

PROVINCIAL NOTICE

P.N. 114/2020 30 October 2020

WESTERN CAPE PROVINCIAL SCHOOL EDUCATION ACT, 1997 (ACT 12 OF 1997) REGULATIONS RELATING TO THE MANAGEMENT AND CONTROL OF HOSTELS AT PUBLIC SCHOOLS AND THE CONTROL OVER THE IMMOVABLE PROPERTY AND EQUIPMENT UNDER THE WESTERN CAPE EDUCATION DEPARTMENT: DRAFT AMENDMENT, 2020

The Provincial Minister of Education in the Western Cape, under section 63(1)(a) and (cE), read with sections 24(1)(a) and 45(9), of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), intends to make the regulations set out in the Schedule.

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the Regulations relating to the Management and Control of Hostels at Public Schools and the Control over the Immovable Property and Equipment under the Western Cape Education Department, as published under Provincial Notice 361/2012 dated 28 November 2012.

Amendment of Arrangement of Regulations

2. The Arrangement of Regulations before regulation 1 of the Regulations is amended by the insertion after the reference to the heading to regulation 1 of the following item:

"1A. Application of regulations".

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is amended-

- (a) by the insertion before the definition of "district hostel coordinator" of the following definition:
" **'disciplinary committee'** means a committee established by the governing body of a public school in terms of section 23 of the Act to deal with disciplinary matters;"
- (b) by the insertion after the definition of "district hostel coordinator" of the following definition:
" **'expulsion'** means the permanent prohibition of a hostel boarder by the Head of Department-
 - (a) from living in a hostel; or
 - (b) from living in a hostel and attending a school, after following the process in terms of these regulations;"
- (c) by the insertion after the definition of "provincial hostel coordinator" of the following definition:
" **'Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape'** means the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, as published under Provincial Notice 365/2011 dated 15 December 2011, as may be amended from time to time;"
- (d) by the deletion after the definition of "supervisor" of the word "and"; and
- (e) by the insertion after the definition of "supervisor" of the following definition:
" **'suspension'** means the temporary prohibition of a hostel boarder by the governing body, disciplinary committee or Head of Department-
 - (a) from living in a hostel; or
 - (b) from living in a hostel and attending a school;"

Insertion of regulation 1A of the Regulations

4. The following regulation is inserted in the Regulations after regulation 1:

"Application of regulations

1A. These regulations apply to all hostels at public schools in the province."

Amendment of regulation 6 of the Regulations

5. Regulation 6 of the Regulations is amended by the addition of the following sub-regulation:

"(3) The Head of Department must perform all functions assigned to him or her by these regulations."

Amendment of regulation 8 of the Regulations

6. Regulation 8 of the Regulations is amended-

- (a) by the deletion after paragraph (a) of sub-regulation (1) of the word "and"; and
- (b) by the insertion after paragraph (a) of sub-regulation (1) of the following paragraph:
"(aA) perform all functions assigned to it by these regulations; and".

Amendment of regulation 11 of the Regulations

7. Regulation 11 of the Regulations is amended by the insertion after paragraph (e) of sub- regulation (1) of the following paragraph:

- "(eA) notify the principal as contemplated in regulation 18(2) of an allegation of serious misconduct against a hostel boarder, and may make recommendations to the principal and governing body on hostel discipline in general or a specific disciplinary matter;".

Substitution of regulation 18 of the Regulations

8. The following regulation is substituted for regulation 18 of the Regulations:

"Hostel boarder behaviour and discipline at hostels

18. (1) Subject to the provisions of the South African Schools Act, a hostel boarder at a hostel who-

