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Navrae: Direktoraat: Werknemersverhoudinge

Omsendbrief: 0011/2019

Vervaldatum: Geen

Aan: Adjunk-direkteurs-generaal, Hoofdirekteure, Direkteure (Hoofkantoor en distrikskantore), Adjunkdirekteure, Kringbestuurders, Hoofde: GLOO-koördinering en -advies, Prinsipale en Voorsitters van beheerliggame by openbare skole

Kort opsomming: *Riglyne vir prinsipale oor hulle rol in die rapportering en bestuur van beweerde wangedrag, dissiplinêre verhore en geskilpunte oor onbillike ontslag.*

Onderwerp: Riglyne vir prinsipale oor hulle rol in die rapportering en bestuur van beweerde wangedrag, dissiplinêre verhore en geskilpunte oor onbillike ontslag

1. Die doel van hierdie omsendbrief is om riglyne te voorsien wat prinsipale kan help met die rapportering en beheer van beweerde wangedrag sowel as hulle rol tydens dissiplinêre verhore en geskilpunte wat uit onbillike ontslag voortgespruit het. Hierdie riglyne het betrekking op alle prinsipale verbonde aan openbare skole in die Wes-Kaap Onderwysdepartement (WKOD).

2. **Wetgewende raamwerk**

Die volgende wetgewing en beleide beheer die rol van die prinsipaal in die rapportering en bestuur van beweerde wangedragkwessies:

- a) Die Personeeladministrasiemaatreëls (PAM), gepubliseer in *Staatskoerant* No. 39684 van 12 Februarie 2016, saamgelees met artikel 16A(2)(a) van die Suid-Afrikaanse Skolewet (SASW), 1996 (Wet 84 van 1996), verklaar dat die prinsipaal verantwoordelik is vir die professionele bestuur van 'n openbare skool soos bepaal in artikel 16A(3) van die SASW, en pligte moet verrig, insluitend die uitvoer van funksies wat aan hom of haar deur die Hoof van die Departement (HvD) gedelegeer is. Voorts verklaar artikel 16A(2)(e) dat die prinsipaal hulp moet bied in die hantering van dissiplinêre sake wat betref opvoeders en ondersteuningspersoneel wat deur die HvD in diens geneem is.

- b) Omsendbrief 0012/2019, gedateer 09 Maart 2019, wat deur die Provinsiale Raad op Arbeidsverhoudinge in die Onderwys geformuleer is, handel oor die verbod op lyfstraf.
- c) Wes-Kaap Onderwysdepartement se Klagtehanteringsprotokol en -riglyne, 2017.
- d) Stop Misbruikprotokol van die Wes-Kaap Onderwysdepartement, 2014.
- e) Handleiding oor die Basiese Finansiële Stelsel vir Skole.

3. **Prinsipaal se rol**

3.1 **Rapportering**

- 3.1.1 Wanneer 'n beweerde insident gerapporteer is, moet die prinsipaal, afhangende van die aard van die bewering, die saak by die Direkoraat: Werknemersverhoudinge aanhangig maak (kyk Bylae A vir riglyne).
- 3.1.2 In die geval van werknemers wat deur die beheerliggaam in diens geneem is, moet daar seker gemaak word dat die beheerliggaam van die beweerde insident in kennis gestel is.
- 3.1.3 Dis algemeen bekend dat die WKOD geen regsbevoegdheid het oor werknemers wat deur beheerliggame aangestel is nie. Maar, insidente wat werknemers betrek wat deur die beheerliggaam van die skool in diens geneem is, moet (ingevolge paragraaf 3.5(d)(i) van die Stop Misbruikprotokol van die WKOD, 2014) aan die distrik se maatskaplike werker gerapporteer word, en/of aan die Direkoraat: Werknemersverhoudinge. Die rede hiervoor is:
 - a) om te verseker dat alle leerders die nodige berading, ondersteuning en ondervraging ontvang; en
 - b) sodat die distrik se maatskaplike werker die saak aan die Suid-Afrikaanse Polisie (SAPD) kan rapporteer, afhangende van die meriete van 'n saak.
- 3.1.4 Sodra dit onder hulle aandag gebring is, moet die prinsipaal die ouers/voogde van die leerder(s) van die beweerde insident onmiddellik kontak en hulle inlig daaroor.
- 3.1.5 Die prinsipaal moet die kringbestuurder van die betrokke distrikskantoor hieroor inlig. Afhangende van die aard van die wangedrag, moet die rolspelers gesamentlik besluit oor 'n proses vir verdere ingryping wat nie beperk is tot berading en die veiligheid van die leerder(s) nie.
- 3.1.6 In beweerde misdadigheidsgevalle (byvoorbeeld, dwelmhandel, waar ander mense se lewens bedreig word, aanranding, ens.) behoort die prinsipaal die saak by die SAPD aan te meld in oorleg met die kringbestuurder/beheerliggaam.

