsion to the Head of Department.
- At the disciplinary hearing an attendance register must be signed by all parties to the proceedings, including the learner, their parents (representative if applicable) and witnesses.
- Detailed minutes must be kept of proceedings where charges of misconduct against a learner are investigated and/or discussed. In order to allow the Head of Department to determine whether the parent of the learner or their representative was afforded the opportunity to state their side of the case and whether their representations were properly considered in the final decision. The minutes must include but not limited to:
  - The full charge against the learner.
  - How the learner pleads, and the parent/caregiver's and/or representative's responses to the charges.



- Questions asked by the learner, the parent or their representative, and the responses to such questions.
- The response of the governing body to the representation of the learner, the parent or their representative.
- The decision of the governing body and the reasons for such decision.

## **7. The decision of the Governing Body**

7.1 The ratification of the disciplinary committee's recommendation about whether or not the learner is guilty of serious misconduct and the appropriate corrective measures is for the governing body, and not the disciplinary committee.

7.2 Following a determination that the learner is guilty of serious misconduct, the governing body may do one of the following: suspend a learner for a maximum of seven school days; impose another sanction contemplated in the school code of conduct; make a recommendation of expulsion to the Head of Department.

7.3 The governing body should inform the Head of Department not more than three days after the hearing in case where the sanction is an expulsion.

7.4 The governing body is not empowered to expel the learner. The governing body is only empowered to make a recommendation of expulsion to the Head of Department.

7.5 The learner and his or her parents must be informed in writing of the decision of the governing body as to whether or not the learner is guilty of serious misconduct and the corrective measures to be imposed.

## **8. Representations as to sanction**

8.1 If the learner is found to be guilty of serious misconduct, they must be allowed to make representations on the sanction that should be imposed. In particular, they must be allowed to present mitigating factors for a lighter sanction.

8.2 The initiator should be allowed to present aggravating factors on sanctions to be imposed.

8.3 The mitigating and aggravating factors would include, but would not be limited to, evidence of the personal circumstances of the learner, including their general record of past conduct at the school, the nature and seriousness of the misconduct in question, and the interests of the school community.

## **9. Suspension as a sanction**

9.1 Following a finding of serious misconduct at a disciplinary hearing, the governing body can suspend a learner as a sanction for a maximum of seven school days as a corrective measure.

9.2 If a learner is suspended, they must be given continued access to education. This may include the opportunity to continue with schoolwork under the supervision of the parents or caregivers.

9.3 The governing body must report all the decisions to suspend and the nature of the suspension of the learners to the Head of Department District Director, who must keep a register of all suspensions.

## **10. Information to be provided to the Head of Department when recommending expulsion**

10.1 Information to be provided to the Head of Department when recommending expulsion should include:

- The school's code of conduct with the relevant clause(s) highlighted or, where reasonably practicable, excerpts of the relevant parts of the school code of conduct.
- If the learner was given a precautionary suspension, any representations made by the learner prior to the precautionary suspension.
- The notice(s) and the charge sheet.
- Copies or, where it is not possible to make copies, descriptions of any evidence relied upon.
- Minutes and attendance register of the hearing (including any mitigation and aggravating factors raised in relation to sanction), signed by the attendees; and
- The governing body's recommendation and the reasons thereof.

10.2 The Head of Department must be provided with copies of all evidence relied upon including the minutes. This will allow the Head of Department to properly assess whether they agree with the governing body's recommendation.

10.3 Where the evidence takes the form of 'real' or physical evidence, such as a weapon or drugs, the Head of Department should be provided with a description and/or photographs of this evidence and is entitled to inspect the evidence if they feel it is necessary to do so.

10.4 Learners, parents and/or learners' representatives should be allowed to have sight of, and to sign off on, documents sent to the Head of Department.

10.5 The Head of Department should thoroughly interrogate recommendations of expulsion and the evidence submitted by schools for consideration. This will assist the Head of Department to address any biases or irregularities that may have occurred prior to the recommendation that would not otherwise come to the attention of the Head of Department.

10.6 If new information is brought to the attention of the Head of Department, which was not part of the disciplinary hearing, the Head of Department must ensure that the governing body and the learner and their parents/caregivers and/or representative are given the opportunity to comment to such new or additional information. Any such comments should be submitted in a timely manner and not more than one week after the request for comments were made.

## **11. The decision of the Head of Department**

11.1 The Head of Department must consider all relevant information prior to making a decision on expulsion. It is incumbent on the Head of Department to ensure that the full record of disciplinary proceedings, including representations by the learner or parent, are placed before them before a final decision is made.

