



# DISCIPLINARY PROCEDURES FOR PUBLIC SCHOOLS

## A GUIDE FOR LEARNERS AND THEIR PARENTS OR GUARDIANS

This document is for learners and their parents or guardians. It explains what should happen if the learner is accused of serious misconduct at school and how disciplinary procedures should work. It is for learners at public schools. The rules for private schools are different. The document can also be used by those representing learners at disciplinary hearings.



### THE DOCUMENT EXPLAINS:

- ✓ What a school code of conduct is and what it should contain.
- ✓ What should happen when a learner is accused of serious misconduct.
- ✓ How searches and drug testing should be carried out.
- ✓ What a disciplinary hearing is and how it should work. Disciplinary hearings are held to decide whether a learner has committed serious misconduct and how the school will respond.
- ✓ How to prepare for a disciplinary hearing.
- ✓ How the other stages of the disciplinary process work, including the process for expelling a learner from school (permanently unenrolling the learner from that school).

# WHAT IS A SCHOOL CODE OF CONDUCT?



A school code of conduct sets out the school's approach to discipline. It is a document that lists the rules and guidelines that everyone in the school must follow. It also explains how these rules will be enforced, with other important school policies included.

## SCHOOL DISCIPLINE

School discipline should be used to guide the behaviour of learners at school. Schools should use discipline to teach appropriate and address inappropriate behaviour.

Sometimes, if learners engage in serious misconduct (misbehaviour), schools may use suspension or expulsion as forms of discipline.

Every school has a school governing body (SGB) made up of the principal, and elected parents, teachers, and high school learners which is responsible for running the school. The SGB should develop a **code of conduct** for the school. This code sets out the type of behaviour that is expected from everyone in the school, and should help make the school a disciplined, safe and positive place for learning. The SGB should also establish a disciplinary committee. The disciplinary committee is there to make sure all discipline processes happen fairly.

Before the code of conduct is finalised, the SGB must consult with learners, parents and teachers. This means they need to ask for their opinions and feedback to make sure everyone's views are considered.

The code of conduct must also follow the rules of the Constitution, the South African Schools Act, as amended (The Schools Law) and all other important laws. For example, the Constitution says every child has the right to an education, and the Schools Law says every child has the right to attend school without being unfairly suspended or expelled. A code of conduct must follow these guidelines and ensure that any discipline is fair.

The code of conduct must clearly describe all types of misconduct (misbehaviour/rule-breaking) and what the consequences will be. The code of conduct should be clear about the difference between misconduct and serious misconduct. This is because learners can be suspended or expelled for serious misconduct.

The code of conduct explains the steps that must be followed when disciplining a learner for misconduct. It must include fair procedures to protect the rights of learners and anyone else involved. Procedures are a set of specific, step-by-step instructions that outline how to handle a situation. They provide guidance on the actions to take and the order to take them in.

When a learner is enrolled in a school, the school must make sure that both the learner and their parents/caregivers understand the school's code of conduct. A code of conduct must have support measures, such as counselling, to help learners when they need it.

## SERIOUS MISCONDUCT

Misconduct means harmful or inappropriate behaviour that goes against the school code of conduct.

There is a long list of things that is considered serious misconduct and you must look at the Schools Law and your school code of conduct to check—some examples include physically hurting others or threatening to hurt others, harassing others, bullying others, bringing drugs or alcohol to schools, cheating on tests, stealing or dishonesty that harms another learner and bringing dangerous objects to schools.

Serious misconduct can lead to suspension or expulsion.

### SUSPENSION

Suspension means that a learner is temporarily denied entry to the school where they are enrolled at.

### EXPULSION

Expulsion means that a learner is permanently un-enrolled from the school and cannot attend it. Schools do not have the power to expel a learner. Schools can only make a recommendation to the head of the provincial education department that a learner should be expelled.

