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DEPARTMENT OF EDUCATION
DEPARTEMENT VAN ONDERWYS

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MINISTRY OF EDUCATION

SOUTH AFRICAN SCHOOLS ACT, 1996 (Act No.84 of 1996)

GUIDELINES FOR THE CONSIDERATION OF GOVERNING BODIES IN ADOPTING A CODE OF CONDUCT FOR LEARNERS

I, Sibusiso Mandlenkosi Emmanuel Bengu, Minister of Education, after consultation with each member of the Council of Education Ministers, hereby give notice in terms of section 8(3) of the South African Schools Act, 1996, of guidelines in the Schedule which governing bodies may consider in adopting a Code of Conduct for Learners.

S M E BENGU
Minister of Education
April 1998

SCHEDULE

GUIDELINES FOR A CODE OF CONDUCT FOR LEARNERS

1. INTRODUCTION

- 1.1** Section 8 of the South African Schools Act provides that a governing body of a public school must adopt a Code of Conduct. The Code of Conduct must aim at establishing a disciplined and purposeful environment to facilitate effective education and learning in schools.
- 1.2** This document sets out guidelines for consideration by governing bodies of public schools in adopting a Code of Conduct for learners to ensure that there is order and discipline in schools.
- 1.3** The Code of Conduct must be subject to the Constitution of the Republic of South Africa, 1996, the South African Schools Act, 1996 and provincial legislation. It must reflect the constitutional democracy, human rights and transparent communication which underpin South African society.

- 1.4 The Code of Conduct must inform the learners of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. It must set a standard of moral behaviour for learners and equip them with the expertise, knowledge and skills they would be expected to evince as worthy and responsible citizens. It must promote the civic responsibilities of the school and it must develop leadership. The main focus of the Code of Conduct must be positive discipline; it must not be punitive and punishment oriented but facilitate constructive learning.
- 1.5 Each school must develop its own Code of Conduct. In formulating a Code of Conduct as a consensus document and before adopting it, the governing body must involve the parents, learners, educators, and non-educators at that school. After the adoption of the Code of Conduct, each stakeholder must receive a copy thereof. The above stakeholders must also be consulted when the Code of Conduct is reviewed annually or when any amendments are made.
- 1.6 The purpose of a code of conduct is to promote positive discipline, self-discipline and exemplary conduct, as learners learn by observation and experience.
- 1.7 All key stakeholders should be committed to the Code of Conduct despite its being directed specifically at learners.
- 1.8 The Code of Conduct must suit the development of the learners and be appropriate to the different school levels. The language used must be easily understandable to make the content accessible. The format should be user-friendly.
- 1.9 The Code of Conduct must contain a set of moral values, norms and principles which the school community should uphold. However, the Code of Conduct is only enforceable against learners - no other person.
- 1.10 The Code of Conduct should clarify and promote the roles and responsibilities of various stakeholders in the creation of a proper learning environment in schools.
- 1.11 The Code of Conduct should contain the components discussed below (paragraphs 2-14) which aim at providing appropriate mechanisms and avenues for stakeholders to air their grievances, and also provide for legitimate disciplinary measures.
2. THE PREAMBLE TO A CODE OF CONDUCT
 - 2.1 The preamble to a Code of Conduct should contain the principles, philosophy and ethos contained in the preamble to the South African Schools Act.
 - 2.2 Reference should be made to the fact that, while the State has the obligation to make education available and accessible, this must be complemented by the commitment and acceptance of responsibility by the other partners in education, inter alia, learners, educators and parents.

2.3 The preamble should direct the Code of Conduct towards a culture of reconciliation, teaching, learning and mutual respect and the establishment of a culture of tolerance and peace in all schools.

3. THE LEGAL AUTHORITY FOR THE CONTROL AND DISCIPLINE OF LEARNERS

3.1 In terms of section 3(n), of the National Education Policy Act, Act No. 27 of 1996, the Minister of Education must determine national education policy for the control and discipline of learners at education institutions.

3.2 This policy shall be directed at the advancement and protection of the fundamental rights of every person guaranteed in the Bill of Rights in the Constitution of the Republic of South Africa 1996, Act No. 108 of 1996.

