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Circular: 0011/2019

Expiry date: None

To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Deputy Directors, Circuit Managers, Heads: SLES Coordination and Advice, Principals and Chairpersons of governing bodies at public schools

Short summary: *Guidelines for principals on their role in reporting and managing alleged misconduct, disciplinary hearings and unfair dismissal disputes.*

Subject: Guidelines for principals on their role in reporting and managing alleged misconduct, disciplinary hearings and unfair dismissal disputes

1. The purpose of this circular is to provide guidelines to assist principals with the reporting and managing of alleged misconduct as well as their role during disciplinary hearings and unfair dismissal disputes stemming from such process. These guidelines apply to all principals associated with public schools in the Western Cape Education Department (WCED).

2. **Legislative framework**

The following legislation and policies govern the role of the principal in reporting and managing alleged misconduct matters:

- a) The Personnel Administrative Measures (PAM), published in *Government Gazette* No. 39684 of 12 February 2016, read in conjunction with section 16A(2)(a) of the South African Schools Act (SASA), 1996 (Act 84 of 1996), states that the principal is responsible for the professional management of a public school as contemplated in section 16A(3) of SASA, and must carry out duties which include the performance of functions delegated to him or her by the Head of Department (HoD). Furthermore, section 16A(2)(e) states that the principal needs to assist in handling disciplinary matters pertaining to educators and support staff employed by the HoD.
- b) Circular 0012/2019, dated 09 March 2019, that was drafted in the Provincial Education Labour Relations Council deals with the prohibition of corporal punishment.

- c) Western Cape Education Department Complaints Management Protocol and Guidelines, 2017.
- d) Abuse No More Protocol of the Western Cape Education Department, 2014.
- e) Manual on the Basic Financial System for Schools.

3. **Role of the principal**

3.1 **Reporting**

- 3.1.1 Once an alleged incident is reported, depending on the nature of the allegation, the principal must report the matter to the Directorate: Employee Relations (see Annexure A as a guideline).
- 3.1.2 Ensure that, in the case of employees in the employ of the governing body, the governing body is informed of the alleged incident.
- 3.1.3 It is common cause that the WCED has no jurisdiction over governing-body-appointed employees. However, incidents that involve employees in the employ of the governing body of the school must be reported to the district social worker (in terms of paragraph 3.5(d)(i) of the Abuse No More Protocol of the WCED, 2014) and/or the Directorate: Employee Relations. The rationale for this is:
 - a) to ensure that all learners receive the necessary counselling, support and debriefing; and
 - b) depending on the merits of a case, so that the district social worker can report the matter to the South African Police Service (SAPS).
- 3.1.4 Once it has been brought to their attention, the principal must contact and inform the parents/guardians of the learner(s) of the alleged incident immediately.
- 3.1.5 The principal must inform the circuit manager at the relevant district office. Depending on the nature of misconduct, the role players must collectively decide on a process of further intervention which is not limited to counselling and the safety of the learner(s).
- 3.1.6 In cases of alleged criminality (for example drug dealing, where the lives of others are threatened, assault, etc.) the principal must report the matter to SAPS in consultation with the circuit manager/governing body.

3.2 **Responsibilities**

- 3.2.1 The principal is not to conduct an investigation into matters of abuse (see the Abuse No More Protocol of the WCED, 2014). Such cases are to be reported immediately.
- 3.2.2 In all other cases, with the exception of abuse, it is advisable to gather the relevant information to ascertain the merits and follow the proposed action in Annexure A.

- 3.2.3 Once the matter has been reported to the WCED, it is regarded as *sub judice* and requires no further action from the principal, with the exception of being a communication channel.
- 3.2.4 All media inquiries related to an alleged incident must be referred to the Directorate: Communication.
- 3.2.5 The principal should avail her/himself for a possible interview with a labour relations officer and/or union officials subject to an appointment being made in order to investigate the matter.
- 3.2.6 The principal may be required to act as a witness during the disciplinary hearing on behalf of the WCED and/or any other party depending on the merits of the case.
- 3.2.7 Access to witnesses must not be unreasonably refused. In the event that the WCED and/or union require any educator/public servant to testify in proceedings, the principal is to assist with the necessary arrangements/consultation.

4. **Consent**

- 4.1 A labour relations officer and the union representative will investigate the matter, and where learners are involved will require the parents/guardians' consent prior to the investigation, if needed for a formal disciplinary hearing.
- 4.2 Please note that legal representation will only be granted in extraordinary cases and will depend on the discretion of the appointed presiding officer. Under no circumstances may a legal representative visit a school or consult with a learner or employee/educator, unless the presiding officer has granted such representation.
- 4.3 It is advisable that when a learner is interviewed either an educator, social worker, therapists, psychologist, counsellor or intermediary be present in order to protect his/her best interests in the absence of a parent/guardian.
- 4.4 It could be required of the principal, as the manager of the institution, to ensure that parents/guardians are issued with a letter of consent in this regard and the return thereof. The letter of consent should clearly explain the nature of the allegations and any other relevant information that may be required.
- 4.5 It is important that parents/guardians understand the reason for such consent, nature of proceedings, and that the necessary support or guidance will be given to the witness.