11.2 The Head of Department must make a final decision on the expulsion of the learner within the prescribed 14 days.

11.3 The total period of suspension of a learner from school must not be longer than seven days for a precautionary suspension and not more than 14 days suspension pending the decision of the Head of Department regarding a recommendation of expulsion.



11.4 At the expiry of the 14 days' suspension and whilst awaiting the decision of the Head of Department, the learner should return to the school where they are enrolled in order to receive education and continue with their schooling.

11.5 Keeping the learner out of the school for more than 14 days whilst awaiting the decision can only be done with the Head of Department's approval.

11.6 The Head of Department's decision should be informed by taking the best interests of the learner concerned.

## **12. Expulsions**

12.1 The Head of Department must make alternative arrangements for expelled learners of compulsory school going age. In making such arrangements, the Head of Department should take reasonable measures to protect the rights of other learners. Alternative arrangements may include:

- Ensuring that the learner is admitted to another school in an area closest to where they reside, if reasonably practicable;
- Requiring the learner to attend counselling; and
- Requesting regular progress reports in respect of the counselling.

12.2 If a learner is expelled and they are not of compulsory school going age, their parents may make alternative arrangements for his or her placement at a school and may request the assistance of the District Director.

12.3 Appropriate arrangements should be made for learners who are expelled in the last term of the academic year to ensure that their academic interests are protected and not adversely affected by the expulsion. In particular, measures should be put in place to ensure that they are afforded the opportunity to write the final examinations of the year in which they were expelled. This is especially important for critical grades such as grades 10,11 and 12.

12.4 To protect the interests of other learners, the expelled learner may be required to write the examination in a venue separate from the learners of the school which he or she attended at the time of his or her expulsion.

## **13. Appeals**

13.1 A learner who has been expelled from a school, or the parents of such learner, may appeal against the decision of the Head of Department to the Member of the Executive Council within 14 days of receiving the notice of expulsion.

13.2 A copy of the notice of appeal may also be served on the Head of Department and the chairperson of the governing body.

13.3 If an appeal by a learner who has been expelled from a school is upheld by the Member of the Executive Council, the Member of the Executive Council must ensure that a suitable sanction is imposed on the learner within 14 days of the date on which the appeal was upheld.

13.4 If a learner has appealed, the learner must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department in consultation with the principal.

13.5 The Head of Department may consult with parents and learners to determine the most suitable way in which a learner's access to education could be ensured, taking into account the interests of the learner as well as all other learners and teachers at the school.



## SECTION E: PROHIBITED AND UNLAWFUL PRACTICES

School Management Teams and governing bodies are expected to conduct themselves in a manner that is upstanding and in the interests of the school community. As such, schools are strictly prohibited from committing the unlawful acts set out in this section.

### 1. Coercing parents and learners into leaving the school ‘voluntarily’

1.1 Parents and learners must not be coerced or threatened into deregistering and/or transferring to another school as alternative to disciplinary action. If the learner has engaged in serious misconduct, proper disciplinary procedures must be followed. If the learner has not engaged in serious misconduct, they should not be pressured to leave the school.

1.2 Attempts to pressure parents into removing learners with behavioural or psychological difficulties run contrary to the national Policy on Screening, Identification, Assessment and Support (SIAS), which requires schools to screen and identify learners who experience barriers to learning where development and support plan should be put in place to address these barriers.

### 2. Suspending learners for unlawfully long periods and/or without access to education

2.1 Suspension is only appropriate when a learner’s behavior presents a serious safety threat.

2.2 A learner should be suspended as a precautionary measure for the shortest period reasonably possible. The statutory maximum is 7 days, but schools should aim to suspend the learner for no longer than 7 days prior to the disciplinary hearing.

2.3 Following the disciplinary hearing and pending the Head of Department’s decision regarding a recommendation of expulsion, the learner may be suspended for only as much time as necessary to allow for the decision-making process to unfold. The statutory maximum is 14 days.

2.4 Taken together, this means that learners can be suspended for a maximum period of 21 days in total.

2.5 When a learner is suspended, the school must make provision for continued access to education. For example, the learner could be provided with worksheets and tasks to take home with them and complete during the period of suspension.


### 3. Imposing sanctions outside the school’s code of conduct

3.1 A sanction can only be imposed terms of the school’s code of conduct however in exceptional an alternative sanction can be imposed depending on the matter and circumstances of the misconduct.

3.2 All sanctions, and the code of conduct itself, must be consistent with relevant laws and policies at both the national and provincial level.

3.3 Any conditions on the return of a learner to the school following a period of suspension, such as the completion of anger management courses or psychological assessments, must be corrective rather than punitive, and must be consistent with the SIAS policy.





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