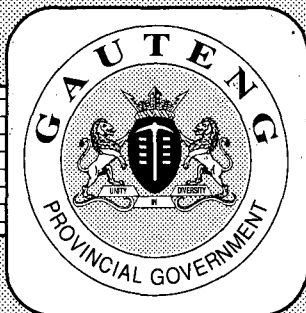


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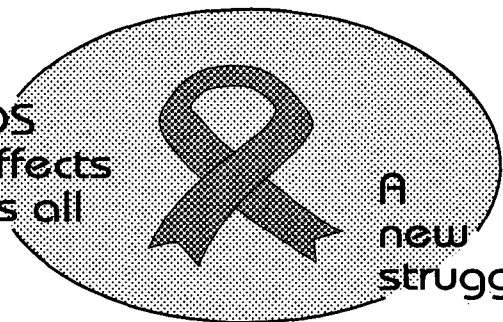
Vol. 6

PRETORIA, 15 SEPTEMBER 2000

No. 130

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DEPARTMENT OF HEALTH

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GENERAL NOTICE

NOTICE 6398 OF 2000

DEPARTMENT OF EDUCATION

SOUTH AFRICAN SCHOOLS ACT, 1996 (ACT No. 84 OF 1996)

NOTICE IN TERMS OF SECTION 9 (3): MISCONDUCT OF LEARNERS AT PUBLIC SCHOOLS AND DISCIPLINARY PROCEEDINGS

I, Ignatius Jacobs, Member of the Executive Council responsible for Education in the Province of Gauteng, under section 9 (3) of the South African Schools Act, 1996 (Act No. 84 of 1996), hereby determine—

- (a) the behaviour by a learner at a public school which constitutes serious misconduct;
- (b) disciplinary proceedings to be followed in such cases; and
- (c) provisions of due process safeguarding the interests of learners and any other party involved in disciplinary proceedings,

as set out in the Schedule.

Given under my Hand at Johannesburg on this 4th day of September, Two Thousand.

I. JACOBS

Mec: Education (Gauteng Province)

SCHEDULE

Definitions

1. (1) Subjection to sub paragraph (2) and unless the context indicates otherwise, a word which is defined in section 1 of the South African Schools Act, 1996 (Act 84 of 1996) shall have the same meaning in this notice.

(2) In this notice, unless the context indicates otherwise—

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

“**disciplinary committee**” means a disciplinary committee appointed in terms of paragraph 4;

“**misconduct**” means misconduct committed by a learner and includes, the following:

- (a) Misconduct committed on the premises of a school, whether during or outside of school hours;
- (b) misconduct committed during any school activity, irrespective of whether it is committed within or outside the school premises, and during or outside of school hours; and
- (c) any conduct, committed in or out of school uniform and within or outside the school premises,

which—

- (i) tends to bring the school into disrepute;
- (ii) interferes with the governance, authority and proper administration of the school;
- (iii) interferes with the conditions necessary for any school activity;
- (iv) subject to the reasonable exercise of the right assemble, demonstrate, picket and petition as provided in the Constitution, 1996 and the code, is committed with the intention of preventing any person from exercising his or her rights, powers or duties as a member of the school community, or is committed in retaliation against such exercise; or
- (v) is prohibited by the code of the school;

“**Prosecutor**” means the principal of the school or an educator appointed by the principal to present the case against a learner;

“**representative**” means a parent of a learner, a co-learner or any other person chosen by the learner to represent the learner at a disciplinary hearing;

“**school days**” means days of the week, excluding Saturdays, Sundays, public holidays and school holidays;

“**serious misconduct**” means misconduct as contained in Schedules 1 and 2;

“**suspension**” means—

- (a) a learner may not be entitled to attend a class at the school;
- (b) a learner may not be entitled to hold office or perform any duties and functions contemplated by any relevant law relating to school governance for the period of the suspension;

- (c) a learner may not be entitled to participate in extra-curricular activities at the school; or
- (d) a learner may not be able to attend school for a period of time that may not exceed one week;

and suspend has the same meaning;

"provisional suspension" means a learner may be provisionally suspended by the principal from the time charges of serious misconduct have been laid against a learner until the results of a fair hearing of a disciplinary committee have been finalized if, in the opinion of the principal in consultation with the Head of Department, it is in the interests of the learner or educators and the school community; Provided that the learner is able to continue with schoolwork under proper supervision; and

"the Act" means the South African Schools Act, 1996 (Act 84 of 1996).

