

DEPARTMENT OF EDUCATION  
DEPARTEMENT VAN ONDERWYS  
LEFAPHA LA THUTO  
ISEBE LEZEMFUNDO

Education Building  
156 Barkly Road  
Homestead  
KIMBERLEY 8301

19 AUG 2009

Private Bag X5029  
KIMBERLEY 8300  
Republic of South Africa  
[www.ncedu.gov.za](http://www.ncedu.gov.za)

Tel. (053) 839 6776  
Fax (053) 839 6773

Enquiries :  
Dipatlisiso : O MOGATLE  
Imibuzo :  
Navrae :

Reference :  
Tshupelo : L2.5.6  
Isalathiso :  
Verwysings :

Date :  
Leshupelo : 18 August 2009  
Umhla :  
Datum :

TO: PRINCIPALS  
LEARNER REPRESENTATIVE COUNCILS  
CIRCUIT MANAGERS  
SCHOOL GOVERNING BODIES

CIRCULAR 74 2009

RE: CONDUCTING DISCIPLINARY HEARINGS AGAINST LEARNERS

It has come to my attention that principals and school governing bodies do not conduct disciplinary hearings in terms of the regulatory framework. This inevitably results in the outcome of such hearings being dismissed on appeal by the Member of the Executive Council. Schools are then faced with the prospect of having to continue with learners who show no respect for the systems that have been put in place to govern the relationships at the school. These prospects further result in the school community developing a negative attitude towards recalcitrant learners and it appears as if my office has no appreciation for the rights of other learners at the school.

To this end, my office hereunder sets out a step by step guide, which is not a substitution for Official Notice mentioned here under, to be followed by school governing bodies in conducting disciplinary hearings against learners.

You will appreciate that Member of the Executive Council for Education has determined in Official Notice 1157 of 2007 what conduct constitutes serious misconduct.

STEP 1

The principal of the school may charge the learner in writing with serious misconduct should he/she is of the opinion that sufficient grounds exist for such a charge. The charge sheet must contain the following:

- a) Allegations against the learner,
- b) A direction calling on the learner to either admit or deny the allegation(s) in writing and/or an explanation concerning the allegation(s) within seven



HIV/AIDS is everyone's concern.

- days, and
- c) The rights of the learner with regard to the conducting of the hearing e.g. the right to representation, the right to call witnesses, the right to question witnesses, the right to adduce oral or documentary evidence, the right to have access to documentary evidence produced in support of the charge(s) and the right to appeal the finding of the tribunal or that of the governing body,
  - d) That the hearing may continue in absence of the learner, parent and/or guardian, and
  - e) Further that the charges are of a serious nature and may result in a recommendation for expulsion.

Kindly take note that the power to charge a learner with serious misconduct has not been delegated to any educator except the principal of the school. The notice specifically speaks of *"under his or her hand"*.

You will appreciate that the Notice does not provide a closed list of acts of serious misconduct and principals may charge learners with serious misconduct even for acts that are not listed, as long as the charge(s) are reasonable.

#### STEP 2

The original charge sheet should be delivered to the learner and his/her parent. The frame work provides for the delivery of the charges by;

1. Handing it over personally to the learner and the parent or guardian,
2. Forwarding it to the parent or guardian per prepaid registered post to the last known residential address.

It should be noted that the notice must be delivered to both the learner and the parent/guardian and not only to one of them.

#### STEP 3

The principal must, after receiving a response from the learner, submit to the governing body a copy of the charge, proof of delivery and any admission(s) that may have been received from the learner. The governing body must then designate a disciplinary committee consisting of three persons. These persons must at all times act in a manner that is not intimidating to the learner. The chairperson of the tribunal must also appoint any member of the school community to act a prosecuting officer.

#### STEP 4

If the learner admits the charge(s), the presiding officer will be obliged, where he/she is of the opinion that the misconduct may warrant expulsion, conduct a fair hearing notwithstanding the admission. At the hearing, the learner must be accompanied by his/her parent or a person designated by the parent.

