



PROVINCE OF WESTERN CAPE

PROVINSIE WES-KAAP

IPHONDO LENTSHONA KOLONI

Provincial Gazette Extraordinary

Buitengewone Provinsiale Koerant

Isongezelelo kwiGazethi yePhondo

6939

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6939

Thursday, 15 December 2011

Donderdag, 15 Desember 2011

uLwesine, 15 Disemba 2011

Registered at the Post Office as a Newspaper

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(*Reprints are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)

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As 'n Nuusblad by die Poskantoor Geregistreer

INHOUD

(*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)

Provinsiale Kennisgewing

- 365 Regulasies betreffende die dissiplinerig, skorsing en uitsetting van leerders in openbare skole in die Wes-Kaap 7

Ibhaliswe ePosini njengePhephandaba

IZIQULATHO

(*Ushicilelo oLutsha lufumaneka kwigumbi M21, kwiSakhiwo sePhondo seNdlu yoWiso Mthetho, 7 Wale Street, eKapa 8001.)

Isaziso Jikelele

- 365 Imimiselo emalunga nokululeka, ukunqumamisa nkugxotha abafundi kwizikolo zikarhulumente kwiPhondo leNtshona Koloni 12

PROVINCIAL NOTICE

The following Provincial Notice is published for general information.

ADV. B. GERBER,
DIRECTOR-GENERAL

Provincial Building,
Wale Street,
Cape Town.

PROVINSIALE KENNISGEWING

Die volgende Provinsiale Kennisgewing word vir algemene inligting gepubliseer.

ADV. B. GERBER,
DIREKTEUR-GENERAAL

Provinsiale-gebou,
Waalstraat,
Kaapstad.

P.N. 365/2011

15 December 2011

**REGULATIONS RELATING TO DISCIPLINING, SUSPENSION AND EXPULSION OF LEARNERS AT PUBLIC SCHOOLS
IN THE WESTERN CAPE**

In terms of section 63(1)(cE) of the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), read with section 9(3) of the South African Schools Act, 1996 (Act 84 of 1996), the Provincial Minister responsible for education in the Western Cape makes the regulations set out in the Schedule.

SCHEDULE

ARRANGEMENT OF REGULATIONS

1. Definitions and application
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3. Serious misconduct
4. Suspension of learner
5. Notice to learner and parent of disciplinary hearing
6. Appointment and composition of disciplinary committee
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1. Definitions and application

- (1) In these regulations any word or expression to which a meaning has been assigned in the Western Cape Provincial School Education Act, 1997 (Act 12 of 1997), bears the meaning assigned to it and, unless the context otherwise indicates—

“**disciplinary committee**” means a committee established by the governing body of a public school in terms of section 30(1) of the Act;

“**District Director**” means the senior officer in a district of the Western Cape Education Department;

“**expulsion**” means the permanent prohibition of a learner by the Head of Department, from attending the school at which he or she was enrolled, after following the process in terms of the Act, and these regulations;

“**suspension**” means the temporary prohibition of a learner from attending a school as in terms of regulation 4; and

“**the Act**” means the South African Schools Act, 1996 (Act 84 of 1996).

- (2) These regulations do not apply to a child and youth care centre described in section 191 of the Children’s Act, 2005 (Act 38 of 2005).

2. Investigation of possible serious misconduct

- (1) Where it is alleged that the conduct of a learner may constitute serious misconduct in terms of regulation 3(1), the allegation must be brought to the attention of the principal who must—
- (a) investigate or cause an investigation to be carried out to determine whether there are grounds for a disciplinary hearing;
 - (b) decide whether there is sufficient evidence to institute disciplinary action against the learner in respect of the serious misconduct and whether or not to report the matter to the governing body.

- (2) The governing body may, on reasonable grounds, and as a precautionary measure, suspend the learner suspected of serious misconduct from attending school for a period not longer than seven school days.
- (3) The governing body must—
 - (a) inform the learner and the parents of the learner of the intention to suspend and the reasons therefore;
 - (b) afford the learner and the parents of the learner a reasonable opportunity to make representations to the governing body in relation to such suspension; and
 - (c) report the decision of the suspension of the learner to the District Director, who must keep a register of all such suspensions.
- (4) The governing body must conduct disciplinary proceedings in the manner contemplated in section 8 of the Act against the learner within seven school days after the suspension of such learner.
- (5) If disciplinary proceedings are not conducted within seven school days after the suspension of the learner, the governing body must obtain the approval of the Head of Department for the continuation of the suspension of such learner.