- 4.6 Once the letters of consent have been returned to school, either granting or declining consent, these are to be submitted by the principal to the labour relations officer, employee, union representative or legal representative.
- 4.7 The prescribed consent form must be used (see Annexure B for ease of reference).
5. **Transport and other logistical arrangements**
- 5.1 The WCED may require the assistance of the school, in this case the principal, in securing the attendance of learners at a disciplinary and/or unfair dismissal dispute by arranging/securing transport.
- 5.2 A consent form that gives permission for the learner to be transported by the school/WCED and to testify, and that explains the reason for their attendance (see Annexure B), must be completed by the parents/guardians.
- 5.3 Please note that it is the responsibility of the union and/or legal representative to arrange and/or secure transportation for learners who act as witnesses on their behalf.
- 5.4 The WCED will ensure that an intermediary or social worker, in the absence of a parent/guardian and where deemed required, is present in order to protect the rights of the minor learners.
- 5.5 If the school is part of the National School Nutrition Programme, it is recommended that the principal arranges a snack for the learners.
6. Kindly bring the contents of this circular to the attention of all concerned.

SIGNED: BK SCHREUDER

HEAD: EDUCATION

DATE: 2019-03-09



LETTER OF CONSENT

LEARNER TESTIFYING AS A WITNESS DURING DISCIPLINARY HEARINGS/ARBITRATION PROCEEDINGS AND FOR TRANSPORTATION

(Delete what is not applicable)

I,, the undersigned being the legal parent/guardian of, a full time learner enrolled formally at in Grade: for the year 20....., herewith give / do not give my consent to the relevant employee relations officer delegated by the Directorate: Employee Relations, the union or legal representative to interview my child.

The above consent is for the purpose of assisting with the enquiry into allegations of:

.....

I further do not object / object to my child acting as a witness for the Western Cape Education Department or the union or legal representative (in the matter as outlined above), should it be required of him/her to do so in order to curb such practices.

In respect of the transportation of my child, acting as a witness for official purposes, in a state-owned/operated/chartered motor vehicle, I hereby give / do not give my consent.

This is confirmed in my capacity as legal parent/guardian and signed on the day of 20..... at

.....
Signature of parent/guardian

.....
Date

.....
Signature of witness

.....
Date



**DISCIPLINARY CODE
SCHEDULE OF TRANSGRESSIONS FOR EDUCATORS**

NATURE OF TRANSGRESSION	PROPOSED ACTION					COMMENTS AND/OR POLICY GUIDELINES
	FIRST TRANSGRESSION	SECOND TRANSGRESSION	THIRD TRANSGRESSION	FOURTH TRANSGRESSION	FIFTH TRANSGRESSION	
1. VERY SERIOUS TRANSGRESSIONS <i>*Please note that section 17 of the Employment of Educators Act, 1998 (Act 76 of 1998), states that an educator must be dismissed if found guilty under this provision.</i>						
1.1 Section 17(1)(a): theft, fraud, bribery or corruption in regard to examinations or promotional reports	Refer to Directorate: Employee Relations					See section 17 of the Employment of Educators Act, 1998 (Act 76 of 1998).
1.2 Section 17(1)(b): committing an act of sexual assault on a learner, student or employee	Refer to Directorate: Employee Relations					
1.3 Section 17(1)(c): having a sexual relationship with a learner of the school where he/she is employed	Refer to Directorate: Employee Relations					
1.4 Section 17(1)(d): seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other	Refer to Directorate: Employee Relations					

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	The proposed action should not automatically be imposed. The nature and circumstances of each individual case should be taken into consideration prior to making a decision. Therefore, the proposed code serves only as a guideline.					
1.5 employee Section 17(1)(e): illegal possession of intoxicating, illegal or stupefying substances	Refer to Directorate: Employee Relations					
1.6 Section 17(1)(f): causing a learner or student to perform any of the acts contemplated above	Refer to Directorate: Employee Relations					
2. SERIOUS TRANSGRESSIONS						
2.1 Failing to comply with or contravening any act or regulation	Refer to Directorate: Employee Relations					Sections 17 and 18 of the Employment of Educators Act, 1998 (Act 76 of 1998) may apply.
2.2 Theft, bribery, fraud or unauthorised removal of WCED equipment or property or the property of another person from WCED premises/buildings, or being in unauthorised possession of WCED property	Refer to Directorate: Employee Relations					The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.
2.3 Falsifying records, as well as any other documentation, e.g. medical certificates, academic records, etc.	Refer to Directorate: Employee Relations					
2.4 Serious negligence	Refer to Directorate:					

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2.5 Making false statements or giving false evidence	Refer to Director: Employee Relations					
2.6 Administering corporal punishment (section 10 of the South African Schools Act, 1996 (Act 84 of 1996))	Refer to Director: Employee Relations					
2.7 Threatening violence (to cause physical injury to any other person) or physical assault	Refer to Director: Employee Relations					
2.8 Making remarks of a racist nature	Refer to Director: Employee Relations					
2.9 Gross dishonesty	Refer to Director: Employee Relations					
2.10 Endangering the safety of others	Refer to Director: Employee Relations					
2.11 Willful damage to WCED's property or equipment or the property of other staff members	Refer to Director: Employee Relations					
2.12 Gross insubordination	Refer to					The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.