3.2 **Verantwoordelikhede**

- 3.2.1 Die prinsipaal mag nie mishandelingsake ondersoek nie (kyk die Stop Misbruikprotokol van die Wes-Kaap Onderwysdepartement, 2014). Sodanige sake moet onmiddellik gerapporteer word.
- 3.2.2 Daar word aanbeveel dat, met uitsondering van mishandeling, die toepaslike inligting oor alle ander sake versamel word om die meriete daarvan te bepaal en die voorgestelde proses in Bylae A te volg.
- 3.2.3 Wanneer die saak aan die WKOD gerapporteer is, word dit as *sub judice* beskou en dit verg geen verdere optrede van die prinsipaal nie, behalwe om as kommunikasiemiddel te dien.
- 3.2.4 Alle medianavrae oor 'n beweerde insident moet na die Direktooraat: Kommunikasie verwys word.
- 3.2.5 Die prinsipaal behoort haar-/homself beskikbaar te stel vir 'n moontlike onderhoud met 'n arbeidsverhoudingebeampte en/of vakbondbeamptes om die saak te ondersoek, onderhewig aan 'n afspraak wat gemaak moet word.
- 3.2.6 Die prinsipaal mag gevra word om as getuie tydens die dissiplinêre verhoor in die belang van die WKOD en/of enige ander party op te tree, afhangende van die meriete van die saak.
- 3.2.7 Toegang tot getuies mag nie onredelikerwys geweier word nie. Indien die WKOD en/of vakbond verlang dat enige opvoeder/staatsdiensamptenaar tydens die verrigtinge getuie is lewer, moet die prinsipaal met die nodige reëlings/beraadslaging help.

4. **Toestemming**

- 4.1 'n Arbeidsverhoudingebeampte en die vakbondverteenwoordiger sal die saak ondersoek, en waar leerders betrokke is, sal daar gevra word dat die ouers/voogde toestemming gee vóór die ondersoek, indien dit nodig is vir 'n formele dissiplinêre verhoor.
- 4.2 Let asseblief daarop dat regsverteenwoordiging slegs in buitengewone gevalle toegestaan sal word en dit sal na goeddunke van die aangestelde voorsittende beampte geskied. Onder geen omstandighede mag 'n regsverteenwoordiger 'n skool besoek of 'n leerder of werknemer/opvoeder raadpleeg nie, tensy die voorsittende beampte sodanige verteenwoordiging toegestaan het.
- 4.3 Daar word aanbeveel dat, wanneer 'n onderhoud met 'n leerder gevoer word, daar óf 'n opvoeder, maatskaplike werker, terapeut, sielkundige, berader óf bemiddelaar

teenwoordig moet wees om die belang van hom/haar te beskerm in die afwesigheid van 'n ouer/voog.

- 4.4 Daar kan van die prinsipaal verwag word om as bestuurder van die inrigting te verseker dat 'n toestemmingsbrief in hierdie verband aan ouers/voogde uitgereik word en toe te sien dat dit teruggestuur word. Die toestemmingsbrief moet duidelik die aard van die aantygings en enige ander toepaslike inligting wat verlang mag word, verduidelik.
- 4.5 Dit is belangrik dat ouers/voogde die rede vir sodanige toestemming en aard van die verrigtinge moet verstaan, en dat die nodige ondersteuning of leiding aan die getuie gegee word.
- 4.6 Wanneer die toestemmingsbrief teruggestuur is skool toe met óf toestemming óf weiering van toestemming, moet dit deur die prinsipaal aan die arbeidsverhoudingebeampte, vakbondverteenwoordiger of regsverteenwoordiger voorgelê word.
- 4.7 Die voorgeskrewe toestemmingsvorm moet gebruik word (kyk Bylae B vir maklike verwysing).

5. **Vervoer en ander logistiese reëlings**

- 5.1 Die WKOD mag die hulp van die skool verlang, in hierdie geval die prinsipaal, om die bywoning van leerders by 'n dissiplinêre verhoor en/of geskilpunt oor onbillike ontslag te waarborg deur vervoer te reël/waarborg.
- 5.2 'n Toestemmingsvorm wat toestemming aan die leerder gee om deur die skool/WKOD vervoer te word en te getuig, en wat die rede vir hulle bywoning verduidelik (kyk Bylae B), moet deur die ouers/voogde ingevul word.
- 5.3 Let asseblief daarop dat dit die vakbond en/of regsverteenwoordiger se verantwoordelikheid is om vervoer vir leerders wat as getuies namens hulle optree, te reël/waarborg.
- 5.4 Die WKOD sal verseker dat 'n bemiddelaar of maatskaplike werker, in die afwesigheid van 'n ouer/voog en waar nodig geag, teenwoordig is om die regte van minderjarige leerders te beskerm.
- 5.5 As die skool deel van die Nasionale Skoolvoedingsprogram is, word aanbeveel dat die prinsipaal 'n ligte maaltyd vir die leerders reël.

6. Bring asseblief die inhoud van hierdie omsendbrief onder die aandag van alle betrokkenes.

GETEKEN: BK SCHREUDER

HOOF: ONDERWYS

DATUM: 2019-03-09

NATURE OF TRANSGRESSION	PROPOSED ACTION					COMMENTS AND/OR POLICY GUIDELINES
	FIRST TRANSGRESSION	SECOND TRANSGRESSION	THIRD TRANSGRESSION	FOURTH TRANSGRESSION	FIFTH TRANSGRESSION	
	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				