# WHAT HAPPENS WHEN A LEARNER IS ACCUSED OF COMMITTING SERIOUS MISCONDUCT?

If a learner commits serious misconduct that needs corrective action, the SGB may start a disciplinary process. The school's code of conduct must clearly explain what is meant by "serious misconduct". Depending on **how serious the misconduct is**, disciplinary proceedings may lead to **suspension and/or a recommendation of expulsion** of the learner(s) in question. Every part of this process (including initial investigation) must follow the rules in the code of conduct, the Schools Law and any other relevant policies.



# SEARCHES AND DRUG TESTING

## SEARCHES

A principal of a school may randomly search any learner or group of learners for dangerous objects or illegal drugs. Searches should be done by someone of the same gender as the learner. If the principal is not the same gender as the learner, then they should choose someone else to do the search.

### The search:

- ✓ Must be done in a private area. It cannot be done in front of another learner.
- ✓ Must be done with at least one adult witness present. The witness should be the same gender as the learner.
- ✗ Must not include the learner's mouth or private parts.

These searches must be based on fair and reasonable suspicion that one or more learners may be in possession of such item(s) on the school premises.

The principal does not have to ask parents for permission to do these searches on school property.

A police official may also search any person at a public school at random, and without a warrant, if there is a suspicion that there are dangerous weapons or illegal drugs on school premises.



## DRUG TESTING

If there is a fair and reasonable suspicion that a learner used illegal drugs, a principal or someone chosen by the principal can do a urine test or other non-invasive drug test.

The principal or the person chosen by the principal must be the same gender as the learner who is undergoing the drug test.

**The drug test must be done in a fair way. The following rules must be followed:**

- ✓ One adult witness must be present for the drug test. The witness should be the same gender as the learner.
- ✓ The principal or person chosen by the principal must remove the drug testing device from its sealed packaging in front of the learner and the adult witness.
- ✓ The principal or person chosen by the principal must order the learner to provide a sample of urine.
- ✓ The principal or person chosen by the principal must follow the instructions on the testing device.
- ✗ The principal or person chosen by the principal does not need parents' permission to conduct a drug test on school premises.
- ✓ After a drug test is done, the principal or person must within one working day, if practicable, let the parent know that a drug test or search and seizure was done and also let the parent and the learner know about the result of the test immediately after it becomes available.

# THE STAGES OF THE DISCIPLINARY PROCESS

## STAGE 1: PRE-HEARING

### 1 Initial investigation

If a learner is accused of serious misconduct, a school principal or a person chosen by them must do a proper preliminary investigation. This means checking if there is enough reason to hold a formal disciplinary hearing. They should try to find out how likely it is that the learner did the thing they are accused of.

If the principal believes that it is more likely than not that the learner committed the serious misconduct, a formal disciplinary hearing must be organised by the principal and/or SGB. The disciplinary hearing will be held by the school's disciplinary committee, if there is one. If there is no disciplinary committee, the hearing should be held by the SGB.



### 2 Precautionary suspension

An SGB may, on reasonable grounds and as a precautionary measure, suspend a learner who is suspected of serious misconduct. The SGB should only do this when it could be dangerous or harmful to allow the learner to stay in school. However, if the learner is criminally charged by the police for murder, attempted murder, a sexual offence, robbery, theft, assault with the intention to seriously harm someone, breaking and entering a place to harm someone, possessing or selling drugs, then the SGB must suspend the learner immediately.

The learner or their parent(s) or guardian(s) must be given an opportunity to make representations before a precautionary suspension is imposed. In other words, they should have a chance to explain why the learner should not be suspended. If the SGB listens to the reasons why the learner should not be suspended but still believes that it would be dangerous or harmful to allow the learner to stay in school, then the learner **can** be suspended **before** a full disciplinary hearing takes place. But if the learner is charged by the police as

explained above, then the SGB does not have to give learners or parents a chance to explain why the learner should not be suspended immediately. The learner will just be suspended immediately.

A learner may be suspended as a precaution for a maximum of **seven (7) school days**. During these seven days, the school **must** hold a disciplinary hearing. If this is not done, then the SGB must ask for special permission from the Head of the Provincial Education Department for the suspension to continue. If they do not get permission, then the learner should be allowed to return to school.