3.3 The South African Schools Act, Act No. 84 of 1996, section 8(1) empowers a governing body of a school to maintain discipline in a school. The Code of Conduct must prescribe behaviour that respects the rights of learners and educators.

3.4 The Code of Conduct of a public school must be displayed at the school and as far as possible be given to each learner in the official language of teaching of the learner when he/she enrolls at a school. As learners are compelled to comply with the Code of Conduct of the school they attend they must be informed about its contents, which must list, in positive terms, the things learners may not do, or should do, as well as communication channels, grievance procedures and due process in conducting a fair hearing.

3.5 Learners must understand that action may be taken against them if they contravene the Code of Conduct. When action is taken against learners they should be informed why their conduct is considered as misbehaviour or misconduct and why they are to be disciplined or punished. The punishment must suit the offence.

3.6 Nothing shall exempt a learner from complying with the Code of Conduct of the school.

3.7 An educator at the school shall have the same rights as a parent to control and discipline the learner according to the Code of Conduct during the time the learner is in attendance at the school, any classroom, school function or school excursion or school related activities.

3.8 The principal or an educator, upon reasonable suspicion (sufficient information), has the legal authority to conduct a search of any learner or property in possession of the learner for a dangerous weapon, firearm, drugs, or harmful dangerous substance, stolen property, or pornographic material brought on to the school property. (A search may be performed in terms of the following Acts of general application: Control of Access to Public Premises and Vehicles Act, 1985, Act No. 53 of 1985; Drugs and Drug Trafficking Act 140 of 1992; Arms and Ammunition Act, 1969, Act No. 75 of 1969). During a search human dignity shall be observed and learners shall be searched in private by persons of their own gender, preferably in the presence of at least one other person. A record must be kept of the search proceedings and the outcome.

3.9 A learner who falls pregnant may not be prevented from attending school. A pregnant girl may be referred to a hospital school for pregnant girls.

4. PRINCIPLES AND VALUES: THE RIGHTS OF LEARNERS

4.1 Democracy

The Bill of Rights in the Constitution of the Republic of South Africa, Act No. 108 of 1996, enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. The school must protect, promote and fulfil the rights identified in the Bill of Rights. All learners and partners at a school have the democratic right to due process and to participate in decision-making about matters affecting them at the school. They also have the right to have their views heard about these matters.

4.2 Non-discrimination and equality

No person may unfairly discriminate against a learner. All learners shall enjoy equal treatment before the law and shall receive equal protection and benefits of the law.

4.3 Privacy, respect and dignity

Every learner has inherent dignity and has the right to have his/her human dignity respected. That implies mutual respect including respect for one another's convictions and cultural traditions. Every learner also has the right to privacy, which includes the right not to have his/her person or property searched or his/her possession seized. However, the principal or an educator may search learners based on his/her reasonable suspicion followed by the use of search methods that are reasonable in scope.

4.4 Non-violence and the freedom and security of a person

4.4.1 Every learner has the right not to be treated or punished in a cruel, inhuman or degrading manner. Corporal punishment has been abolished. Educators and learners have to learn the importance of mediation and co-operation, to seek and negotiate non-violent solutions to conflict and differences and to make use of due process of law.

4.4.2 Learners have the right not to be locked up in solitary confinement or detention.

4.4.3 The philosophy of the disciplinary system is based on human dignity and on respect and consideration for others and not on fear or assault.

4.5 Freedom of expression and right to demonstrate and present petitions

4.5.1 Freedom of expression is more than freedom of speech. The freedom of expression includes the right to seek, hear, read and wear. The freedom of expression is extended to forms of outward expression as seen in clothing selection and hairstyles. However, learners' rights to enjoy freedom of expression are not absolute. Vulgar words, insubordination and insults are not protected speech. When the expression leads to a material and substantial disruption in school operations, activities or the rights of others, this right can be limited as the disruption of schools is unacceptable.

4.5.2 Learners have the right to agreed procedures with the governing body for expressing and resolving school-related grievances, including due process, a method of appeal and a right to assemble peacefully on the school property at a time and place designated by the principal. Problems or issues should, as far as possible, be resolved at the school. However, the disruption of schools is unacceptable.

