



## **Cedarwood School: Learner discipline procedure and policy**

**Section Twenty One**

**PROCEDURE:**

**LEARNER DISCIPLINE**



## INTRODUCTION

### PROCEDURE AND CODE: LEARNER DISCIPLINE

#### 1. Overview and Foreword

##### **Provisions enshrined in the SA Constitution**

The Constitution, which together with Common Law forms the foundation for the country's legal system, sets out the most important rules of conduct for institutions and individuals, and gives expression to the values of SA society.

Chapter 2 of the SA Constitution sets out the "Bill of Rights", which prescribes the fundamental rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. The Bill of Rights has a number of sections that are relevant when considering the rights of children in schools, including:

##### Section 9

The right to *equality before the law*, and to equal protection of the law. Direct or indirect discrimination is prohibited, but with this right legitimately limited by affirmative action.

##### Section 10

The right to *human dignity* and to be treated with dignity and respect.

##### Section 12

The right to *personal freedom and security*. This *inter alia* protects people from being subjected to cruel, inhuman or degrading treatment, or unjust punishment.

##### Section 14

The right to *personal privacy* - provides protection from improper searches, seizure of private possessions and the violation of personal communications.

##### Section 28

Specifically *protects the rights of children* ("child" means a person under the age of 18 years). A wide range of fundamental rights are provided for, in addition to the other general rights contained in the Constitution. In particular –

S28.1d every child has the right to be protected from maltreatment, neglect, abuse or degradation;

S28.2 a child's best interests are of paramount importance in every matter concerning the child.

##### Section 29

Deals with *education* and sets out the right of every person to basic education, and to further education which should be made reasonably available by the State.

S29.3 "Everyone has the right to establish and maintain, at their own expense, independent education institutions that

- a. do not discriminate on the basis of race;
- b. are registered with the state; and
- c. maintain standards that are not inferior to standards at comparable public education institutions.

S29.4 "Subsection 3 does not preclude state subsidies for independent educational institutions."

##### Section 33

Assures the right of *administrative action* that is lawful, reasonable and procedurally

fair.

#### Section 39

Requires that when any legislation, common law or customary law is being developed, the spirit, purpose and objectives of the Bill of Rights should be promoted, and that all laws therefore be interpreted in accordance with the Bill of Rights.

#### **SA Schools Act**

In addition to being subject to all the provisions of the Bill of Rights described above, independent schools are affected by the provisions of the South African Schools Act, No. 84 of 1996 as amended. While this statute, per definition does cover all schools in SA [see definition of “school” in S1], it is clear that most sections of the Schools Act are not intended to regulate the activities of independent schools. The only exceptions to this exclusion are chapter 3 (“Independent Schools” S45 to S50), Section 53 (Transition provisions) and Chapter 7 (General Provisions: S58 to S64) which are applicable to independent schools.

The Schools Act’s Sections 8 / Code of conduct for learners; 9 / Suspension and expulsion from public school and 10 / Prohibition of corporal punishment, are not technically applicable to learners at registered independent schools. However, these provisions which deal with learner discipline -

- do establish some basic “good practice” guidelines for the treatment of learners in SA schools; and
- may well be applicable and “set the standards” for dealing with learner discipline in an independent school (through the process of “extension” by the Dept of Education), should the School not have its own school-specific learner discipline policies and procedures in place.

#### **The Labour Relations Act**

While the Labour Relations Act, No. 66 of 1995 as amended, is not *directly* applicable to learners who do not fall within the definition of “employee”, and do not have an employee relationship with the School, this Act does however provide a cornerstone for determining what is considered to be “fair” in our law.

Most importantly, this Act introduces further obligations beyond lawfulness, requiring that conduct by parties to employment also be (1) procedurally and (2) substantively fair. These two descriptive aspects of fairness have now become central to much of our thinking as to what constitutes equitable decision making and reasonable conduct in South Africa. For this reason, the general principles applicable to taking fair corrective and / or disciplinary action against employees are also generally applicable to learners as well.

The similarity of many aspects of the School’s Learner Discipline Procedure with those of the School’s Disciplinary Procedure and Code for Employees is therefore not coincidental. Obviously then, the level of care applied to taking action against employees should at least be matched when the School is considering and implementing corrective measures and disciplinary action against any learner.

## **2. The Essence of Fairness, and the Right to Education**

The concept of fairness has now been very extensively developed in our law in South Africa. The introduction of the term “fair labour practice” in 1979 into our labour law has literally turned our legal framework on its head. As already noted in 1 above, the SA Constitution’s Bill of Rights Section 33 assures the right of *administrative action* that is lawful, reasonable and procedurally fair for everyone as a fundamental human right.