Application

2. (1) This notice and any code made in terms thereof apply to a learner who was at the time of the misconduct alleged against the learner subject to the discipline of the school.

(2) A learner is subject to the discipline of the school if the learner is registered as a learner at a school.

Institution of disciplinary proceedings that may lead to suspension or expulsion

3. (1) Only the principal may institute disciplinary action against a learner in respect of serious misconduct.

(2) The principal may institute disciplinary action against a learner in respect of serious misconduct only if—

- (a) there is sufficient evidence to institute such proceedings; and
- (b) the principal considers it to be in the best interests of the school and its community that such disciplinary action should be instituted.

(3) No learner may be expelled from school unless—

- (a) the learner is found guilty of serious misconduct specified in Schedule 2 of this notice; and
- (b) the provisions relating to expulsion are complied with.

(4) Learners found guilty of serious misconduct specified in Schedule 1 of this notice may not be expelled, but may only be suspended or provisionally suspended.

(5) The Head of Department may, in exceptional circumstances, authorize a departure from sub paragraphs (3) and (4).

Disciplinary Committee for serious misconduct

4. (1) Upon notification by the principal to a learner that disciplinary action is instituted against that learner, the governing body must appoint a disciplinary committee and designate one of the members of the disciplinary committee as chairperson to adjudicate the allegation of serious misconduct.

(2) Subject to sub paragraph (3), the disciplinary committee comprises of three persons who are either members of the governing body or persons who are eligible to be elected as members of the governing body.

(3) The appointment of persons to a disciplinary committee is subject to the following conditions:

- (a) The chairperson of the disciplinary committee must be a parent member or community member of the governing body;
- (b) the principal or a learner at the school are not eligible to be members of the disciplinary committee; and
- (c) no person may be appointed to the disciplinary committee if the person has personal knowledge of or any interest in any matter before the disciplinary committee.

(4) (1) An executive committee member of the representative council of learners (RCL) may attend the hearing as an observer.

Procedure for hearing of serious misconduct

5. (1) A learner charged with serious misconduct is entitled to a hearing adjudicated upon by the disciplinary committee.

(2) A learner charged with serious misconduct must be given no less than 5 (five) school days written notice of the hearing into the alleged misconduct, unless—

- (a) the governing body directs, with good cause, that a shorter notice period shall apply; and
- (b) there is no prejudice caused to the learner by the shorter notice period.

(3) The notice contemplated in subparagraph (2) must—

- (a) contain sufficient particularity of the date, place and nature of the alleged serious misconduct to enable the learner to identify the incident in question and to respond thereto;
- (b) inform the learner of the charges, place date and time of the hearing;

- (c) inform the learner of provisional suspension, if any; the reasons therefore and any other matter required in connection with the provisional suspension; and
- (d) inform the learner of the rights of a learner in terms hereof.

(4) The principal must give the notice contemplated in sub paragraph (2) to the learner and deliver a copy thereof to the parents of the learner at the address of the learner as indicated in the school register.

(5) At least one of the parents of the learner must accompany the learner at the hearing, unless the learner is 21 (twenty-one) years or older.

(6) If a member of the disciplinary committee, the learner, his or her representative or a witness requires an interpreter, the disciplinary committee may 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 formally qualified interpreter.

(7) If the learner fails to appear before the disciplinary committee after due notice in terms of subparagraph (2) and without just cause for not attending the hearing, the hearing may continue in the absence of the learner.

(8) The disciplinary committee must keep a full and accurate record of all proceedings before it.