- (a) uses, threatens to use, has in his or her possession, sells or distributes a dangerous object;
- (b) uses, has in his or her possession, sells, distributes or, in the circumstances contemplated in section 45A(9) of the Act, tests positive for alcoholic liquor or illegal drugs;
- (c) commits an act of bullying, assault, theft, arson or malicious damage to property, or another criminal offence;
- (d) uses hate speech, makes himself or herself guilty of victimisation, intimidation, racism, sexism or sexual harassment, possesses or distributes pornographic material, or engages in any act of public indecency;
- (e) disrespects, violates the rights of, endangers the safety of, threatens or verbally abuses fellow hostel boarders, fellow learners, supervisors, educators, staff members or visitors;
- (f) vandalises, destroys or defaces hostel infrastructure;
- (g) commits an act of gross insubordination;
- (h) with the intention of enabling himself or herself or any other person to gain an unfair advantage, has in his or her possession, uses, distributes or trades any unauthorised copy of a test or examination question paper, cheats, or bribes or attempts to bribe any person in respect of any test or examination;
- (i) disrupts the hostel programme;
- (j) falsely identifies himself or herself, or knowingly and wilfully supplies false information or falsifies documentation to gain an unfair advantage at the hostel;
- (k) conducts or participates in any initiation practices against a fellow learner or a fellow hostel boarder;
- (l) contravenes any law while living in the hostel or attending the school;
- (m) contravenes the code of conduct of the school or the code of conduct of the hostel, if applicable; or
- (n) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner, may be guilty of serious misconduct.

(2)(a) Where it is alleged that the conduct of a hostel boarder may constitute serious misconduct contemplated in sub-regulation (1), the chairperson of the hostel committee must notify the principal in writing.

(b) Once notified, the principal must, without delay-

- (i) investigate or cause an investigation to be carried out to determine whether there are grounds for a disciplinary hearing; and
- (ii) decide whether there is sufficient evidence to institute disciplinary action against the hostel boarder in respect of the serious misconduct and whether or not to report the matter to the governing body.

(3)(a) On receipt of a report by the principal, or out of its own volition, the governing body may, on reasonable grounds, and as a precautionary measure, suspend the hostel boarder suspected of serious misconduct-

- (i) from living in the hostel; or
- (ii) from living in the hostel and attending the school, for a period not longer than seven school days.

(b) Reasonable grounds for precautionary suspension are as follows:

- (i) the presence of the hostel boarder at the hostel or the school is likely to compromise the safety of fellow hostel boarders, fellow learners, supervisors, educators, staff members or visitors;
- (ii) the presence of the hostel boarder at the hostel or the school is likely to result in damage to property;
- (iii) the presence of the hostel boarder at the hostel or the school is likely to cause disruption of the hostel programme or the school programme; or
- (iv) the hostel boarder is likely to interfere with witnesses or tamper with evidence.

(4) Before the governing body enforces the suspension in terms of sub-regulation (3), it must-

- (a) inform the hostel boarder and the parents of the hostel boarder of the intended suspension and the reasons therefor; and
- (b) afford the hostel boarder and the parents of the hostel boarder a reasonable opportunity to make representations orally or in writing to the governing body regarding the intended suspension.

(5) If the governing body suspends the hostel boarder as contemplated in sub-regulation (3)(a), it must report the decision of the suspension of the hostel boarder to the district director, who must keep a register of all suspensions.

(6)(a) Regulations 5 and 6(1), (2), (4) and (5) of the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape apply, with the necessary changes, to the disciplinary proceedings against a hostel boarder, and every reference to the learner must be construed as a reference to the hostel boarder.

(b) The disciplinary committee must be chaired by a member of the governing body, designated by the governing body, who is not an employee or staff member of the school or the hostel.

(c) If the governing body does not designate a disciplinary committee, all references to the disciplinary committee in these regulations must be construed as references to the governing body.

(7)(a) The governing body or disciplinary committee must conduct disciplinary proceedings in the manner contemplated in section 8(6) to (9) of the South African Schools Act against the hostel boarder-

- (i) within seven school days after the suspension of such hostel boarder as contemplated in sub-regulation (3)(a); and
- (ii) after five school days since notice of the disciplinary proceedings was given, as contemplated in regulation 5(1) of the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape.

(b) Every reference to a learner in section 8(6) to (9) of the South African Schools Act must be construed as a reference to the hostel boarder.

(c) If disciplinary proceedings are not conducted within seven school days after the suspension of the hostel boarder as contemplated in sub-regulation (3), the governing body must obtain the approval of the Head of Department for the continuation of the suspension of the hostel boarder.

(8)(a) Regulation 7(1) to (4)(d), (4)(f), (5) to (6) and (8) to (9) of the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape applies, with the necessary changes, to the disciplinary proceedings against a hostel boarder, and every reference to the learner must be construed as a reference to the hostel boarder.