The importance of ensuring fairness (and not just lawfulness) in dealings with learners / parents is very apparent. Also as highlighted above, the concept of fairness in our law is seen as having two distinct but inter-linked halves - procedural and substantive fairness. Both these considerations of fairness must also be weighed

against the Right to Education assured by S29 of the Bill of Rights. A balance must therefore be demonstrated between a reasonable and fair disciplinary decision and the learner's right to education.

In more simple terms, if the School is to prejudice or deprive a learner of his/her Constitutional right to education, the School must be able to demonstrate that any decision taking in this regard is both procedurally and substantively fair i.e. "Justice Must be Seen to be Done". Failure by the School to demonstrate (read "prove") fairness will call into doubt any disciplinary action taken against a learner that may prejudice the fundamental right to education.

In practice, the School will practically demonstrate fairness through the application of the School's guidelines set out in this policy and procedure by -

- carefully considering the educational rights of the learner, before making any decision which impacts on these rights [*constitutionality*];
- properly investigating the alleged misconduct of any learner, and seeking to identify the relevant facts [*procedural fairness*]; and
- considering the facts, taking into account relevant circumstances and arriving at a justifiable and reasonable decision [*substantively fair*].

### **3. Universal Norms of Fairness regarding Discipline**

In arriving at the specific guidelines relevant to procedural fairness, the universally accepted "Rules of Natural Justice" have been used as the basis for determining the desired procedures to be followed to ascertain the facts, PRIOR to making any decision on the matter at hand.

#### **Procedural Norms**

These universal, largely procedural 'rules' include

- a. the provision of clear standards of conduct, and ensuring the communication and understanding of such expectations by those affected;
- b. a party being advised timeously when an alleged transgression occurs;
- c. proper investigation of the alleged transgression, the 'accused' also being advised of any investigation to be conducted;
- d. the accused being given the opportunity to participate in, and prepare for an investigation;
- e. the accused being provided with the opportunity to state his/her case and be properly heard;
- f. the right of the accused to challenge the accuser and to contest any evidence presented;
- g. being properly informed of the outcome of any investigation;
- h. access to an appeal / review procedure (internally or externally).

Imposing any serious disciplinary measures against a learner without these fundamental rules being reasonably addressed may then be contrary to the basic norms of fairness.

#### **Substantive Norms of Fairness**

From a substantive fairness perspective, accepted universal norms of justice include

- i. a *presumption of innocence* until the contrary is proven by the accuser;
- j. action taken should primarily have a *corrective intention* and be focused on preventing a reoccurrence;
- k. the penalty, or '*punishment*', *must be appropriate* in relation to the seriousness of the transgression;

- i. disciplinary measures should be meted out *consistently*, but ALSO with *due consideration* to any relevant circumstances [especially those in mitigation];
- m. the *two decisions* made as to (1) guilt and (2) penalty should be *made distinctly* (i.e. separately) and by a *reasonably objective party*, only after proper consideration of all the facts;
- n. the penalty should take into account the learner's *rights to education*, with the penalty of expulsion from School being reserved as a last resort only.

Should any school impose disciplinary measures against a learner that is contrary to these fundamental substantive tenets, such action would probably be considered to be unfair.

#### 4. **The Need for a School-specific Disciplinary Procedure**

Taking all the above considerations into account, it is readily apparent that the School should not rely on broad common or constitutional law principles to determine the rights of the School and learners / parents, especially when it comes to matters regarding learner discipline.

As previously discussed, while the Schools Act is not directly applicable to independent schools regarding learner discipline, it does indirectly create a platform that sets the basic norms and standards of educational conduct in SA. Independent schools may therefore be called upon to defend any actions that are perceived as being contrary to the accepted code of conduct for educational institutions.

Independent schools clearly have the right, and the opportunity, to develop and adopt their own rules of conduct, and the procedures to apply and enforce these rules. These rules and procedures will obviously have to give due consideration to accepted rules of justice and norms of practice.

**The School believes that its Disciplinary Procedure and Code for Learner Discipline is lawful and well constructed, sets a suitably and appropriate high standard for fair educational practices at the School, and will promote fair and just discipline; in the best interests of the School and of the learner.**

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End of Procedure and Code: Learner Discipline

Disciplinary Procedure: Learners

**Note: Public versus Independent School practices**

It must again be pointed out that the procedural and code guideline that follows is based on established practices and norms in the Independent Schooling sector, and WILL be different in some material respects from the procedures that may be applicable to learners in Public Schools, and as are prescribed by the SA Schools Act of 1996, as amended.