The hearing may only continue in the absence of the learner, parent or a person so designated if a governing body can show good cause for such continuation. This usually involves situations where it can be shown that, despite, proper notice being given, the parent deliberately failed to accompany the learner or



**HIV/AIDS is everyone's concern.**

that the learner failed/refused to attend the hearing. This above is not meant to be exhaustive.

The chairperson may appoint an intermediary for any witness under the age 18 years if it appears that the hearing may put such witness under undue stress or suffering. Questioning of such a witness shall only take place through such intermediary. Such intermediary will/ must convey the general purport of the question to the witness.

The chair or the governing body may further direct that the testimony of such witness may take place at an informally arranged place, arranged in such a fashion that the witness does not give testimony in the presence of the person who may upset them.

#### STEP 5

It is the responsibility of the prosecutor to lead evidence on behalf of the governing body. This may take the form of oral, documentary or written statements, questioning witnesses and advancing arguments in support of the charge(s). It is the responsibility of the parent, learner or designated person to also lead evidence in defense.

The presiding officer is responsible for conducting the hearing fairly, be consistent and reasonable and also safeguarding the interest of all parties involved in the hearing. He/she is further responsible or expected to at all times guide parties at the hearing on procedures to be followed and the implications of the exercise of certain rights (e.g. the right to remain silent).

The learner may at any time during the hearing admit guilt and shall be deemed to be guilty of the charge(s). The hearing shall be closed to all persons other than those involved in it.

#### STEP 6

After the conclusion of the hearing, the presiding officer must make a finding on the guilt or innocence of the learner based on the evidence presented. In the event that a finding of guilty is returned, the learner must then be afforded the opportunity to present mitigating factors while the prosecutor will be afforded an opportunity to present aggravating factors. It is again expected that the presiding officer will notify parties of the importance to present such factors. The presentation of these factors may be done either orally or in writing.

The chairperson must then submit the finding and the recommendation(s) together with the record of the proceedings to the governing body. The governing body must communicate its decision to the parent and the learner within seven (7) days of the conclusion of the hearing.

A governing body may only impose the following sanctions;

- 1) Suspension for a period not exceeding seven school days,
- 2) A monetary fine not exceeding Five Hundred Rand (R500) (such fine must accrue to the school fund),
- 3) Impose any sanction provided for in the schools code of conduct.



**HIV/AIDS is everyone's concern.**

In the event the governing body decides to recommend expulsion, such recommendation must be made to the District Director within three (3) days of the decision of the governing body. Such recommendation shall be accompanied by the full record of the proceedings.


#### STEP 7

The learner, parent or guardian may appeal against the finding and or sanction of the tribunal or the governing body to the MEC within seven (7) days of being notified of the outcome.

Governing bodies are advised to adhere to these processes and may request advise from our Legal Services section should they be unclear about anything. Governing bodies are further advised to familiarize themselves with the contents of Official Gazette 1157 of 2007 as this is the only document dealing with serious misconduct (notice attached for ease of reference).

My office trusts that this circular will be of assistance to governing bodies in the execution of their functions. We shall provide training to any governing body on these procedures should your respective offices so require.

Yours faithfully,



Mr. AF JOEMAT  
HEAD OF DEPARTMENT



**HIV/AIDS is everyone's concern.**

## CONTENTS • INHOUD

No

Page  
No. Gazette  
No.

## OFFICIAL NOTICE

- 10 Northern Cape School Education Act (6/1996): Notice determining conduct that constitutes serious misconduct in public schools in the Northern Cape and related matters

2 1157

## OFFICIAL NOTICE

## OFFICE NOTICE 10 OF 2007

## NORTHERN CAPE SCHOOL EDUCATION ACT, 1996 (ACT NO. 6 OF 1996)

NOTICE DETERMINING CONDUCT THAT CONSTITUTES SERIOUS MISCONDUCT IN  
PUBLIC SCHOOLS IN THE NORTHERN CAPE AND RELATED MATTERS

I, the undersigned Gomolemo Archie Lucas, Member of the Executive Council responsible for Education in the Province of the Northern Cape, acting in terms of section 22 (5) of the Northern Cape School Education Act, No. 6 of 1996, read with Section 9 (3) of the South African Schools Act, No. 84 of 1996, hereby publish the notice contained in the Schedule