3. Serious misconduct

- (1) Subject to the provisions of the Act, a learner at a school who—
 - (a) used or had in his or her possession or sells or distributes a dangerous object, alcoholic liquor or illegal drugs;
 - (b) commits an act of bullying, assault, theft, arson or malicious damage to property;
 - (c) commits an act of gross insubordination or engages in immoral conduct;
 - (d) is in possession of or uses any unauthorised copy of a test or examination question paper, or cheats, distributes, trades, bribes or attempts to bribe any person in respect of any test or examination, with the intention of enabling himself or herself, or any other person, to gain an unfair advantage;
 - (e) uses hate speech, makes himself or herself guilty of racism, sexism, sexual harassment, possesses or distributes pornographic material or engages in any act of public indecency;
 - (f) endangers the safety or threatens fellow learners or educators, disrupts the school programme or violates the rights of others;
 - (g) falsely identifies himself or herself, or knowingly and wilfully supplies false information or falsifies documentation to gain an unfair advantage at school;
 - (h) has repeatedly been found guilty of transgressing the learner's code of conduct; or
 - (i) conducts himself or herself, in the opinion of the governing body, in a disgraceful, improper or unbecoming manner, may be guilty of serious misconduct.
- (2) Subject to the provisions of the Act, a learner at a school may be suspended by the governing body or expelled by the Head of Department if, after a fair hearing, he or she is found guilty of serious misconduct as contemplated in sub-regulation (1).

4. Suspension of Learner

- (1) The governing body may only suspend a learner—
 - (a) as a precautionary measure and in the manner contemplated in regulation 2(2) for a period not longer than seven school days;
 - (b) as a correctional measure, after the learner has been found guilty of serious misconduct as contemplated in regulation 7(4)(e)(i), for a period not longer than seven school days; or
 - (c) pending the decision of the Head of Department as contemplated in regulation 8(2), for a period not longer than 14 school days.
- (2) The total period of suspension of a learner from school shall not be longer than 21 school days.
- (3) The governing body must report all the decisions to suspend and the nature of the suspension of the learners to the District Director, who shall keep a register of all such suspensions.

5. Notice to learner and parent of disciplinary hearing

- (1) The governing body must notify the learner as well as the parents of the learner, in writing, that disciplinary proceedings will be instituted against the learner. The notice must—
 - (a) provide at least five school days' notice of the disciplinary hearing;
 - (b) inform the learner and the parents of the learner that disciplinary proceedings will be instituted against the learner;
 - (c) contain sufficient particulars of the date, time, place and the nature of the alleged serious misconduct to enable the learner to identify the incident and to respond thereto at the disciplinary hearing;
 - (d) contain the date, time and venue of the disciplinary hearing;
 - (e) advise the learner of his or her right to—

- (i) be accompanied and represented at the hearing, by his or her parents, or by a representative chosen by the parents;
 - (ii) request access to documents or information produced in evidence; and
 - (iii) ask questions, cross-examine, lead evidence, call witnesses and produce documentary evidence to clarify issues pertaining to the allegation.
- (f) inform the learner, where applicable, of the precautionary suspension and the nature of academic support to be provided by the school before the disciplinary hearing and during the period of suspension contemplated in regulation 2(2).

- (2) The principal must give the notice contemplated in sub-regulation (1) to the learner, and deliver a copy thereof to the parents of the learner at the address of the learner indicated in the school admission register or the learner profile.

6. Appointment and composition of disciplinary committee

- (1) The governing body must preside over the disciplinary proceedings or must appoint a disciplinary committee to do so.
- (2) The disciplinary committee must comprise at least five persons, at least three whom must be governing body members.
- (3) The disciplinary committee must be chaired by a member of the governing body, designated by the governing body, who is not an employee or member of staff of the school.
- (4) The disciplinary committee must be impartial, fair and act without favour or prejudice.
- (5) The principal, learners at the school or persons having a conflict of interest are not eligible to be members of the disciplinary committee and may not be present when the governing body discusses the report or recommendations of the disciplinary committee.