### 3 Advance notice of the disciplinary hearing

The disciplinary process must start with an **advance notice** to the learner and their parent(s) or legal guardian(s). This step is extremely important because it gives a learner enough time to prepare for presenting their side of the story. The notice should include:

- ✓ The learner's personal details.
- ✓ The date, time, and place of the hearing.
- ✓ The details of the charge(s) against the learner.
- ✓ The date and nature of the alleged misconduct.
- ✓ Information about the right of the learner to be represented. The learner has the right to be represented at the hearing either by their parent or by a representative of the parents' choice.
- ✓ Information about the learner's other rights. This includes the learner's right to present their case, ask questions in the hearing, call and question witnesses, and look at evidence beforehand.



### 4 Hearing preparation

Once the learner receives advance notice that the hearing will be held, they should make sure they are prepared.

If the school gives the learner copies of the **evidence** that they will use (such as statements made by witnesses), the learner should go through the evidence and decide whether to plead guilty or not guilty. If the learner did not do the thing they are accused of, they should normally plead not guilty.

The learner has the right to get copies of evidence or, where this is not possible, they have the right to inspect (look at) the evidence on the school premises.

### The learner can request copies of:

- ✓ The list of witnesses that the school will use in the hearing
- ✓ Witness statements
- ✓ Statement from teachers or support staff
- ✓ Other documents the school will use in the hearing

There are some types of evidence that cannot be copied. The learner can arrange to go and look at this evidence at the school. This type of evidence includes:



- ✗ Weapons
- ✗ Drugs
- ✗ Drug tests

If the learner has **witnesses** to support their version of events, the learner can arrange for them to be at the hearing. However, the learner cannot force a witness to be there if the witness does not want to be.

**IF THE LEARNER WISHES  
TO BE REPRESENTED  
AT THE HEARING,  
THEY SHOULD FIND A  
REPRESENTATIVE BEFORE  
THE HEARING STARTS.**



## STAGE 2: DISCIPLINARY HEARING

### Fair process

The Chairperson of the disciplinary committee must make sure the hearing is fair. This includes explaining the learner's rights and the charge(s) against the learner. Once this is done, both the school and the learner will have the chance to present their side of the story and to produce evidence and witness statements.



### The school's side of the story

The school will be able to present their side of the story in front of the disciplinary committee by calling witnesses or presenting other forms of evidence such as a drug test or weapon that was found after a search was done of the learner.

The learner or their representative will be able to challenge the evidence that the school presents, and this includes questioning the school's witnesses.

If a witness statement is given as evidence, the witness who wrote the statement must be present at the hearing, otherwise the statement cannot be included as evidence.

The school principal is allowed to be present in the hearing. However, the principal is **not** allowed to be present after the hearing, when the SGB or disciplinary committee is deciding on what the outcome should be.

### The learner's side of the story

Once the school has finished presenting its side of their story, the learner or learner's representative will be allowed to present their side of the story.

The learner is allowed to call their own witnesses to support their version of events. The school also has the right to question the learner's witnesses.

The SGB must keep a record of the proceedings.

**IMPORTANT: IN SOME CASES, IF THE SGB HAS A GOOD REASON, THE DISCIPLINARY PROCEEDING CAN CONTINUE WITHOUT THE PARENTS OR REPRESENTATIVE. THIS MIGHT HAPPEN IF THE SGB TRIES TO COMMUNICATE WITH THE PARENTS OR REPRESENTATIVE BUT RECEIVES NO RESPONSE.**

## Intermediaries

Both the school and the learner can call witnesses, but if a witness is under the age of 18, the SGB may appoint a competent person to act as an intermediary (a helper) for the witness. The intermediary would then help the witness present the evidence. This is often done when the SGB believes that testifying in the proceeding would expose the witness to unnecessary mental stress or suffering.

If an intermediary is appointed, all the questions for that witness must be asked through the intermediary.

## Decision

When the hearing is finished, the SGB will decide whether the learner is guilty of the serious misconduct or not.

If the case is quite simple, the SGB might make their decision on the same day. If the case is more complicated, the SGB might make their decision at a later date.