4.6 School environment

Learners have the right to a clean and safe environment that is conducive to education. Security of property, well-cared for school facilities, school furniture and equipment, clean toilet facilities, water and a green environment, absence of harassment in attending classes and writing tests and examinations, all create an atmosphere that is conducive for education and training.

4.7 Education

4.7.1 The Constitution enshrines the right of every one to education and to further education which the State must make progressively available and accessible;

- 4.7.2 The South African Schools Act provides that education is compulsory for learners from the year in which such learners reach the age of 7 years until the last school day of the year in which such learners turn 15 years or the ninth grade, whichever comes first. It also makes provision for due process before a learner may be removed or expelled from a school. The right of a learner to education cannot be taken away when the learner is expelled from school. Therefore, in the case of expulsion, the Head of Department must find a school place for an expelled learner who is of school-going age.
- 4.7.3 In cases of suspension and expulsion, placement in an alternative school setting, e.g. reassignment to another class, correctional education under supervision after school hours, a special school for learners with behavioural disorders, etc., are options which could be considered in conjunction with a school psychologist or a social worker. Suspension with the intent to expel a learner is part of a process to be decided by the Head of Department. The governing body may suspend a learner as a punitive measure if due process has been followed.
- 4.7.4 Education and learning can be successful if the learners are committed to self-development, education and learning, and the educators are dedicated to education and teaching.
- 4.7.5 The right to education includes the right to attend all classes, to learn and be taught in all approved subjects, to be informed regularly about school progress, to make use of all school facilities, and to have the potential of all learners fully developed.

5. RIGHTS AND RESPONSIBILITIES OF LEARNERS

5.1 School and Classroom Rules

- (a) school rules are designed to regulate the general organisation of the school, and relationships between the principal, educators and learners. Classroom rules are designed to give effect specifically to the relationship between educators and learners in the classroom, and may include classroom interactions and management;
- (b) learners must be involved in the formulation of school and classroom rules and must conform to such rules;
- (c) all rules are to be consistent with the overall Code of Conduct, be clear and understandable and make provision for fair warning;

- (d) each learner should be provided with a copy of the school rules at the beginning of each school year; younger learners at primary schools should be informed verbally of school rules;
- (e) classroom rules should be posted in the classroom. The consequence for breaking the rules should also be included. The punishment must fit the offence and be graded to make provision for repeated offences. These rules should make provision for fundamental fairness and fair warning; and
- (f) learners must be expected to know and to adhere to school and classroom rules. Ignorance of these rules is not an acceptable excuse.

5.2 Learning and school work

Learners must commit themselves to do their school work during classes, complete assigned homework and catch up on work missed because of absence. Disruption of schools is unacceptable.

5.3 Security and care of school property

As the school has been developed for the use of all the learners attending the school, it is the privilege and obligation of every learner to protect and carefully use all the facilities and equipment so that others that come after them can also enjoy the privilege. The parent or legal guardian of anyone who intentionally misuses, damages or defaces any school property should replace it or pay for the property so damaged. Destruction of property is a punishable offence.

5.4 School attendance

The right of learners to basic education places the obligation on them to attend school regularly during school hours. Should a learner be absent his/her parent or legal guardian must notify the school to explain the absence.

5.5 Learners have the responsibility to learn and develop their full potential. i.e. academic, occupational, social, sport, spiritual, art and cultural potential. They should actively participate in the learning process and decision making and have the opportunity to talk about their problems.

5.6 Learners can expect educators to maintain a high standard of professional ethics and to be present to teach their classes, assist them with their learning difficulties, report on their progress and to look after their well-being. There should be a relationship of mutual trust and respect between learners and educators. Victimisation of the one by the other is unacceptable.

5.7 The Learner Representative Council should represent the interests and views of the learners within the school. They should also promote proper conduct of learners but do not have the authority or right to punish other learners.

