PLACE ON SCHOOL LETTERHEAD

DISCIPLINARY HEARING PROCEDURE AND FAIRNESS CHECKLIST[1]

Hearing of: _____ **Gr:** _____ **Date:** _____

Brief description of the concern:

Full details are set out on the Notice of Disciplinary Hearing

1. _____
2. _____
3. _____

IMPORTANT: *This checklist must be read together with the applicable provincial disciplinary regulations and the school's Code of Conduct. Where those instruments prescribe additional or stricter procedural safeguards, those requirements must be followed.*

[1] Please visit www.fedsas.org.za for resources on disciplinary hearings, including *Framework of a Disciplinary Hearing, Certain Aspect Prior to and the Process of a Disciplinary Hearing and Nature and Course of Disciplinary Hearing*. The principles of procedural and substantive fairness in a learner disciplinary hearing apply equally to School Governing Body (SGB) employees.

Kopiereg FEDSAS Copyright

REF	CHECKLIST ITEM	YES	NO
1A	**NOTICE OF HEARING / CHARGE SHEET**		
1.1.	Written notice / charge sheet was received within the minimum notice period required by the applicable provincial regulations and the school's Code of Conduct. The national guideline refers to at least five school days' written notice, but the applicable provincial rule must be checked.	**YES**	**NO**
1.2.	Details of the concern are set out on the Notice of Concern / Charge Sheet / Notice of Disciplinary hearing[2].	**YES**	**NO**
1.3.	The concern / charges are linked to the applicable provisions of the school's Code of Conduct and, where relevant, the applicable provincial serious-misconduct provisions.	**YES**	**NO**
1.4.	The evidence / documents on which the school intends to rely were disclosed in the Notice of Hearing as required by the applicable Code of Conduct / provincial rules and sufficiently in advance to avoid unfair surprise.	**YES**	**NO**
1.5.	The charges contain sufficient particulars, including what is alleged and, where reasonably possible, the date, place and conduct complained of, to enable the learner to understand and answer the case.	**YES**	**NO**
1.6.	Time & venue of the hearing stated on the Notice of Hearing / charge sheet.	**YES**	**NO**
1.7.	The procedural rights of the learner are stated on the Notice of Hearing / charge sheet.	**YES**	**NO**

[2] Please see the Notice of Disciplinary Hearing template on www.fedsas.org.za

Kopiereg FEDSAS Copyright

1.8.	The learner / parent was informed of the learner's right to be represented in accordance with section 8(6) of SASA and the applicable Code of Conduct / regulations. [3]	**YES**	**NO**
1.9.	The learner / parent was informed of the right to request further particulars of clarification of the charges where reasonably necessary to prepare for the heading.	**YES**	**NO**
1.10.	Proof of service / receipt of the notice and accompanying documents is available, and the date of receipt is recorded.	**YES**	**NO**
1.11.	The learner and parent/guardian's preferred language and any interpreter needs were addressed.	**YES**	**NO**
1B	**TEMPORARY SUSPENSION / PRECAUTIONARY**		
1.12.	The learner was temporarily suspended as a precautionary measure before the hearing.[4]	**YES**	**NO**
1.13.	The suspension was authorised by the governing body and the statutory basis and reasons for the suspension were recorded.	**YES**	**NO**
1.14.	The alleged misconduct falls within a category contemplated by section 9(1) of SASA.	**YES**	**NO**
1.15.	Where section 9(1)(a) applies, the learner was given a reasonable opportunity to make representations regarding the accusation before the suspension was enforced.	**YES**	**NO**
1.16.	Where section 9(1)(b) applies, it was confirmed that the alleged offence occurred on school premises or at a school activity and that the learner had been formally charged by SAPS, in which event immediate suspension may be imposed without prior representations.	**YES**	**NO**

[3] Under SASA s 8(6), a minor has a right to be accompanied/represented by a parent, guardian, or their designee - not automatically by a lawyer, which depends on the school's code of conduct.

[4] General serious misconduct: precautionary suspension only after a chance for written representations. SAPS-charged severe crimes (murder, rape, armed robbery, drug dealing): immediate suspension, no prior representations. (SASA s 9(1)(a)-(b).)

Kopiereg FEDSAS Copyright

1.17.	The disciplinary proceedings were commenced / conducted within seven school days after the suspension.	**YES**	**NO**
1.18.	If the hearing was not conducted within seven school days, approval of the Head of Department for continuation of the suspension was obtained.	**YES**	**NO**
1.19.	The suspension was based on relevant safety considerations, where applicable.	**YES**	**NO**
Suspension notes / dates / statutory basis: _____ _____ _____ _____			
1C	**PRELIMINARY ISSUES TO BE DEALT WITH BEFORE THE PLEA**		
1.20.	All persons present were identified and their roles recorded (presiding officer / panel, school presenter, learner, parent / designated person, interpreter, witnesses and minute-taker).	**YES**	**NO**
1.21.	The learner is accompanied by a parent or person designated by the parent. If not, the governing body's good cause for continuing in that person's absence is recorded.	**YES**	**NO**
1.22.	The learner's preferred language was confirmed and any need for an interpreter or other communication accommodation was addressed.	**YES**	**NO**
1.23.	Any request for legal or other representation was considered and ruled on in accordance with the applicable provincial regulations and Code of Conduct.	**YES**	**NO**
1.24.	The panel / disciplinary committee was properly appointed and is properly constituted under the applicable provincial regulations, SGB resolution and Code of Conduct.	**YES**	**NO**