**IMPORTANT: WHEN THE SGB IS MAKING THIS DECISION, THE SCHOOL PRINCIPAL MAY NOT BE PRESENT AND MUST STEP OUT.**



## Consequences

If the SGB decides that the learner is guilty of serious misconduct, the learner or their representative must be allowed to make a case for why the learner should be given leniency (receive a lighter punishment or no punishment) before the SGB decides on what the consequences will be. This is called “mitigation”. Some mitigating factors that can be presented to the school include:

- ✓ It is the learner’s first offence.
- ✓ The learner has leadership positions at the school.
- ✓ The learner does well academically.
- ✓ The learner shows regret for their actions.
- ✓ The learner took accountability for their actions by admitting guilt and not wasting the SGB’s time.

After this, the school is allowed to make a case for why the learner should not be given a lighter punishment. This is called “aggravation”. For example, one aggravating factor might be that the learner has broken the rules in the code of conduct many times.

Once they have considered all the mitigating factors and aggravating factors, the SGB will decide on the consequences. Depending on how serious the misconduct is, and any mitigating and aggravating factors, the SGB may:

- ✓ Give the learner a detention, community service or taking away privileges (for example, banning the learner from sport).
- ✓ Suspend the learner for up to seven days.
- ✓ Make a recommendation to the Head of the Provincial Department of Education to expel the learner from the school.

### STAGE 3: RECOMMENDING EXPULSION TO THE HEAD OF DEPARTMENT

If the SGB recommends expulsion, the Head of Department (HOD) has **14 days** from receiving the recommendation to decide on whether to expel the learner or not.

During these 14 days, while the SGB waits for the HODs decision, the SGB may decide to suspend the learner or, if the learner is already suspended, to extend the existing suspension.



**IT IS IMPORTANT TO KNOW THAT A LEARNER IN A PUBLIC SCHOOL MAY ONLY BE EXPELLED BY THE HOD AND ONLY IF THEY ARE FOUND GUILTY OF SERIOUS MISCONDUCT, AFTER PROPER DISCIPLINARY PROCESSES HAVE BEEN FOLLOWED.**

If a learner is under 15 years old or in Grade 9 or below (in other words, if they are subject to compulsory schooling), the HOD must find another public school for them to attend.

Sometimes the HOD decides not to expel the learner. In this case, after talking with the SGB, the HOD can choose a different punishment for the learner or send the case back to the SGB for them to choose a different consequence for the learner.

## STAGE 4: APPEAL PROCESS

If a learner is expelled and feels the punishment or process was unfair, they can appeal to the Provincial Minister of Education in the province (MEC) within 14 days of receiving the notice of expulsion from the HOD. During the time when the learner is waiting on the MEC's response for the appeal, the HOD must give the learner access to education.

This access can take the form of attendance at school, but when deciding this the HOD must take reasonable measures to protect the rights of the other learners at the school and consider alternative methods of providing education to the learner.

If the MEC decides that they disagree with the HOD and the learner must not be expelled, the MEC must make sure that a more suitable punishment/consequence is given to the learner within 14 days of the date on which the appeal was upheld (when the MEC made the decision)



### CHECKLIST: WAS MY DISCIPLINARY ACTION FAIR?

#### DISCIPLINARY ACTION IS FAIR IF:

- ✓ The rule that the learner is accused of breaking is found in the school's code of conduct, laws, rules or policies
- ✓ A proper notice was given to the learner – which includes enough details and gives the learner enough time to prepare
- ✓ The learner was given a chance to present their case (side of the story)
- ✓ A written decision and reasons for the decision was given
- ✓ There was a clear reason for the sanction
- ✓ There was a consideration of mitigation and aggravating factors
- ✓ There was enough proof that the learner committed the misconduct/broke the rule
- ✓ The sanction fits the misconduct that was committed

#### IN CASES OF EXPULSION ONLY:

- ✗ The HOD made the decision to expel the learner, not the SGB
- ✗ The SGB shared all the evidence with the HOD, including the learner's evidence
- ✗ The learner was given a chance to appeal the decision to expel them



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