5.8 A school may establish a liaison mechanism between learners and educators.

6. RESPONSIBILITIES OF PARENTS WITH RESPECT TO THE CODE OF CONDUCT

6.1 The ultimate responsibility for learners' behaviour rests with their parents or guardians. It is expected that parents will

(a) support the school, and require learners to observe all school rules and regulations and accept responsibility for any misbehaviour on their part; and

(b) take an active interest in their children's schoolwork and make it possible for the children to complete assigned homework.

6.2 Parents should attend meetings that the governing body convenes for them.

6.3 Parents have the right to take legal action against any educator, learner or person who unlawfully violates the constitutional rights of their children by, e.g. corporal punishment, injury to a child, etc.

7. DISCIPLINE

7.1 Discipline must be maintained in the school and the classroom to ensure that the education of learners proceeds without disruptive behaviour and offences. Its goal is to teach and lead learners to self discipline.

7.2 The disciplinary process must be expeditious, fair, just, corrective, consistent and educative. Where possible the parent should be informed and involved in the correction of the learner's behaviour. Learners should be protected from abuse by adults or other learners.

7.3 Restraint is the act of controlling the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators may use reasonable measures where necessary to prevent a learner from harming him/herself or others.

7.4 The South African Schools Act, 1996, empowers school authorities to discipline learners, but it is beyond the law to delegate this authority to fellow learners. Learners are partners with other members of the school and are not in charge of the school.

- 7.5 Every educator is responsible for discipline at all times at the school and at school related activities. Educators have full authority and responsibility to correct the behaviour of learners whenever such correction is necessary at the school. Serious misconduct must be referred to the principal of the school. However, a mechanism must be created at schools to handle disciplinary problems to reduce the load of the principal.
- 7.6 Any corrective measures or disciplinary action must be commensurate with the offence/infraction. Corrective measures may become more severe with subsequent repeated infractions. Suspension or expulsion may follow. Learners should not think that they cannot be suspended or expelled simply because it is their first offence or infraction of a rule or policy, but such decision should be taken by the right authority.
- 7.7 In cases where a learner cannot adjust to the school and where his/her behaviour is objectionable in that it violates the rights of others, he/she will be referred to the principal. Through consultation with his/her educators, and the site of learning based team in consultation with the parents or guardians every effort should be made to assist him/her to adjust. This will include referral to the education support services for treatment. If all these efforts fail, the principal will refer the matter to the governing body, which may make a decision in the best interest of the learner and the other learners at the school.

8. PUNISHMENT

- 8.1 Punishment is a corrective measure or a penalty inflicted on an offender who has to suffer the consequences of misconduct in order to maintain the orderly society of the school.
- 8.2 Corporal punishment shall not be administered.

9. DISPUTE RESOLUTION

Educators as disciplinarians must resolve disciplinary problems which are not serious enough to be referred to the principal. A liaison mechanism, or objective and impartial adjudicator between learners and educators, should be set up to resolve disputes. In cases where learners are involved in gangs, the principal should not confront them but the governing body should set up a negotiation mechanism.

10. PREVENTION, PROACTIVE ADVICE, COUNSELLING, PENALTIES AND CORRECTIVE MEASURES

10.1 In case of minor offences corrective measures may be applied. These measures could include one or more of the following:

- (a) verbal warning or written reprimand by an educator or a principal;
- (b) supervised school work that will contribute to the learner's progress at school, the improvement of the school environment, provided that the parents are timeously informed and the security of the child is assured;
- (c) performing tasks that would assist the offended person;
- (d) agreed affordable compensation;
- (e) replacement of damaged property; and
- (f) suspension from some school activities, e.g. sport, cultural activities.