(9) The prosecutor must commence proceedings at the hearing by setting out the charge against the learner and thereafter presenting the case against the learner.

(10) The chairperson of the disciplinary committee must ask the learner whether the learner pleads guilty or not guilty to the charge. The learner must respond thereto. Should the learner fail to respond, the learner will be deemed to have pleaded not guilty to the charge.

(11) If the learner pleads guilty to the charge—

- (a) the chairperson must question the learner with reference to the alleged facts comprising the misconduct as outlined by the prosecutor in order to satisfy the disciplinary committee that the learner is indeed guilty of the charge;
- (b) if, upon questioning the learner, it appears that the version of the learner materially differs from the facts as outlined by the prosecutor, or if the chairperson is not satisfied that the learner is guilty of the charge, the chairperson must enter a plea of not guilty in respect of the charge on behalf of the learner;
- (c) if the disciplinary committee, or the majority of its members, is satisfied that the learner is guilty of the charge, the disciplinary committee must find the learner guilty of the charge.

(12) If the learner pleads not guilty to the charge—

- (a) the prosecutor may call witnesses or present other evidence on oath in respect of the allegations against the learner;
- (b) the learner or the representative of the learner 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 the representative of the learner may call witnesses or present other evidence on oath in support of the defense;
- (d) the prosecutor may question any witness and examine any evidence presented on behalf of 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, first the prosecutor and then the learner or the representative of the learner may address the disciplinary committee as to the guilt or otherwise of the learner;
- (g) the disciplinary committee must thereafter adjourn the hearing for not more than 2 (two) school days to a specified place, date and time in order to decide whether, on a balance of probabilities, the learner is guilty or not guilty of the charge; and
- (h) at the date and time contemplated in subparagraph (g), the disciplinary committee must inform the learner of the findings of the disciplinary committee.

(13) If the learner is found guilty of the charge, the prosecutor and the learner or the representative of the learner, may present evidence before the disciplinary committee relevant to an appropriate penalty, including but not limited to evidence of the personal circumstances of the learner, general record of past conduct at the school, the nature and seriousness of the misconduct in question, and the interests of the school community.

(14) Immediately after considering any evidence presented in terms of subparagraph (13), the disciplinary committee must impose on the learner a penalty that is prescribed in terms of the code and this notice, and inform the learner in writing thereof.

(15) If the disciplinary committee decides that the learner should be expelled from the school, it must make a recommendation to that effect to the Head of Department and may suspend the learner from the school, in consultation with the Head of Department, pending the decision of the Head of department on whether the learner is to be expelled.

Further provisions on expulsion

6. (1) Where a disciplinary committee in terms of subparagraph 5 (15) suspends a learner from attending school with a view to expulsion by the Head of Department, the disciplinary committee must direct the principal to submit to the Head of Department the full record of proceedings and a report compiled by the disciplinary committee in respect of the learner.

(2) The report contemplated in subparagraph (1) must include at least the following:

- (a) The full name, date of birth and grade of the learner;
- (b) a summary of the evidence presented by the prosecutor and the learner; and
- (c) a summary of the findings of the disciplinary committee relating to the evidence presented and the sentence proposed by it.

(3) After considering the full record of the proceedings and the report contemplated in subparagraph (1) and within 5 (five) days of being informed of the decision of the disciplinary committee, the Head of Department must—

- (a) expel the learner;
- (b) impose on the learner a lesser punishment permitted by the code and this notice; or
- (c) find the learner not guilty;

and notify the governing body, the learner, the parents and the representative of the learner of the decision by delivering, in the case of the learner, parents and representative, a copy of the notification to the address of the learner indicated in the school register.

(4) The notice contemplated in subparagraph (2) must include a reference to the right of appeal to the Member of the Executive Council if the Head of Department expels a learner.

(5) If the Head of Department expels a learner who is of compulsory school age, the Head of Department—

- (a) must ensure that the learner is admitted to another school or centre of learning within the province;
- (b) may require that the learner attend counselling; and
- (c) must procure regular progress reports in respect of any counselling contemplated in paragraph (b).