**DISCIPLINARY PROCEDURE: LEARNERS**

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**Cedarwood School**

**DISCIPLINARY PROCEDURE FOR LEARNERS**

## Cedarwood School

### DISCIPLINARY PROCEDURE FOR LEARNERS

#### 1. Introduction and Principles

The School fully supports the principles of fair discipline, and the consistent and justified application of appropriate disciplinary measures where necessary. This procedure and code for learners indicates the broad standards of behaviour that are expected of all learners at the School, and encourages a responsible and self-disciplined approach by learners themselves.

- 1.1 Should expected norms of conduct not be met by any learner, corrective action will be initiated by School management. Corrective action may or may not include the application of formal disciplinary measures; steps applied to prevent further occurrences of unacceptable behaviour, and to restore the School / learner relationship.
- 1.2 This procedure and code are considered an important element of the School's Code of Conduct and is applicable to all learners. This document may also have a bearing on the learner's behaviour outside of normal school hours, should the learner's conduct impact negatively on the School / learner relationship, or the reputation and integrity of the School.
- 1.3 The maintenance of discipline and ensuring orderly classroom behaviour is an integral part of every educator's job. The onus therefore lies with the School's educators and its management to apply this procedure in an effective and equitable manner, in the interests of the wellbeing of the School, preserving and promoting educational excellence, and protecting the rights of all school stakeholders including the learner.
- 1.4 The School's procedure is to be made readily available to every School employee, all learners and parents upon or before enrolment, and upon request.

#### 2. School Code of Conduct

In the School context, administrators, educators, parents and learners all have responsibilities. To sustain a positive, orderly and disciplined learning environment, it is important that these parties to the education relationship acknowledge their responsibilities.

##### 2.1 **Educators**

Educators at the School subscribe to the SACE Code of Professional Ethics and the School's own Code of Conduct for Staff. *Inter alia*, the School's educators undertake to

- Be punctual, well prepared and professional in their approach to education
- Manage learner performance effectively and motivate learners to achieve realistic and meaningful personal and educational goals
- Be sensitive to the needs of their learners and address learning difficulties in a positive manner
- Praise, encourage, recognise and reward learners who strive to achieve
- Create a classroom climate which is based on a learning partnership which makes education both relevant and stimulating
- Set a positive example for their learners to follow
- Administer discipline correctively and with dignity when necessary.

Our school prides itself on having good relations with the School's community, its learners and their parents. While parents must expect the School and its educators to provide the best education possible with the resources available to the School, parents must also accept responsibility to help the School

achieve this goal.

## **2.2 Parents**

Parents enroll their children at the School, subject to their acceptance of all the School's rules and other conditions of enrolment. Parents also have the responsibility to

- Actively support the efforts of the School and its educators to teach their children
- Involve themselves to the fullest possible extent in School activities
- Make positive suggestions and contributions to improve the School's education process and the learning environment
- Support the disciplinary structures and procedures of the School, and the reasonable efforts by the School to apply discipline effectively and fairly
- Encourage their children to participate fully in School and extra-mural activities
- Participate in the learning process and assist their children with homework, provide encouragement, check results and communicate freely with the School
- Not expect the School to meet their child's every need
- Ensure that the learner is in attendance of all compulsory attendance functions and activities, and that the School's conduct and timekeeping requirements are observed.

## **2.3 Learners**

In terms of the Constitution, every learner does have the right to education. The School does strive to provide the educational opportunities that its learners and the community deserves. Learners themselves however must also recognize that they have responsibilities to their parents, the School, their educators, their fellow learners and themselves.

Learners therefore must accept and comply with the School's rules and its conditions of enrolment. In more general terms, learners must also

- Comply with instructions from School officials, and with the general rules of the School
- Behave responsibly and not endanger the safety, welfare and rights of others
- Respect and care for the property of the School and others
- Maintain sound relations with others at School, be courteous and respect the dignity and self-worth of others
- Be punctual and observe the timekeeping practices of the School
- Demonstrate a positive attitude towards the opportunity to learn, and be diligent in their efforts to learn
- Behave honestly and conduct themselves with integrity
- Not harass, threaten violence or use force to intimidate, abuse, coerce or interfere with others, with School activities or with School property
- Accept legitimate disciplinary measures taken against them as being necessary.