(b) If the hostel boarder pleads guilty to the charge of serious misconduct, the chairperson of the disciplinary committee must ensure that the disciplinary committee, after finding the hostel boarder guilty of serious misconduct, decides if-

- (i) the hostel boarder should as a correctional measure be suspended-
 - (aa) from living in the hostel; or
 - (bb) from living in the hostel and attending the school, for a period not longer than seven school days;
- (ii) the expulsion of the hostel boarder-

- (aa) from the hostel; or
- (bb) from the hostel and from the school, should be recommended to the Head of Department as contemplated in sub- regulation (10); or
- (iii) any other sanction contemplated for serious misconduct in the code of conduct of the school or the code of conduct of the hostel, if applicable, should be imposed on the hostel boarder.

(c) If the hostel boarder pleads not guilty to the charge of serious misconduct, the disciplinary committee must, if it finds the hostel boarder guilty of serious misconduct after following the process contemplated in regulation 7(5) of the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, with the necessary changes, decide on an appropriate sanction contemplated in paragraph (b)(i) to (iii), taking all the evidence and representations into account.

(9)(a) The disciplinary committee must report all its decisions to the governing body, whereafter the decisions are deemed to be those of the governing body.

(b) The governing body must report all decisions to suspend and the nature of suspension to the district director, who must keep a register of all suspensions.

(10) If the disciplinary committee decided that expulsion is the appropriate sanction, the governing body must make a written recommendation to the Head of Department to expel such hostel boarder-

- (a) from the hostel; or
- (b) from the hostel and from the school.

(11)(a) Where the governing body makes a recommendation as contemplated in sub- regulation (10), it must notify the hostel boarder and the parents of the hostel boarder, in writing, of the decision to make such a recommendation.

(b) Pending a decision by the Head of Department, the governing body may suspend, or extend the suspension of, a hostel boarder-

- (i) from living in the hostel; or
- (ii) from living in the hostel and attending the school, for a period not longer than 14 school days from the day the recommendation was submitted to the Head of Department.

(c) Where a governing body has recommended expulsion to the Head of Department, it must direct the principal to submit to the Head of Department, within three school days-

- (i) the minutes of the meetings at which the decision was taken;
- (ii) any written representations submitted by the hostel boarder, parents of the hostel boarder or representative; and
- (iii) the full record of the proceedings by the disciplinary committee or governing body.

(d) The combined period of suspension of a hostel boarder by the governing body in terms of sub-regulations (3), (8)(b)(i) and (11)(b) may for each disciplinary proceeding against such hostel boarder not exceed 21 school days, unless the governing body obtained the approval of the Head of Department for the continuation of the suspension of the hostel boarder as contemplated in sub-regulation (7)(c).

(12)(a) The Head of Department must consider the recommendation of the governing body and decide whether or not to expel a hostel boarder- (i) from the hostel; or (ii) from the hostel and from the school, within 14 school days of receipt of the recommendation.

(b) If the governing body recommends that the hostel boarder be expelled from the hostel and the Head of Department decides against such expulsion, the Head of Department may, after consultation with the governing body, impose a suitable sanction on the hostel boarder, which must be implemented by the governing body.

(c) If the governing body recommends that the hostel boarder be expelled from the hostel and from the school, and the Head of Department decides against such expulsion from the hostel and from the school, the Head of Department may, after consultation with the governing body, expel the hostel boarder from the hostel only, or impose a suitable sanction on the hostel boarder, which must be implemented by the governing body.

(d) If the Head of Department decides not to impose a sanction on the hostel boarder, the Head of Department must refer the matter back to the governing body for an alternative sanction, other than expulsion, in terms of the code of conduct of the school and the code of conduct of the hostel, if applicable.

(e) The Head of Department must notify the governing body, the hostel boarder and the parents of the hostel boarder immediately, in writing, of his or her decision, with the reasons for such decision.

(f) If the Head of Department expels a hostel boarder-

- (i) from the hostel; or
- (ii) from the hostel and from the school, the notice contemplated in paragraph (e) must include a reference to the right of appeal to the Provincial Minister.