7. Disciplinary hearing

- (1) At the disciplinary hearing the learner has the right to be present, to be represented, to give evidence and either personally or through a representative, to—
 - (a) state his or her case;
 - (b) call witnesses;
 - (c) put questions to any person called as a witness in support of a charge; and
 - (d) inspect documents submitted in evidence.
- (2) If the learner or his or her parents fail to attend the disciplinary hearing without just cause, and after due notice contemplated in regulation 5, and after such hearing has been convened for the second time, the hearing may be conducted in their absence.
- (3) The chairperson must, upon the commencement of the disciplinary hearing, explain the reasons for the disciplinary hearing, request the charge or charges to be read, and ask the learner to plead to the charge.
- (4) If the learner pleads guilty, the chairperson must—
 - (a) ensure that the learner knows and understands what he or she is pleading guilty to;
 - (b) ask the learner, representative, or parents of the learner whether anybody wishes to make representations before a suitable sanction is imposed;
 - (c) ask the learner, representative and parents of the learner and any other parties, except the members of the disciplinary committee, to leave the room while the committee deliberates on a suitable sanction;
 - (d) ensure that the disciplinary committee decides on an appropriate sanction;
 - (e) ensure that the disciplinary committee, after finding the learner guilty of serious misconduct, decide if—
 - (i) the learner should be suspended for a period not longer than seven school days;
 - (ii) any other sanction contemplated for serious misconduct in the code of conduct of that school should be imposed on the learner; or
 - (iii) the expulsion of the learner should be recommended to the Head of Department; and
 - (f) recall the learner, representative or parents of the learner and inform them of the outcome of the recommendations to be submitted to the governing body.
- (5) If the learner pleads not guilty, the chairperson must—
 - (a) request the investigation report to be read and evidence adduced in support of the charge, including the calling of the complainant and witnesses;
 - (b) give the learner, representative or parents of the learner the opportunity to put questions to the complainant and witnesses with the purpose of refuting evidence;

- (c) afford the committee members an opportunity to ask questions of clarity, where applicable;
 - (d) afford the learner an opportunity to state his or her case and to call witnesses;
 - (e) allow committee members to ask questions of clarity;
 - (f) excuse the learner, representative and parents of the learner while the committee reviews evidence and decides on the verdict; and
 - (g) recall the learner, representative and parents of the learner and inform them of the disciplinary committee's decision.
- (6) If the disciplinary committee finds the learner guilty, the chairperson must—
- (a) ask him or her, or his or her representative or parents, if they wish to make representations before a decision is made on the appropriate sanction; and
 - (b) ask the learner, representative or parents of the learner and any other parties, except the members of the disciplinary committee, to leave the room while the committee deliberates on a suitable sanction.
- (7) The disciplinary committee must then decide on an appropriate sanction taking all the evidence and representations into account and decide if—
- (a) the learner should be suspended for a period not longer than seven school days;
 - (b) any other sanction contemplated for serious misconduct in the code of conduct of that school should be imposed on the learner; or
 - (c) the expulsion of the learner should be recommended to the Head of Department.
- (8) Recall the learner, representative or parents of the learner and inform them of the outcome of the recommendations to be submitted to the governing body.
- (9) The learner and his or her parents must be informed, in writing, of the decision of the governing body on whether or not the learner is guilty of serious misconduct, and the sanction imposed.

8. Recommendation of expulsion by governing body

- (1) (a) Where the governing body recommends to the Head of Department that a learner be expelled, the parents of the learner must be notified, in writing, of the decision of the governing body.
- (b) Where a governing body suspends a learner from attending school, with the recommendation of expulsion to the Head of Department, the governing body must direct the principal to submit to the Head of Department, within three school days—
- (i) the minutes of meetings at which the decision was taken;
 - (ii) any written representations submitted by the learner or parents of the learner or representative; and
 - (iii) the full record of the proceedings by the disciplinary committee or governing body.
- (2) Pending a decision by the Head of Department the governing body may suspend or extend the suspension of a learner for a period not longer than 14 days.
- (3) The Head of Department must consider the recommendation by the governing body and must decide whether or not to expel a learner within 14 days of receiving such recommendation.
- (4) If the Head of Department decides not to expel the learner, the Head of Department may, after consultation with the governing body, impose a suitable sanction on the learner, which must be implemented by the governing body.
- (5) If the Head of Department decides not to impose a sanction on the learner, the Head of Department must refer the matter back to the governing body, for an alternative sanction in terms of the school's code of conduct contemplated in section 8 of the Act.
- (6) The governing body and the parents of the learner must be notified immediately, in writing, of the decision of the Head of Department, with good cause shown.
- (7) If the Head of Department expels a learner, the notice contemplated in sub-regulation (6) must include a reference to the right of appeal to the Provincial Minister.