10.2 Suspension should only be considered after every effort has been made to correct the behaviour of the learner.

11. OFFENCES THAT MAY LEAD TO SUSPENSION

Provincial regulations must be consulted in the compilation of a list of offences which may lead to suspension of a learner. Offences that may lead to such suspension include, but are not limited to the following:

- (a) conduct which endangers the safety and violates the rights of others;
- (b) possession, threat or use of a dangerous weapon;
- (c) possession, use, transmission or visible evidence of narcotic or unauthorised drugs, alcohol or intoxicants of any kind;
- (d) fighting, assault or battery;
- (e) immoral behaviour or profanity;
- (f) falsely identifying oneself;
- (g) harmful graffiti, hate speech, sexism, racism;
- (h) theft or possession of stolen property including test or examination papers prior to the writing of tests or examinations;

- (i) unlawful action, vandalism, or destroying or defacing school property;
- (j) disrespect, objectionable behaviour and verbal abuse directed at educators or other school employees or learners;
- (k) repeated violations of school rules or the Code of Conduct;
- (l) criminal and oppressive behaviour such as rape and gender based harassment;
- (m) victimisation, bullying and intimidation of other learners;
- (n) infringement of examination rules; and
- (o) knowingly and wilfully supplying false information or falsifying documentation to gain an unfair advantage at school.

12. SUSPENSION AND EXPULSION

- 12.1 A governing body may, after a fair hearing, suspend any learner who has been found guilty of contravening stipulations of the Code of Conduct:
- (a) for a period of one week; or
 - (b) for a reasonable period not exceeding one week, pending a decision by the Head of Department on the recommendation of the governing body as to whether or not the learner is to be expelled from the school.
- 12.2 A learner who has been expelled, or his/her parent, may appeal against the decision of the Head of Department to the Member of the Executive Council, within seven days of the decision so to expel him/her.
- 12.3 In cases of disciplinary transfer, the Head of Department must find a school place for a learner until the learner is beyond compulsory school-going age, as the right of a learner to basic education cannot be violated.
- 12.4 All decisions leading to suspension or expulsion must take cognisance of applicable laws, e.g. a learner whose parent is unable to pay the school fees determined by the governing body may not be suspended from classes or expelled from the school.

13. DUE PROCESS

- 13.1 The South African Schools Act makes provision for due process including a fair hearing before a learner may be suspended from the school by the governing body. Due process guarantees a learner a fair hearing before a learner may be suspended for a period of one week or be expelled from the school by the Head of the Department.
- 13.2 Any learner alleged to have violated any rule that may require suspension or expulsion, must be brought to the principal. The principal shall hear the evidence and then decide on the action to be taken. Such action must include that the principal must inform the parents in writing of the proposed action and arrange for a fair hearing by a small disciplinary committee (tribunal) consisting of members designated by the governing body. This tribunal must not be intimidating to the learner. In the case of very young learners special arrangements must be made for the hearing and the parents or guardians could represent the learners
- 13.3 The disciplinary committee so appointed must conduct the hearing in accordance with the provincial regulations laid down by the Member of the Executive Council.
- 13.4 For the hearing the learner must -
- (a) be informed of and understand the charges of which written notice should be given at least five days before the time also indicating the date, time and place of the hearing;
 - (b) receive such particulars on the charges as he/she may be entitled to according to law, if he/she so requests;
 - (c) get the opportunity to be heard and tell his/her side of the story and to present the relevant facts;
 - (d) not be prohibited from being represented by legal counsel, in which case written explanation of the charges must be given, or, in less serious cases the learner may be represented by a member of the LRC, parent, guardian or educator;
 - (e) be heard by an impartial person(s);
 - (f) be treated with dignity during the process;
 - (g) be informed in writing of the decision of the governing body on whether or not he/she is guilty of misconduct, and the penalty to be imposed in the case of suspension or expulsion; and
 - (h) have the right to appeal to the MEC if he/she is aggrieved by the decision of the governing body.

- 13.5 The governing body must keep a record of the proceedings of the hearing, and
- (a) may inform, in writing, the Head of Department of its decision to suspend a learner; or
 - (b) must inform the Head of Department within twenty-four hours of its recommendation for expulsion of the learner.

- 13.6 Subject to any provincial law a learner may only be expelled by the Head of Department.

14. **SERIOUS MISCONDUCT AND THE LAW**

Serious misconduct which may include offences according to the law, must be investigated by the police and referred to the Court if necessary. Serious misconduct must be handled in terms of the government notice and regulations promulgated by the Member of Executive Council in the Provincial Gazette of the province concerned.

Should a governing body have difficulty to interpret these guidelines they must please contact the Head of Department of the province in which their school is situated.