GOMOLEMO ARCHIE LUCAS

## SCHEDULE

## 1. Definitions

In this notice a word or expression to which a meaning has been assigned in the Act or the South African Schools Act, 1996, shall have the same meaning so assigned to it and, unless the context indicates otherwise –

"Act" – The Northern Cape School Education Act, No. 6 of 1996;

"dangerous object" – includes any explosive material or device; any firearm or gas weapon; any article, object or instrument which may be employed to cause bodily harm to a person, or to render a person temporarily paralysed or unconscious, or to cause damage to property and any object which the Minister of Education may by notice in the Gazette declare to be a dangerous object for the purpose of the Regulations relating to Safety Measures at Public Schools;

**"illegal drug"** - includes any unlawful, intoxicating or stupefying substance;

**"Minister"** - means the Minister of Education;

**"Regulations Relating to Safety Measures at Public Schools"** - means the Regulations Relating to Safety Measures at public schools and any amendments thereto, published in terms of section 61 of the South African Schools Act, 84 of 1996;

**"school premises"** - includes any building structure, hall, room, office, convenience, land and an enclosure which is under the control of a public school, to which the member of the public has a right of access, or is usually admitted, or to which he or she may be admitted; and

**"school activity"** means any educational, cultural, sporting or social activity of the school within or outside the school premises.

## **2. Determination of behaviour that constitutes serious misconduct**

It is hereby determined that the following conduct shall constitute serious misconduct-

- (1) Rape;
- (2) Indecent Assault;
- (3) Any form of harassment of a member of staff or fellow learner;
- (4) Assault with intent to do grievous bodily harm;
- (5) Common assault on an educator;
- (6) Serious intimidation of any member of staff or fellow learner;
- (7) Malicious damage to state property;
- (8) Theft where aggravating circumstances, in the opinion of the principal, exist;
- (9) Robbery;
- (10) Possession of dangerous objects on school premises or during any school activity;

00002020

- (11) Possession or sale or abuse of illegal substances;
- (12) Possession or dissemination of pornographic or obscene material including material depicting sexual intercourse in all its forms;
- (13) Being on school premises or at a school activity while under the influence of intoxicating liquor or illegal drugs;
- (14) The possession or sale or consumption of intoxicating liquor while on school premises or during any school activity;
- (15) The theft of examination papers or the possession or sale of such stolen examination papers;
- (16) Repeated acts of ordinary misconduct as determined in the school's code of conduct;
- (17) Having a sexual relationship with any staff member or educator at the school where the learner attends;
- (18) Sexual intercourse or any other sexual activity among learners on school premises or during any school activity;
- (19) Any contravention of the Regulations Relating to Safety Measures at Public Schools; and
- (20) Any other act of misconduct that, in the opinion of the principal, reasonably constitutes serious misconduct.

### 3. Due Process

The following procedure shall be followed where a learner is alleged to have committed serious misconduct -

- (1) The principal may in writing under his or her hand charge a learner with serious misconduct if he or she is of the opinion that sufficient grounds for a charge of serious misconduct exist.

- (2) The original of the written charge shall be delivered to the learner concerned and his or her parent or guardian by-
- (a) handing it over to him/her personally; and
  - (b) forwarding it by prepaid registered post to the parent's or guardian's last known residential address.
- (3) The charge contemplated in sub-paragraph 3(1) above must contain a direction calling upon the learner to send or deliver within a period of seven working days a written admission or denial of the charge, and if he or she so desires, a written explanation regarding the alleged serious misconduct with which he or she is charged.
- (4) If the learner admits the charge, either in writing or orally or in person before the presiding officer as contemplated in sub-paragraph 3(16) below, the presiding officer shall be obliged, where he or is she is of the opinion that the misconduct is of such a serious nature that it may warrant expulsion from the school by the Head of Department, to conduct a fair hearing in compliance with the provisions of section 22 (4) (b) of the Act, notwithstanding the admission of guilt.
- (5) The principal must submit to the school governing body a copy of the charge, proof of delivery to the learner and parent or guardian and any admission made by the learner.
- (6) The school governing body must designate a disciplinary committee consisting of three persons: Provided that the members of the tribunal shall at all times act in a manner that is intimidating to the learner.
- (7) The chairperson of the tribunal must in writing appoint any member of the school community to act as prosecuting officer in the hearing.
- (8) The hearing before a presiding officer should be conducted as expeditiously and as informally as possible, but with due regard to the principles of fairness, reasonableness and due process which safeguard the interests of the learner and any other party involved in the hearing.