9. Appeal

- (1) A learner who has been expelled from a school, or the parents of such learner, may appeal against the decision of the Head of Department to the Provincial Minister within 14 days of receiving the notice of expulsion.
- (2) A copy of the notice of appeal contemplated in sub-regulation (1) must also be served on the office of the Head of Department and the chairperson of the governing body.
- (3) If an appeal in terms of sub-regulation (1) by a learner who has been expelled from a school is upheld by the Provincial Minister, the Provincial Minister must ensure that a suitable sanction is imposed on the learner within 14 days of the date on which the appeal was upheld.
- (4) For the purposes of the imposition of a suitable sanction contemplated in sub-regulation (3), the provisions of regulations 8(4) and (5) apply, with the changes required by the context.

10. Access to education

- (1) If a learner who is subject to compulsory attendance in terms of section 3 of the Act is expelled from a school, the Head of Department must make an alternative arrangement for his or her placement at a school.
- (2) If a learner who is not subject to compulsory attendance, is expelled from a school the parents of the learner may make alternative arrangements for his or her placement at a school and may request the assistance of the District Director.
- (3) If a learner has appealed in the manner contemplated in regulation 9(1), such learner must, pending the outcome of the appeal, be given access to education in the manner determined by the Head of Department after consultation with the principal.
- (4) In determining an alternative arrangement for placement contemplated in sub-regulation (1), or the manner of access to education contemplated in sub-regulation (3), the Head of Department—
 - (a) must take reasonable measures to protect the rights of other learners at the school; and
 - (b) may consider an alternative method of providing education to the learner contemplated in sub-regulations (1) and (3), which may include—
 - (i) ensuring that the learner is admitted to another school within the province;
 - (ii) requiring the learner to attend counselling at district level with Specialised Learner and Educator Support or School Psychological Support or School Social Work Support; and
 - (iii) requesting regular progress reports in respect of the counselling contemplated in sub-paragraph (ii) from the relevant support component.
- (5) Any learner who is expelled from a school, during the last term of that year, must be afforded the opportunity to write the final examinations of the year in which he or she was expelled, provided that such learner may be requested by the principal of the school to write the examination in a venue separate from the learners of the school which he or she attended at the time of his or her expulsion.

11. Repeal

The Regulations relating to serious misconduct of learners at public schools (excluding public schools for learners sent or transferred thereto in terms of the Child Care Act, 1983 (Act 74 of 1983), and /or the Criminal Procedure Act, 1997 (Act 51 of 1997) in the Province of the Western Cape, and the disciplinary procedures that must be followed in such cases that was published in Provincial Notice 372 of 1997 in Provincial Gazette Extraordinary No. 5190, dated 31 October 1997, are hereby repealed.

12. Short title and date of commencement

These Regulations are called the Regulations relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape, and comes into effect on 2 April 2012.

(Insert school letterhead and address)

NOTICE TO LEARNER AND PARENT OF DISCIPLINARY HEARING

Notice to learner and parent of the learner on the institution of disciplinary proceedings against the learner for an alleged serious misconduct in terms of regulation 5 of the Regulations Relating to Disciplining, Suspension and Expulsion of Learners in the Western Cape, published in the Western Cape Provincial Gazette Extraordinary No. 6939, dated 15 December 2011.

Date: _____

**Name and address of parent(s)
and learner**

Dear Mr/ Mrs/ Ms _____

NOTICE OF DISCIPLINARY HEARING

1. In accordance with regulation 5, you are hereby informed that the governing body intends to institute disciplinary proceedings against your child on **(State date, time and place)**.
2. Your child is alleged to have **(State the nature of the alleged serious misconduct to enable the learner to identify the incident and to respond thereto at the disciplinary hearing)**.
3. You and your child have the right to
 - 3.1 have and be accompanied at the hearing by a legal representative or any other person or representative to make oral or written representations on behalf of your child;
 - 3.2 request access to documents and any other information to be produced in evidence; and
 - 3.3 to ask questions, cross examine witnesses, lead evidence, call witnesses and produce documentary evidence to clarify issues relating to the allegation.