The School has a number of rules that define the kinds of behaviour expected of its learners. Learners are to also keep their parents advised of these rules (please see School rules) and learners are expected to conduct themselves in accordance with the rules provided.

## **3. Disciplinary Measures**

It is impossible for this procedure or the disciplinary Code (attached) to list every possible type of rule infringement or misconduct by learners. This procedure and the attached code therefore only set out the broader categories of infringement, and the

norms for applying fair disciplinary measures at the School.

Various forms of informal and formal disciplinary measures may be initiated by the learner's responsible educator, or by the School authorities. The School will be entitled to apply corrective action and/or disciplinary measures that it believes are appropriate in the circumstances; within the guidelines provided in this procedure. The judgement and discretion of school officials to apply disciplinary measures will therefore not be rigidly restricted by the procedure or code, but will rather be guided by the circumstances of each case and the various measures described herein.

The severity of action taken by the School or official will depend on the circumstances, the seriousness of an infringement, the interests of fellow learners, the School and its employees, the interests of the offending learner and any other mitigating or aggravating factors being of relevance. For this reason, the guidelines enclosed seek to promote and assure consistency, but do not remove the necessary discretion of the School authorities to apply a lesser (or more severe) penalty should circumstances so dictate.

Disciplinary measures applied in response to learner misconduct will therefore require that the School officials involved exercise their own judgement in deciding on the appropriate and fair action to be taken. Disciplinary action that may be applied by the School, in order of severity, includes -

Informal measures:

- a counseling by the educator or the head of department
- a verbal reprimand (noted on the learner's file)
- detention or time punishment
- "community service"

Formal measures:

- a warning or demerit recorded (usually effective for a period of 3 to 6 months)
- parental contact and an interview with parents, generally after the conducting of an investigation by the School
- suspension for a period from class, or from attending school, pending the convening of a formal disciplinary hearing, and/or as a form of corrective action after the conducting of a disciplinary hearing
- expulsion from the School (as a last resort in the case of serious or repeated misconduct), generally only after the conducting of a disciplinary hearing, and as a last resort.

- 3.4 Discipline must, wherever feasible and effective, be applied progressively. Informal action for minor transgressions is generally applied at educator level, without a formal investigation being necessary. Repeated committing of a minor, similar or related offence will however result in progressively more severe and formal action being taken; particularly where a clear pattern or behaviour trend is indicated by the learner's continued misconduct.
- 3.5 Notwithstanding the principle of progressive discipline, a serious first offence may justify a formal and severe penalty, and mitigate against the imposition of a lesser form of action (please see the Disciplinary Code attached for guidelines on penalties).
- 3.6 Warnings or demerits issued by the School will be noted on the learner's record. Copies of warnings issued should also be provided to the parents by the School.

#### **4. Disciplinary Action Process**

This procedure summarizes the disciplinary process that will be followed, wherever possible, by the School when disciplinary action against a learner is considered appropriate by School authorities.

#### 4.1 INFORMAL PROCEDURES

4.1.1 Infringements that are not considered serious, or do not require formal disciplinary action in the opinion of the learner's responsible educator, can be dealt with directly by the educator. These are not generally recorded on the learner's record, but will still require communication with the learner's parents by the educator involved.

4.1.2 The various forms of informal action are as outlined above and can be implemented by the educator without the involvement of the head of department or School Head.

#### 4.2 INFORMAL INVESTIGATION

4.2.1 When an infringement occurs which appears to require formal disciplinary action, the educator concerned (or another complainant such as a parent) will initiate the disciplinary process by reporting the incident to the head of dept, or by completing a letter of complaint .

A report or complain may be supplemented by any additional information or statements to clarify or adequately detail the facts surrounding the alleged infringement.

*Note:*

*A copy of a notice or letter of complaint need not be provided to the learner if informal action is taken against the learner. If formal disciplinary measures are considered to be appropriate, it is important in the interests of transparency that a copy of any complaints or reports also be provided to the learner / parents. Withholding this information may cast some doubt on the authenticity or seriousness of the alleged infringement (and complaint), and may even result in a formal request for disclosure of the complaint from the learner's parents.*

4.2.2 The learner's responsible educator, and their HOD if required, should investigate the reported infringement or a letter of complaint received, to decide upon appropriate corrective measures. This investigation generally takes the form of an informal inquiry, and wherever possible includes an opportunity for the learner to state his/her case in response to the complaint.

#### 4.3 FORMAL DISCIPLINARY MEASURES

4.3.1 If, after investigation, the infringement is confirmed and considered to be of a nature which does not require severe action, the responsible educator or HOD may counsel the learner and issue an appropriate WARNING or demerit to the learner concerned.