- (9) The learner must be accompanied by his or her parent or a person designated by the parent at the disciplinary proceedings, unless good cause is shown by the governing body for the continuation of the proceedings in the absence of the parent or the person so designated.
- (10) Whenever it appears to the governing body or the chairperson of the tribunal that the disciplinary proceedings may put any witness under the age of 18 years under undue mental stress or suffering if he or she testifies at the hearing, the governing body may, if practicable, appoint a competent person as an intermediary in order to enable the witness to give his or her evidence through that intermediary.
- (11) An examination, cross-examination or re-examination of a witness in respect of whom an intermediary has been appointed must not take place in any manner other than through the intermediary.
- (12) The intermediary may convey the general purport of any question to the relevant witness.
- (13) If the governing body has appointed an intermediary it may direct that the relevant witness must give his or her evidence at any place which –
- (a) is informally arranged to put the witness at ease;
  - (b) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
  - (c) enables the tribunal and any person whose presence is necessary at the proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as the witness during his or her testimony.
- (14) At the hearing the prosecuting officer may –
- (a) present facts by way of adducing oral or documentary evidence or submitting written statements;
  - (b) question any witnesses; and
  - (c) advance arguments in support of the charge.

- (15) At the hearing the learner must be personally present and may also be represented by his or her parent or guardian or a person nominated by the learner or his/her parent or guardian who shall have the right –
- (a) to present facts by adducing oral or documentary evidence or submitting written statements;
  - (b) to question any witness who was called in support of the charge;
  - (c) to have access to documentary evidence produced in support of the charge.
- (16) A learner may at any time during the hearing admit his or her guilt on the charge, whereupon he or she must, subject to sub-paragraph 3(4), be deemed to be guilty of the serious misconduct as charged.
- (17) After the conclusion of the hearing the tribunal must make a finding on the guilt or innocence of the learner.
- (18) In the event that the learner is found guilty of the serious misconduct, the tribunal must afford the learner or his or her representative an opportunity to adduce evidence in mitigation of sanction: Provided that the prosecuting officer shall also be afforded an opportunity to place aggravating circumstances before the tribunal.
- (19) The chairperson of the tribunal must submit the findings and recommendations of the tribunal together with the record of the proceedings to the governing body.
- (20) The governing body must communicate in writing its decision to the learner and his or her parent within 7 days of the conclusion of the hearing.
- (21) In the event that the governing body decides to recommend the expulsion of the learner, such recommendation must be made to the Head of Department or his assignee within 3 days of the governing body's decision: Provided that such recommendation shall be accompanied by the full record of the disciplinary proceedings.
- (22) The disciplinary proceedings must be completed within 7 days of the learner's written admission or denial of the charge as contemplated in sub-paragraph 3(3).

(23) In the event that the governing body decides not to recommend the expulsion of the learner it may-

- (a) impose the suspension of such a learner for a period not exceeding seven school days; or
- (b) impose a monetary fine not exceeding R500.00 (five hundred rand) which fine shall accrue to the school fund when paid; or
- (c) impose any other sanction provided for in the school's code of conduct.

(24) A learner or his or her parent or guardian may, within 7 days of being notified of the governing body's decision as contemplated in sub-paragraph 3(20), appeal against the finding and/or sanction of the tribunal and governing body.

(25) The appeal must be made in writing to the MEC and must set out the grounds upon which such appeal is lodged.

(26) The disciplinary proceedings contemplated herein must be conducted in a fair, equitable, open and transparent manner, save and except that the hearing itself shall be closed to all persons other than the parties or persons officials involved in it.

#### 4. Repeal of Existing Notice

Official Notice No. 5 of 1997 published in the Northern Cape Provincial Gazette No. 236 is hereby repealed.

Dated at Kimberley this 27<sup>th</sup> day of November 2007.

**G. A. LUCAS**

**MEC: Education**