4. It is very important that you prepare yourself and attend the scheduled hearing.
5. You are advised to inform the governing body timeously if you and your child are unable to attend the date specified above so that a mutually convenient date and time can be arranged for the hearing.
6. In the absence of any communication from you, we will assume that you have agreed to attend the scheduled hearing and the necessary arrangements to proceed with the hearing will be made.

Yours faithfully

SCHOOL GOVERNING BODY

(Attach proof of posting and/or acknowledgment of receipt)

(Insert school letterhead and address)

NOTICE OF A SANCTION IMPOSED BY THE GOVERNING BODY

Notice of a sanction imposed by the governing body, after finding the learner guilty of serious misconduct in terms of regulations 7(4)(e) and 7(7) of the Regulations Relating to Disciplining, Suspension and Expulsion of Learners published in Provincial Gazette Extraordinary No. 6939, dated 15 December 2011.

Date: _____

Name and address of parent(s) and learner
--

Dear Mr/ Mrs/ Ms _____

NOTICE OF SANCTION IMPOSED BY THE GOVERNING BODY

1. Following the disciplinary hearing convened in terms of regulation 7 and the School Code of Conduct held on **[Insert the date of the hearing]**, and after deliberating on the evidence presented at the hearing, the governing body has found your child guilty of serious misconduct, and as a result, the governing has decided, as a sanction,
 - 1.1 to suspend your child from attending school for a period of **(State number of school days not longer than seven school days)**; and/or
 - 1.2 to _____ **(Any other sanction contemplated in the school's code of conduct, where applicable)**, for or based on the following reasons **[State reasons for imposing the sanction in 1.1 and 1.2]**.
2. This sanction is effective from **(Insert date.)** until **(Insert date.)**, and your child is expected not to attend school until after the expiry of the period in question.

Yours faithfully

SCHOOL GOVERNING BODY

(Attach proof of posting and/or acknowledgment of receipt)

(Insert school letterhead and address)

**NOTICE OF THE DECISION OF THE GOVERNING BODY TO RECOMMEND EXPULSION OF THE LEARNER
TO THE HEAD OF DEPARTMENT**

Notice of the decision of the governing body to recommend, to the Head of Department that the learner be expelled from attending the school at which he or she was enrolled in terms of regulation 8 of the Regulations Relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape published in Provincial Gazette Extraordinary No. 6939, dated 15 December 2011.

Date: _____

**Name and address of parent(s)
and learner**

Dear Mr/ Mrs/ Ms _____

NOTICE OF THE DECISION TO RECOMMEND EXPULSION

1. Following the disciplinary hearing convened in terms of regulation 7 and the School Code of Conduct and held on **(Insert the date of the hearing)**, and after deliberating on the evidence presented at the hearing, the governing body has found your child guilty of serious misconduct. As a result, the governing body has decided, in terms of regulation 8 and the School's Code of Conduct, to recommend to the Head of the Western Cape Education Department that your child be expelled (be permanently prohibited from attending school at **(Insert name of the school)**), based on the following reasons:
(State reasons)

2. Pending the decision of the Head of Department to expel or not to expel, your child may attend school until a decision has been received.

(OR)

Pending the decision of the Head of Department to expel or not to expel, your child is forthwith suspended for a period of **(Insert number of days not more than 14 school days)**.

3. Please note that only the Head of Department may expel your child from school and that, once the decision of the Head of Department has been communicated to you, in writing and with good cause shown (with reasons), within 14 days of receipt of notice of a decision to expel your child, you have the right to appeal against the decision of the Head of Department to the Provincial Minister.
4. Should you decide to lodge an appeal referred to in paragraph 4 above, you must serve a copy of the notice of appeal to the Head of Department and to the chairperson of the governing body.

Yours faithfully

SCHOOL GOVERNING BODY

(Attach proof of posting and/or acknowledgment of receipt)

(Insert school letterhead and address.)

