

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;
- (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 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 27th day of November 2007.

G. A. LUCAS
MEC: Education