4.3.2 A copy of the warning issued should be given to the learner's parents by the educator or HOD involved. A meeting with the parents may be necessary to clarify the reasons for formal action being taken, as well as to reinforce the seriousness of the infringement and to highlight the expectations that the misconduct will not be repeated.

#### 4.4 FINAL WARNING

4.4.1 A Final Warning is generally only imposed by a Head of Dept or the School Head, if the learner's misconduct was (a) very serious but (b) did not warrant suspension or a hearing / expulsion, or if (c) misconduct occurs which is similar to a previous infringement for which a written warning has already been issued to the learner by the School.

4.4.2 If a Final Warning has been issued to a learner for misconduct, ANY further infringement by the learner should be considered as

warranting suspension and a disciplinary hearing into the learner's behaviour at the School.

*Note:*

*It is not sound disciplinary practice, nor an effective corrective or disciplinary penalty, to impose a 'second final warning'. A final warning is exactly that - "one more strike and you are out" is the intended message of a final warning.*

## 5. **Disciplinary Hearing**

When a serious infringement possibly warranting learner suspension or expulsion occurs, or in the case of a further alleged infringement by a learner with a valid Final Warning on his/her file, the School will generally be required to conduct a formal Disciplinary Hearing to determine appropriate measures to be taken against the learner.

The hearing process is intended to properly and transparently investigate any new allegation(s), to provide an opportunity for the learner / parents to challenge the allegations being made, and to enable the hearing Chairperson to objectively "hear both sides" - to objectively determine the guilt or innocence of the learner, and if applicable, the appropriate disciplinary measure to be taken by the School.

- 5.1 A notification of convening of a disciplinary hearing is to be completed by the School authorities (usually the School Head) and is given to the parents of the learner concerned. This notification must provide sufficient information to ensure that the learner/parents are properly informed of the alleged complaint, the seriousness of the allegations, and the School's intention to convene a formal hearing to investigate the infringement.

*Note:*

- (a) *The learner's parents should be notified of the hearing at least 48 hours (two clear school days) before the scheduled date of the hearing. This will provide the parents with reasonable time to prepare for the hearing. In complex cases, the preparation time provided may be extended, but should not exceed 5 (five) school days wherever possible as extended suspension or delays may unfairly prejudice the learner's schooling.*
- (b) *The learner may be suspended pending the hearing, ONLY if this is considered appropriate, bearing the seriousness of the alleged misconduct and his/her continued exposure to others in mind. The suspension of the learner should be indicated in the notification of hearing to the parents, the period of suspension preferably not exceeding the 5 (five) school days limit indicated in (a) above.*
- (Failure to suspend a learner accused of GROSS misconduct, pending a disciplinary hearing, may call into doubt the seriousness of the alleged misconduct itself, and/or the necessity for a severe penalty. A short period of suspension should not be unfair in such serious cases.)*
- (c) *The learner and his/her parents must be advised that they are expected to attend the hearing, and that their non-attendance may prejudice their child's case (indicate a waiver of their rights to respond to the allegations being made), and may even result in the hearing being held in their absence - and a decision being made without their involvement.*
- (d) *The learner and his/her parents must be advised of the serious nature of the allegations, and the possibility of severe disciplinary (further suspension or expulsion) action being taken should the learner be found guilty of the allegations made against him/her. They should be advised to prepare themselves accordingly*

*(e) Legal representation at disciplinary hearings is NOT a legal requirement and is generally not permitted, unless both the School and the parents agree that it is appropriate for BOTH parties to be legally represented. A disciplinary hearing is an internal school procedure and the involvement of legal counsel can lead to unnecessary over-complication and hindrance of the process. In any event, the parents DO have the right to legally challenge any decision of the hearing Chairperson after the hearing has been conducted.*

5.2 The conducting of the formal disciplinary hearing is an integral part of the School's disciplinary process if serious disciplinary measures are being contemplated against any learner. Expulsion, or extended suspension with a final warning as an alternative to expulsion (if feasible or appropriate), in the absence of a disciplinary hearing being conducted is reserved for exceptional circumstances only.

The hearing should be chaired by a competent and reasonably objective hearing Chairperson, who will be responsible for leading and managing the entire hearing process, and making the two critical and distinct decisions i.e.

- VERDICT: the guilt or innocence of the learner, relative to the allegations made by the School;  
and only thereafter - if the learner is found guilty of the alleged infringement, the second decision as to
- PENALTY: the appropriate measure / action to be taken, after due consideration of mitigating and aggravating factors relevant to the matter.

