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13/2/7

Enquiries: GCA Timm

Circular: 0022/2012

Expiry date: None

To: Chief Directors, Directors, Circuit Team Managers, IMG Managers, Principals of public schools and Chairpersons of public school governing bodies

Brief summary: This circular introduces new regulations on disciplinary measures and procedures (with attachments) relating to serious misconduct of learners at public schools in the Western Cape.

Subject: Regulations relating to disciplining, suspension and expulsion of learners at public schools in the Western Cape, promulgated on 15 December 2011, in the Provincial Gazette Extraordinary No. 6939, and which came into effect on 2 April 2012

1. This circular replaces circular 0018/2012 dated 23 May 2012 in its entirety.
2. The attached Regulations on Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, promulgated by the Provincial Minister, in terms of section 63(1)(cE) of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), read with section 9(3) of the South African Schools Act, 1996 (Act 84 of 1996) came into effect on 2 April 2012.
3. These regulations repeal, in whole, the following:
 - 3.1 The Regulations Relating to Serious Misconduct of Learners (Excluding Learners at Public Schools for Learners Sent or Transferred Thereto in Terms of the Child Care Act, 1983 (Act 74 of 1983), and/or the Criminal Procedure Act, 1997 (Act 51 of 1997)) in the Province of the Western Cape, and the

disciplinary procedures that must be followed in such cases published in Provincial Gazette Extraordinary No. 5190, dated 31 October 1997.

3.2 The General Manual for the Suspension and Expulsion of Learners from Public Schools, published in Circular No. 0030/99, dated 18 March 1999.

3.3 Notice of Disciplinary Hearing (Annexure E) and Lodging of Appeal (Annexure G), published in circular 0024/2009 dated 30 June 2009.

4. It is the responsibility of principals and governing bodies to ensure procedural and substantive compliance with the provisions of the new regulations, in particular the following -

4.1 all disciplinary proceedings which commenced prior to 2 April 2012, and for which a recommendation of expulsion has been made to the Head of Department, and/or an appeal is pending, shall be finalised as provided for under the Regulations and Circulars mentioned at 3.1, 3.2 and 3.3 above.

4.2 all disciplinary proceedings commencing after 2 April 2012, shall be dealt with as contemplated in the new Regulations on Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape.

5. Governing bodies and principals of public schools must implement these new regulations to safeguard the interests and rights of affected learners and their constitutional right to procedural fairness, which requires, amongst others, that:

5.1 the learner and the parent of the learner are informed, in an appropriate manner and through the notice contemplated in regulation 5, of the alleged serious misconduct;

5.2 the notice to the learner and parent or guardian of the learner must contain sufficient particulars as to the date, time and venue of the disciplinary hearing;

5.3 the learner and parent or guardian of the learner are fully informed of their right to access documents relating to the alleged serious misconduct;

5.4 the learner has the right to be represented at the hearing, to ask questions and cross examine witnesses; and

- 5.5 the learner and parent or guardian have the right to be informed, in writing, of the decision of the governing body, or of the Head of Department where expulsion has been recommended and the right of the learner or parent or guardian to appeal against the decision of the Head of Department to the Provincial Minister.
6. In all instances of suspensions contemplated in Regulation 4, the district director, via circuit team managers, must be informed of the nature and period of suspension.
7. Prompt presentation of documentation is essential. The Head of the Western Cape Education Department (WCED) must receive all relevant documents, including the forms attached to this circular, from the governing body within 3 days of the decision to recommend expulsion. The Head of Department must, within 14 days, take a decision and inform the parents or guardian, via the school, of his or her decision. In view of this, the documents referred to in Regulation 8(1)(b), as well as copies of the written notices informing the learner and the parent or guardian of the misconduct and the recommendation of the governing body, must be either faxed or hand delivered or e-mailed under cover of the Recommendation for Expulsion of Learner Form (Annexure D) to the following address:

Head: Education
Attention: Mr GCA Timm
Western Cape Education Department
Room 926 (9th Floor)
Grand Central Towers
Lower Parliament Street
Cape Town
8001

Fax no.: 021 461 3694
Tel. no.: 021 467 2844
e-Mail: Gerald.Timm@pgwc.gov.za

At the same time, copies of these documents must be provided to the circuit team manager or IMG Manager by the principal. Principals should note that these officials may approach them for further clarity. It may also be necessary for the Head of the WCED to contact principals or district officials directly for any additional information.

8. Full minutes must be kept of proceedings where charges of misconduct against a learner are investigated and/or discussed. The following, amongst others, must be minuted so that the Head of the WCED is able to determine whether the parent or guardian of the learner or their representative was afforded the

opportunity to state their side of the case and whether their representation was properly taken into account in the final decision:

- 8.1 The full charges against the learner
 - 8.2 How the learner pleads, and the parent's or guardian's or their representative's reaction to the charges
 - 8.3 Questions asked by the learner, the parent or their representative, and the responses to such questions
 - 8.4 The response of the governing body to the representation of the learner, the parent or their representative
 - 8.5 The decision of the governing body and the reasons for such decision.
9. In terms of Regulation 4(1), the governing body may suspend a learner. Governing bodies should also be mindful of the fact that they may suspend learners in terms of regulations 4(1)(a) and 4(1)(c) if the learner's presence at the school constitutes a threat to the school community, and that a suspension must not be summarily applied.
 10. If principals experience difficulty with the interpretation of the relevant regulations, circuit team or IMG managers must be consulted before steps are taken against enrolled learners. District directors and circuit team managers are requested to ensure that principals within their service areas are fully acquainted with the provisions and the procedures contained in the new regulations.
 11. Circuit team managers will receive a copy of the documentation (not the original) that was sent to the Head of the WCED. They should acquaint themselves with the circumstances of each case in order to assist the Head of Education should further clarification or information be needed, or to enable them to provide the appropriate assistance to the learner after the decision is taken.
 12. Expulsion should be considered as the last resort after all other disciplinary measures have failed.
 13. Attached to these regulations are the following annexures, designed to assist governing bodies and principals of public schools to ensure that a fair and just process is followed:

Annexure A: Notice to learner and parent of disciplinary hearing in terms of Regulation 5

Annexure B: Notice of a sanction imposed by the governing body in terms of

- Regulation 7
- Annexure C:** Notice of the decision of the governing body to recommend expulsion of the learner to the Head of Department in terms of Regulation 8
- Annexure D:** Recommendation by the governing body to the Head of Department for expulsion of the learner from school

14. It should also be noted that these regulations do not apply to a child- or youth care centre described in section 191 of the Children's Act, 2005 (Act 38 of 2005). Formal disciplinary hearings are also not recommended for children in Grades R to 3.
15. School principals and district directors are kindly requested to bring the content of this circular to the attention of all staff.

SIGNED: PENNY VINJEVOLD
HEAD: EDUCATION
DATE: 2012.06.06