Kopiereg FEDSAS Copyright

1.25.	Panel members disclosed any possible conflict, prior involvement or relationship; the learner / parent was invited to raise objections; recusals and rulings were recorded.	**YES**	**NO**
1.26.	Jurisdiction was confirmed: the alleged conduct is capable of falling within the school's Code of Conduct and, where serious misconduct is alleged, within the applicable provincial / statutory framework.	**YES**	**NO**
1.27.	Any objection to the charges, vagueness, duplication, notice, disclosure, procedure or jurisdiction was raised and decided before the plea.	**YES**	**NO**
1.28.	Any application for postponement was heard, and a reasoned ruling was recorded, including any prejudice relied upon.	**YES**	**NO**
1.29.	Any amendment to a charge was explained and the learner was given adequate time to deal with the amendment if fairness required it.	**YES**	**NO**
1.30.	Any special arrangements required for a witness under 18, including possible use of an intermediary under section 8(7)–(9) of SASA, were considered.	**YES**	**NO**
1.31.	The method of keeping the official record of proceedings (minutes and/or audio recording, if permitted) was confirmed.	**YES**	**NO**

Preliminary objections / applications and rulings:

_____

_____

_____

_____

2.	**PROCEDURE & ROLE**		
2.1.	The procedure to be followed during the hearing was explained.	**YES**	**NO**

Kopiereg FEDSAS Copyright

2.2.	The procedure is age-appropriate, conducted in the learner's best interests, and consistent with natural justice, fairness and reasonableness.	**YES**	**NO**
2.3.	The panel was confirmed to be impartial.	**YES**	**NO**
2.4.	No panel member was involved in investigating or raising the concern, and any disclosed conflicts of interest were appropriately addressed.	**YES**	**NO**
2.5.	The role of each member present was explained.	**YES**	**NO**
2.6.	It was explained that the school would present its case on the merits first and that the learner would have a full opportunity to answer the case and present their own case.	**YES**	**NO**
2.7.	The applicable standard of proof was explained and will be applied consistently to each charge.	**YES**	**NO**
2.8.	The merits stage and sanction stage will be kept separate; previous disciplinary history will not be considered when deciding guilt.	**YES**	**NO**
2.9.	Confidentiality and the protection of minor learners and witnesses were explained to those present.	**YES**	**NO**
3.	**EVIDENCE**		
3.1	The concern (charge) was read and the learner was asked if they understood it.	**YES**	**NO**
3.2	The learner was asked to respond to the concern (charge).	**YES**	**NO**
3.3	The learner's response (plea):	**GUILTY**	**NOT GUILTY**
3.4	Where a guilty plea was entered, the panel confirmed that the plea was voluntary, that the learner understood the allegation, and that the admitted facts establish the misconduct before recording a finding.	**YES**	**NO**

Kopiereg FEDSAS Copyright

3.5	The school was given an opportunity to present relevant witnesses and evidence.	**YES**	**NO**
3.6	The learner / representative was given a reasonable opportunity to question the school's witnesses.	**YES**	**NO**
3.7	Documentary, electronic or physical **evidence** relied upon by the school was identified, placed before the panel and made available to the learner / representative.	**YES**	**NO**
3.8	The learner was given an opportunity to explain what happened, call their own witnesses and present relevant documents or other evidence.	**YES**	**NO**
3.9	The school presenter was allowed to ask fair and relevant questions of the learner's witnesses, where applicable.	**YES**	**NO**
3.10	Any child-witness protection / intermediary arrangements were respected during the giving of evidence.	**YES**	**NO**
3.11	Both parties were given an opportunity to make closing submissions on the merits before the panel decided the charges.	**YES**	**NO**

Important evidentiary rulings / admitted exhibits:

_____

_____

_____

_____

4.	**FINDING**		
4.1	The panel gave a finding on whether the concern (charge) was upheld.	**UPHELD**	**NOT UPHELD**
4.2	The panel made a separate finding on each charge after considering only the evidence properly placed before it.	**YES**	**NO**

Kopiereg FEDSAS Copyright

4.3	The panel applied the applicable standard of proof and recorded the material reasons for each finding.	**YES**	**NO**
4.4	The finding and reasons were communicated to the learner and parent / representative before moving to sanction.	**YES**	**NO**

Reason(s) for finding:

_____

_____

_____

_____

5.	**MITIGATING AND AGGRAVATING FACTORS**		
5.1	Mitigating and aggravating circumstances were discussed and considered only after a finding of guilt had been made.	**YES**	**NO**
5.2	The learner and parent / designated person were given a reasonable opportunity to address the panel in mitigation.	**YES**	**NO**
5.3	The school was given a reasonable opportunity to place relevant aggravating circumstances before the panel.	**YES**	**NO**
5.4	Any previous disciplinary record was introduced only at sanction stage, was verified, and the learner / parent was given an opportunity to respond to it.	**YES**	**NO**
5.5	The panel considered the learner's age, maturity, personal circumstances, seriousness of the misconduct, harm caused, remorse, previous interventions, prospects of rehabilitation, consistency and the learner's best interests.	**YES**	**NO**

Mitigating:

_____

Kopiereg FEDSAS Copyright

Aggravating:			
6.	**OUTCOME / SANCTION**		
6.1	The panel deliberated and issued an outcome, clearly recording the sanction, the reasons for the decision, the implementation date and the responsible person.	**YES**	**NO**
6.2	The sanction is one contemplated in the school's Code of Conduct and permitted by applicable law.	**YES**	**NO**
6.3	The sanction is proportionate and takes account of discipline, safety, education, rehabilitation, restorative options and the learner's best interests.	**YES**	**NO**
6.4	If the SGB imposes suspension as a sanction, it does not exceed seven school days; if expulsion is considered, the SGB makes a recommendation to the Head of Department because only the HOD may expel a learner.	**YES**	**NO**
6.5	If expulsion is recommended, any suspension pending the HOD's decision complies with section 9(1E) of SASA and does not exceed 14 days.	**YES**	**NO**
6.6	Appropriate support, counselling or rehabilitative measures required by the Code of Conduct were considered.	**YES**	**NO**

Kopiereg FEDSAS Copyright

6.7	**Restitution:** _____ _____ _____	Responsible person & date: _____ _____	
6.8.	**Rehabilitation:** _____ _____ _____	Responsible person & date: _____ _____	
6.9.	**Reformative / restorative measure:** _____ _____ _____	Responsible person & date: _____ _____	
7.	**RIGHT TO APPEAL[5] / REVIEW**		
7.1	The learner / parent was informed in writing of any applicable internal or provincial review / appeal mechanism. If the HOD expels the learner, the statutory appeal to the MEC under section 9(4) applies.	**YES**	**NO**
7.2	Where an appeal is available, the learner and parent / guardian were informed of the procedure and the applicable time period.	**YES**	**NO**
8.	**FAIRNESS OF PROCEDURE**		
8.1	Was the procedure fair?	**YES**	**NO**
8.2	Was the learner given a meaningful and reasonable opportunity to know the case, challenge it and present his / her own case?	**YES**	**NO**
8.3	Was the panel impartial and free from any undisclosed conflict of interest?	**YES**	**NO**

[5] Please adjust to be in line with your school's code of conduct. The purpose of this item is to inform the parents & learner whether there is a right to an internal appeal and whether they understand it.

Kopiereg FEDSAS Copyright

8.4	Were the relevant procedural objections and application properly considered and decided?	**YES**	**NO**
Reasons / fairness concerns (if any): _____ _____ _____ _____			
9.	**FAIRNESS OF SANCTION**		
9.1	Were the sanctions fair and proportionate, taking into account the seriousness of the misconduct, the learner's age and circumstances, the impact on others, consistency, rehabilitation, the learner's right to education and the learner's best interests?	**YES**	**NO**
9.2	Is the sanction consistent with the Code of Conduct and, so far as reasonably possible, with sanctions imposed in comparable cases?	**YES**	**NO**
10.	**COMMUNICATION AND RECORD-KEEPING**		
10.1	Minutes and/or an authorized recording of the hearing were retained on file.	**YES**	**NO**
10.2	The written finding and sanction / recommendation were provided to the learner and parent / designated person.	**YES**	**NO**
10.3	The official record, exhibits, attendance record, preliminary rulings and reasons for the outcome are complete and retained securely.	**YES**	**NO**
10.4	Any refusal by a learner or parent to sign acknowledgement of receipt was recorded and witnessed; refusal to sign does not convert the signature into a requirement for agreement with the outcome.	**YES**	**NO**
10.5	Where follow-up actions were imposed, responsible persons and completion / review dates were recorded.	**YES**	**NO**

Kopiereg FEDSAS Copyright

Signed at _____ on this ____ day of _____ 20 ___.

_____

Signature of *parent(s)* agreeing with the above

Name and surname of parent: _____

_____

Signature of *Presiding Officer*

Name of Presiding Officer: _____

Date: _____

Review note: This checklist is a procedural aid and does not replace the applicable provincial regulations, the school Code of Conduct or a properly reasoned record of the hearing.

Kopiereg FEDSAS Copyright