RECOMMENDATION BY THE GOVERNING BODY TO THE HEAD OF DEPARTMENT FOR EXPULSION OF THE LEARNER FROM SCHOOL

This annexure must be completed and submitted for each learner recommended for expulsion by the governing body in terms of regulation 8, and **MUST ACCOMPANY ALL THE DOCUMENTS CONTEMPLATED IN REGULATION 8(1)**. Regulation 8 of the Regulations Relating to Disciplining, Suspension and Expulsion of Learners at Public Schools in the Western Cape published in Provincial Gazette Extraordinary No. 6939, dated 15 December 2012.

NAME OF SCHOOL:			
TEL. NUMBER:		FAX NUMBER	
NAME OF LEARNER:		GENDER:	
LEARNER'S CEMIS NUMBER:		GRADE:	
DATE OF BIRTH:		AGE:	
NAME OF CIRCUIT TEAM MANAGER:		DISTRICT OFFICE AND NAME OF DISTRICT DIRECTOR:	

PLEASE COMPLETE THE FOLLOWING, USING A "YES OR "NO" WHERE APPROPRIATE:

1. Can the behaviour of the learner be classified as serious misconduct in the manner contemplated in Regulation 3(1)?

2. Please provide a summary and a detailed description of the incident with relevant dates.

3. Who reported the incident to the principal and/or school governing body?

- Learner
- Principal
- Deputy principal
- Educator
- Staff member
- Parent(s)
- Member of the SGB
- Other

4. Who investigated the alleged serious misconduct?

5. Was the learner or parent of the learner informed, in writing, of the alleged serious misconduct?

YES/ NO	DATE

6. Did the learner or parents of the learner acknowledge receipt of notification?

YES	NO

7. Please state the date of disciplinary hearing by the governing body or disciplinary committee:

--

8. Please state the date on which the decision was taken and/or ratified by the governing body:

--

APPOINTMENT, COMPOSITION OF THE DISCIPLINARY COMMITTEE AND THE DISCIPLINARY HEARING:

NAME	DESIGNATION	NAME	DESIGNATION

9. Was the disciplinary committee properly constituted in the manner contemplated in regulation 6?

10. Who chaired the disciplinary hearing?

11. Is he or she (chairperson) a member of the governing body?

12. How many of the members present and presiding at the hearing as part of the disciplinary committee are not members of the governing body?

13. Was the learner present at the hearing?

14. Who accompanied the learner? Was it a parent and/or chosen representative?

15. Was the learner/ parent/ representative given an opportunity to state his or her case in the manner contemplated in regulation 7(1)?

16. Did the governing body or disciplinary committee ensure that the learner, the learner's parent(s) or representative, the investigator, the reporter and/or any other parties, with an interest in the matter, except for members of the governing body or disciplinary committee, leave the room while the matter was being deliberated, and for imposition of a suitable sanction?

17. Is the decision and recommendation of expulsion of the learner attached as part of the record of the disciplinary proceedings?

18. Was the learner previously found guilty of similar serious misconduct? If so, provide details:

19. What other intervention or assistance, if any, has been given to the learner on account of previous serious misconduct? (Please attach all reports):

20. Was the decision to suspend and the nature of the suspension reported to the district director? Please explain:

21. Will the learner be allowed to write examinations or, alternatively, what other arrangements have been put in place relating to access to education and examinations?

22. Additional comments, (if any):

.....
(PLEASE PRINT NAME & SURNAME OF CHAIRPERSON OF THE SGB)

.....
(SIGNATURE)

.....
(DATE)

CHECKLIST FOR SUBMISSION OF DOCUMENTS TO THE HEAD OF DEPARTMENT

DOCUMENTS	CONFIRMATION
1. State the nature and form of submission used, i.e. registered mail/ by fax / by hand	
2. Date on which the document were mailed/ faxed/ hand delivered to the HOD	
3. Copy of the notice to learner and parent(s) inviting them to the disciplinary hearing, and acknowledgment of receipt	
4. Copy of the letter to learner and parent(s) informing them of the decision of the SGB (Disciplinary Committee), and acknowledgment of receipt	
5. Minutes of meetings at which the decision was taken	
6. Written representations submitted by the learner or parents of the learner or representative	
7. Full record of the proceedings by the disciplinary committee or governing body (including copies of all documents submitted by both parties during the hearing)	