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

Suspension and expulsion from a hostel

7. (1) The provisions of paragraphs 3, 4, 5 and 6 apply likewise to the suspension and expulsion of a learner from a hostel.

(2) If a learner residing in a hostel, is suspended or expelled from a school to which the hostel is attached, the learner is deemed to be expelled from that hostel as well.

(3) A learner may be suspended or expelled from a hostel, without being suspended from the school to which the hostel is attached.

Appeal against decision of Head of Department to expel a learner

8. (1) A learner or the parent of a learner may appeal to the Member of the Executive Council against—

- (a) any finding of guilt by the Head of Department in respect of which a penalty of expulsion has been imposed;
- (b) a penalty of expulsion imposed by the Head of Department; and
- (c) an order made by the Head of Department in terms of subparagraph 6 (5).

(2) A learner or the parent of a learner who wishes to appeal against a decision contemplated in subparagraph (1) must, within 14 (fourteen) days of being notified in terms of subparagraph 6 (2) of the decision, hand deliver a notice of appeal together with the grounds for the appeal to the office of the Member of the Executive Council.

(3) Unless the Member of the Executive Council 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 5 (five) days of receiving the notice of appeal, the Member of the Executive Council must inform the Head of Department and the governing body of the lodging of an appeal and provide them with a copy thereof.

(5) Within 5 (five) days of receipt of the notice of appeal from the Member of the Executive Council, the Head of Department and the governing body may respond in writing to the notice of appeal and state the reasons why the appeal should be dismissed.

(6) Within 5 (five) days of receipt of the submissions contemplated in subparagraph (5), the Member of the executive Council must—

- (a) dismiss the appeal;
- (b) impose on the learner a lesser punishment permitted by the code and this notice;
- (c) impose any other sanction deemed appropriate by the Member of the Executive Council; or
- (d) find the learner not guilty,

and notify the learner, parents and the representative of the learner and the Head of Department of the decision.

- (7) The decision of the Member of the Executive Council in respect of the appeal shall be final.

SCHEDULE 1

(SERIOUS MISCONDUCT THAT MAY LEAD TO SUSPENSION)

A learner will be guilty of serious misconduct if he or she, intentionally and without just excuse—

- (a) seriously threatens, disrupts or frustrates teaching or learning in a class;
- (b) engages in an conspiracy to disrupt the proper functioning of the school through collective action;
- (c) insults the dignity of or defames any learner or any other person, which includes racist remarks;
- (d) distributes, or is in the possession of any test or examination material that may enable another person to gain an unfair advantage in a test or examination;
- (e) cheats in a test or examination or any other form of assessment such as assignments;
- (f) engages in any act of public indecency;
- (g) sexually harasses another person;
- (h) is found in possession of or distributes pornographic material; or
- (i) is under the influence or in the possession of alcohol.

SCHEDULE 2

(SERIOUS MISCONDUCT THAT MAY LEAD TO EXPULSION)

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

- (a) is found guilty of misconduct as contemplated in Schedule 1 after having been found guilty of the same or similar misconduct on two previous occasions;
- (b) fails to comply with a punishment of suspension as a correctional measure; or
- (c) intentionally and without just excuse—
 - (i) forges any document or signature to the potential or actual prejudice of the school;
 - (ii) trades in any test or examination question paper or in any test or examination material;
 - (iii) 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;
 - (iv) engages in fraud;
 - (v) engages in theft, or otherwise acts dishonestly to the prejudice of another person;
 - (vi) is in possession of, consumes or deals in any illegal substance or other harmful substance;
 - (vii) is in possession of, uses or transmits narcotic or unauthorised drugs or on visible evidence of such possession, use or transmission;
 - (viii) is in possession of any dangerous weapon;
 - (ix) assaults or threatens to assault another person;
 - (x) holds any person hostage;
 - (xi) murders any person;
 - (xii) rapes any person; or engages in any sexual activity which amounts to an offence in law.
 - (xiii) maliciously damages property.