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2.13 Financial misconduct	<p>Directorate: Employee Relations</p> <p>Refer to Directorate: Employee Relations</p>					<p>The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal, the Public Finance Management Act, 1999 (Act 1 of 1999), Treasury Regulations, and the Manual on the Basic Financial System for Schools must be taken into account.</p>
2.14 Sexual assault/molestation	<p>Refer to Directorate: Employee Relations</p>					<p>See Abuse No More Protocol of the WCED, 2014.</p>
2.15 An employee found guilty, in any criminal court of law, or a common-law or statutory offence	<p>Disciplinary action will depend on the nature and circumstances of the case</p>					<p>Disciplinary action will depend on the nature and circumstances of the case, as well as on the previous record of the employee. The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.</p>
2.16 Under the influence of drugs/alcohol or in possession of banned substances	<p>Refer to Directorate: Employee Relations</p>					<p>The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.</p>

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2.17 Participating in unprotected industrial action	Refer to Directorate: Employee Relations					The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.
2.18 Refusing to do any lawfully assigned regular work or to obey instructions from the designated supervisor without just or reasonable cause, the onus being on the employee to justify his refusal and/or disobedience	Refer to Directorate: Employee Relations					The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.
2.19 Unjustifiably prejudicing the administration, discipline or efficiency of the WCED, school or training institution	Refer to Directorate: Employee Relations					The nature and circumstances of the case will determine the sanction and may warrant a sanction of dismissal.
2.20 Performing poorly or inadequately for reasons other than incapacity	Refer to Directorate: Employee Relations					The nature and circumstances of the case may warrant a sanction of dismissal. Consideration to be given to the procedure as outlined in schedule 1 of the Employment of Educators Act, 1998 (Act 76 of 1998).
2.21 Conducting him/herself in an improper, disgraceful or unacceptable	Refer to Directorate: Employee Relations					The nature and circumstances of the case may warrant dismissal.

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2.22 manner while on duty Misusing official property for private purposes	Refer to Directorate: Employee Relations					The nature and circumstances of the case may warrant dismissal.
2.23 Being absent from the workplace while on duty, without the permission of the supervisor	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
2.24 Driving government vehicle or any mobile equipment without authority	Refer to Directorate: Employee Relations					
2.25 Misusing a government vehicle or any other mobile equipment	Refer to Directorate: Employee Relations					
2.26 Attempting to bring, or causing the name of the WCED to be brought into disrepute	Refer to Directorate: Employee Relations					
2.27 Gross negligence with serious or potentially serious consequences for the WCED, its staff or the public	Refer to Directorate: Employee Relations					
2.28 Revealing confidential information to unauthorised persons (revealing confidential	Progressive discipline	Refer to Directorate: Employee Relations if final				The nature and circumstances of the case may warrant dismissal.

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information shall mean unauthorised presentations, discussions, press releases, publications and/or any communication whatsoever on any matters that could embarrass or harm the Western Cape Government and/or its staff)		written warning has been issued during the disciplinary meeting				
2.29 Loss of WCED property or the property of other staff members as a result of carelessness	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
2.30 Performing private activities during official working hours	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
2.31 Performing private work without the necessary written permission	Progressive discipline	Refer to Directorate: Employee Relations if final				

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2.32 Causing serious disruptions in interpersonal relationships	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
2.33 Unauthorised and/or uncommunicated absenteeism unless the employee offers a reasonable and legitimate excuse for his absence (the onus being on the employee to justify his absenteeism)	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				The nature and circumstances of the case may warrant dismissal.
2.34 Misusing official phones, cellphones and fax machines for private purposes, without authorisation	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
2.35 Misusing official information	Progressive discipline	Refer to Directorate:				

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technology apparatus such as desktop or laptop computers and printing devices		Employee Relations if final written warning has been issued during the disciplinary meeting				
2.36 Flagrantly disregarding safety standards	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
3. LESS SERIOUS TRANSGRESSIONS						
3.1 Late-coming/absenteeism	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				For a first offence the usual disciplinary action will entail counselling.
3.2 Sleeping on duty	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the				

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3.3 Disregarding safety regulations where contravention is minor	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.4 Smoking in an area where it is prohibited	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.5 Gambling on WCED premises	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.6 Improper or unprofessional conduct	Progressive discipline	Refer to Directorate: Employee Relations if final written warning has been issued				

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3.7 Insubordination	Progressive discipline	Refer to Director: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.8 Matters relating to daily duties	Progressive discipline	Refer to Director: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.9 Posting, and/or distributing and/or displaying, and/or fixing notices, posters, stickers etc. on WCED premises or soliciting of any kind without the WCED's written permission	Progressive discipline	Refer to Director: Employee Relations if final written warning has been issued during the disciplinary meeting				
3.10 Leaving work early without permission	Progressive discipline	Refer to Director: Employee Relations if final written warning				