5.3 The Hearing Chairperson is required to conduct the hearing procedure in a proper manner that conforms to the rules of natural justice (see paragraph 3 of the School Procedure's Introduction) i.e. the learner and his/her parents -

- should be given adequate notice and be properly informed of the allegations being made by the School
- should be requested to attend the hearing as representatives for the learner, and the hearing is to be timeously conducted
- should be presented with all facts and information relating to the allegations being made against the learner
- should be given the opportunity to question evidence presented by the School, and be entitled to present their own perspective and explain/defend their child's actions
- are entitled to a hearing to be chaired by a reasonably impartial chairperson, and to decisions being made in an objective and considered manner
- are to be treated with dignity and respect throughout the hearing
- are to be assured of the greatest confidentiality possible
- must be formally advised of the outcome of the hearing [i.e. as to both verdict and penalty) by the hearing Chairperson, and the reasons for such decisions
- should be offered the right to appeal against any decision made by the hearing Chairperson.

*Note:*

*The formality of the hearing process will be determined by the customs and practices of the School, and the "style" of the hearing Chairperson. There is some leeway as to the formality of internal disciplinary hearings and a 'quasi-legal and highly formalized procedure is NOT a pre-requisite to demonstrate a proper procedure and fair decision making.*

*A record of hearing proceedings should be kept by the hearing Chairperson, or by a nominated scribe. Electronic / voice recording of the hearing is not required, but may be provided for at the request (and expense) of the parents if this is feasible. If the outcome of a hearing is expected to be contested, it is preferable that proceedings be properly recorded and minuted.*

- 5.4 In accordance with the above principles, the parents should be formally advised of the decisions of the hearing Chairperson after the completion of the hearing i.e. the two decisions made regarding guilt or innocence, and whether to impose disciplinary action or not.

This notification of the outcome, preferably distributed within 5 (five) school days of the hearing being completed, should include a reminder that the learner / parents have the right to appeal against any corrective and disciplinary action decided upon by the Chairperson, within a further 5 (five) school days of the outcome being made available to the parents.

- 5.5 Copies of all disciplinary hearing related documentation must be retained by the School for actioning, recording and safekeeping purposes.

## **6. Appeal Review Process**

While it is a fundamental right in terms of the “Rules of Natural Justice” for a learner (parents) to be provided with an opportunity for appeal against disciplinary measures imposed by the hearing Chairperson, our law does not dictate or prescribe whether this appeal process should be internal (made to and decided upon by another School authority) or external i.e. made to a third party in terms of legal process e.g. referring the matter to Court for adjudication.

The School believes that an internal appeal REVIEW process is more beneficial and fair for both the learner and the School, and provides a further, expeditious and less public avenue for the parties to seek to resolve any dispute regarding disciplinary matters; primarily in the educational interests of the learner.

- 6.1 Accordingly, the learner / parents have the right to appeal against any formal disciplinary action imposed by the School (i.e. against any formal disciplinary action taken by the School or any decisions by a hearing Chairperson) as a final process in the School’s disciplinary procedure.

- 6.2 The lodging of an appeal against formal disciplinary action, or any decision by a hearing Chairperson, only entitles the learner to an appeal review however. The right to an appeal review therefore does not entitle the learner to a “re-hearing”.

An appeal review is generally a process that does not entail a full re-investigation or a rehearing of all the evidence heard at the hearing, and the Reviewer is only required to review the matter, according to the grounds and motivation submitted by the appellant / parents. The Reviewer is expected to at least review the hearing Chairperson’s findings and any documentation submitted by the respective parties, and to consider any further or new evidence provided by either party.

- 6.3 Due to the nature of the review process, the learner / parents wishing to appeal must be advised to fully motivate their appeal in writing, detailing all the grounds for appeal and providing the Reviewer with any additional or new evidence they wish to submit in support of the appeal.

The onus rests with the learner / parents to justify an appeal, and the grounds for the appeal must be clearly and comprehensively set out in the appeal request. This will enable the Reviewer to appreciate and properly consider the appellant’s grounds for the review.

- 6.4 Any request for appeal must be submitted to the School Head or the hearing

Chairperson within 5 (five) school days of the hearing Chairperson's decisions having been provided to the learner/parents, so as not to delay review proceedings.