(13)(a) A hostel boarder or the parents of a hostel boarder who has been expelled- (i) from the hostel; or (ii) from the hostel and from the school, may appeal against the decision of the Head of Department by submitting a notice of appeal to the Provincial Minister within 14 school days of receipt of the notice of expulsion from the Head of Department.

(b) A copy of the notice of appeal contemplated in paragraph (a) must also be served on the office of the Head of Department and the chairperson of the governing body.

(c) If an appeal in terms of paragraph (a) is upheld by the Provincial Minister, the Provincial Minister must ensure that one of the following sanctions is imposed on the hostel boarder within 14 school days of the date on which the appeal was upheld:

- (i) if the Head of Department expelled the hostel boarder from the hostel and the Provincial Minister decides against such expulsion, the Provincial Minister may, after consultation with the governing body, impose a suitable sanction on the hostel boarder, which must be implemented by the governing body;
- (ii) if the Head of Department expelled the hostel boarder from the hostel and from the school, and the Provincial Minister decides against such expulsion from the hostel and from the school, the Provincial Minister may, after consultation with the governing body, expel the hostel boarder from the hostel only, or impose a suitable sanction on the hostel boarder, which must be implemented by the governing body;
- (iii) if the Provincial Minister decides not to impose a sanction on the hostel boarder, the Provincial Minister must refer the matter back to the governing body for an alternative sanction, other than expulsion, in terms of the code of conduct of the school and the code of conduct of the hostel, if applicable.

(14)(a) If a hostel boarder who is subject to compulsory school attendance in terms of section 42(1) of the Act is expelled-

- (i) from the hostel, and the expulsion will have the effect that the hostel boarder will not be able to attend the school; or
- (ii) from the hostel and from the school, the Head of Department must make an alternative arrangement for the placement of the hostel boarder-
 - (aa) at a public school; or
 - (bb) at a public school and its hostel, if the school contemplated in item (aa) is not accessible to the hostel boarder.

(b) If a hostel boarder who is not subject to compulsory school attendance, is expelled-

- (i) from the hostel, and the expulsion will have the effect that the hostel boarder will not be able to attend the school; or
- (ii) from the hostel and from the school, the parents of the hostel boarder may make an alternative arrangement for his or her placement-
 - (aa) at a school; or
 - (bb) at a school and its hostel, and may request the assistance of the district director.

(c) If the hostel boarder is expelled-

- (i) from the hostel, and the expulsion will have the effect that the hostel boarder will not be able to attend the school; or
- (ii) from the hostel and from the school, and the hostel boarder or the parents of the hostel boarder have appealed in the manner contemplated in sub-regulation (13), such hostel boarder must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department after consultation with the principal.

(d) In determining an alternative arrangement for placement contemplated in paragraph (a), or the manner of access to education contemplated in paragraph (c), the Head of Department-

- (i) must take reasonable measures to protect the rights of supervisors, educators, staff members, visitors and other-
 - (aa) learners at the school concerned; and
 - (bb) hostel boarders at the hostel concerned, if applicable; and
- (ii) may consider an alternative method of providing education to the hostel boarder, which may include-
 - (aa) ensuring that the hostel boarder is admitted to another school within the province;

- (bb) ensuring that the hostel boarder is admitted to another school within the province and its hostel;
- (cc) requiring the hostel boarder to attend counselling at district level with Specialised Learner and Educator Support or School Psychological Support or School Social Work Support; and
- (dd) requesting regular progress reports in respect of the counselling contemplated in item (cc) from the relevant support component.

(e) Any hostel boarder who is expelled-

- (i) from the hostel, which expulsion will have the effect that the hostel boarder will not be able to attend the school; or
- (ii) from the hostel and from the school, during the last term of a year, must be afforded the opportunity to write the final examinations of that school in that year, and the principal of the school may instruct the hostel boarder to write the examination in a venue separate from the learners of the school.

(15) If any conflict arises between this regulation and the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, this regulation prevails where a hostel boarder is concerned."

Short title

9. These regulations are called the Regulations relating to the Management and Control of Hostels at Public Schools and the Control over the Immovable Property and Equipment under the Western Cape Education Department: Amendment, 2020.