*Note: Appeal / Review*

- (a) *The learner's right to an appeal against disciplinary action imposed by the School does not ordinarily mean that all matters raised at the hearing will be re-heard. As already indicated, the appeal review procedure is limited to an objective review of the decisions made by the School or the hearing Chairperson. A full 're-hearing' is ONLY necessary when the disciplinary procedure or hearing appears to have been materially defective, and/or the decisions reached appear to be patently flawed.*
- (b) *Should it become obvious that a full re-hearing is required for a fair appeal process, usually due to a materially defective disciplinary hearing process having taken place or substantial new evidence having come to light after the hearing, a full appeal (re)hearing should be conducted in accordance with the principles highlighted in section 5 above, but chaired by a new and impartial appeal Chairperson.*
- (c) *It is now an accepted principle in our law that even substantial defects in a disciplinary hearing can be effectively "cured" by the conducting of a new and full ('fresh') re-hearing.*

- 6.5 The School will be responsible for appointing an appropriate person, or review panel, to conduct an appeal review, or a re-hearing if this is considered necessary. It is common practice for an appropriate School Board member to be appointed as the Reviewer, subject to his/her not having been consulted or involved in the matter to be reviewed.
- 6.6 After reviewing the appeal motivation submitted by the appellant, and investigating any aspects of the disciplinary process considered necessary, the Reviewer will make a decision based on his / her findings, relative to the grounds for appeal submitted by the appellant.
- 6.7 When a final decision has been made by the Reviewer (or rehearing chairperson / panel as the case may be), a written Appeal Review Finding must be provided to the learner/parents by the Reviewer, wherever possible within a 5 (five) school days. A copy of the Review finding must also be placed on the learner's file for recording purposes.
- 6.8 The communication of the Reviewer's appeal decision marks the conclusion of the School's appeal process, and is the final step in the School's Disciplinary Procedure.

The learner / parents will have to resort to external authorities should they wish to pursue an appeal to a further level.

## **7. Collective / Group Misconduct**

The above-described disciplinary procedure is principally designed to deal with instances of misconduct by individual learners. Alleged misconduct by a group of learners, where the infringement(s) are of a similar nature or with a related intent, is considered as being "collective misconduct".

- 7.1 Generally, collective misconduct is more effectively dealt with on a collective basis. An informal investigation into the alleged group misconduct is generally conducted initially by the educator or head of dept. This investigation will normally include a discussion with the learners involved, to attempt to get to the facts of the matter and to get the learners' perspective before deciding on the best way forward.
- 7.2 Dependent upon the outcome of this initial investigation, informal or formal disciplinary action may be considered appropriate by the responsible school

official for the individual learners involved.

- 7.3 Should the alleged infringement be considered to be of a serious nature, a single disciplinary hearing procedure may be conducted with all the learners concerned, with their parents present.

The same procedures as provided for in section five above (Disciplinary Hearing) are generally also followed in a collective disciplinary hearing.

- 7.4 Despite the use of a collective hearing procedure, individual learners must still be provided with the opportunity of demonstrating that their own circumstances may be different from that of the group, or other learners, and for showing why they should be treated differently.

*Note:*

*In certain cases, it may be more appropriate by the School to conduct separate investigations or hearings with individual learners, despite the allegations of misconduct being similar.*

*The School reserves its right to exercise its option to conduct individual or collective hearing procedures, the disclosure of its reasons for this decision to also be at its sole discretion.*

- 7.5 The same provisions set out in section six above regarding appeal review procedures will apply in the case of collective disciplinary matters.

The School reserves its right to initiate a separate or collective / group appeal review process, to deal with any appeals lodged by any learners affected. Similarly, a decision by the School to rehear any evidence against an individual learner involved, will not prejudice the School's rights to only conduct appeal reviews with other learners.

## **8. Disciplinary Code**

The School's disciplinary code for learners is attached, and is ONLY intended as a guideline for assessing and determining appropriate disciplinary measures for various types of infringement or misconduct by learners. As indicated previously, the circumstances of a particular case, especially mitigating considerations, may justify a less severe penalty than that indicated in the Code.

Similarly, aggravating considerations relevant to a particular case may justify a more severe penalty than that recommended in the Code.

- 8.1 The various infringements set out in the Code are not intended to be an exhaustive or full listing of possible infringements or misconduct by learners, but are rather to be interpreted as indications of the broad types and severity of offences by learners, and the appropriate sanctions if the learner is found to be guilty by the School.

- 8.2 The Code makes provision for 'progressive' or accumulative penalty i.e. the imposition of a more severe penalty for a repeated and similar infringement by the same learner.

## **9. Practical Application Notes**

- 9.1 PENALTY AND CONSISTENCY

The penalties set out in the attached disciplinary code indicate the recommended penalty that could be imposed for a particular infringement. Obviously, a lesser penalty may be applied, should mitigating considerations indicate that the indicated penalty is not appropriate in the circumstances.

While the application of disciplinary measures should be consistent, due consideration of factors relating to each case is of equal importance. For this reason, the Code should be viewed as a guideline, and the penalties reflected therein need not be slavishly followed. It is important to note that being

absolutely consistent, every time, may well demonstrate UNFAIR application of disciplinary measures!

## 9.2 CUMULATIVE AFFECT

Cumulative action for a repeated offence i.e. imposing a more serious penalty for misconduct than that imposed previously for misconduct, is only appropriate if the second infringement is of a “similar nature” to the previous type of misconduct. The nature and type of offence should therefore be the same, and any warnings issued previously for the related offence should also not have expired.

## 9.3 BURDEN OF PROOF

As the onus generally rests with the School to prove the reasonableness and fairness of disciplinary action taken against a learner, care must be taken to follow all the procedural steps outlined in this procedure and code. Any material and unjustified deviation from the recommended procedures set out in this procedure may well result in the actions of the School being challenged.

## 9.4 MISCONDUCT OFF THE SCHOOL PREMISES

Imposing disciplinary action against a learner for misconduct that took place “off-site” (e.g. after hours and/or off the School’s premises) requires that the School clearly demonstrate the negative impact of that misconduct on the School / learner relationship.

*To illustrate: If a learner is charged and found guilty of theft of goods at a shopping mall, the School is not automatically entitled to impose any disciplinary sanction on the learner. But such misconduct off the School’s premises (if proven) may however be considered sufficiently serious and relevant in the case of a School prefect, and result in a prefect being demerited, and even their prefectureship being rescinded.*

## 9.5 CRIMINAL MISCONDUCT AT SCHOOL

Should a learner admit to, be suspected of or be found guilty of a criminal offence (such a theft of a cell phone or School property for example) at School or on the School premises, it is recommended that the School conduct the appropriate disciplinary procedures as a matter of urgency. The disciplinary procedures applied by the School are not directly dependent upon any possible or later criminal proceedings that may be initiated by the State or other parties against the learner.

The procedures that may be applicable in accordance with criminal law have no direct bearing upon the School / learner relationship. It is not prudent for the School to wait until criminal / court proceedings have run their course (or not as is more often the case) before initiating any disciplinary steps against an offending learner. The imposition of disciplinary measures against a learner after investigation by the School, such as expulsion for serious misconduct, will not be nullified or viewed as “double punishment” should the learner also be sentenced, if found guilty by a court of law.

## 9.6 SUSPENSION (Two forms of Suspension)

### 9.6.1 As a penalty:

In exceptional cases, extended suspension from class or from School activities may be acceptable (and possibly appropriate in certain limited circumstances) as a severe form of punishment, and ONLY as an alternative to expulsion of a learner by the School. Such a suspension is also conditional upon this form of penalty being requested / agreed to by the learner’s parents, and a final warning also being imposed in conjunction with the suspension.

Suspension as a penalty can therefore only be agreed upon once a disciplinary hearing has been conducted, and the learner has been found guilty of serious misconduct. In addition, an extended period of suspension should not be of such duration as to jeopardise the educational interests of the learner. Such an extended and prejudicial suspension may then well lead to (justifiable) challenge on Constitutional rights grounds.

9.6.2 Pending a hearing:

Suspension of the learner from School activities pending the conducting of a formal hearing (i.e. if expulsion is being considered) should ordinarily not be of a duration that would prejudice the educational rights of the learner.

The disciplinary hearing should therefore be conducted as soon as possible after the suspension of the learner takes effect. It should also be clearly indicated to the learner / parents that this suspension is not a form of punishment, and is a practical arrangement to remove the learner, temporarily and in the best interests of the School, the learner and other learners.

9.7 EXPULSION AS A LAST RESORT ONLY

Expulsion should ONLY be effected after conducting a formal disciplinary hearing. The procedural requirement of conducting a hearing prior to expulsion, even if the learner admits guilt, should not be flouted.

Justice must be seen to be done, and expulsion without a hearing will almost certainly result in legal challenge. The penalty of expulsion is a last resort, if no reasonable alternative or lesser form of penalty is considered appropriate.

The School may well be called upon to motivate why a less severe penalty than expulsion was not imposed, and to even provide information on why alternatives to expulsion were not considered appropriate.