



POLICY (Number: Hii)
DISCIPLINARY CODE AND PROCEDURE FOR PUPILS

DISCIPLINE: DEFINITION

Discipline is corrective action initiated by the School in response to unacceptable learner behaviour or conduct.

1. INTRODUCTION

1.1. Maintenance of discipline:

The Headmaster and the teaching staff are responsible for the maintenance of discipline, the promotion of stability, and the fair and equal treatment of all learners at Somerset House.

1.2. Implementation:

This disciplinary code and procedure forms an integral part of the contract of enrolment between the School and the parent/guardian/custodian of each learner enrolled at the School. It applies to all learners of the School and is implemented without exception when disciplinary action is taken, including the suspension or expulsion of a learner as a result of an offence or inappropriate behaviour.

1.3. Purpose of discipline:

The purpose of the disciplinary code and procedure is to encourage disciplined conduct amongst all learners, which is to the advantage and for the safety of each individual as well as for the promotion of the School's objectives. It is designed to maintain the promotion of the School's standards and compliance with the Code of Conduct and not to punish the learner.

2. DISCIPLINARY PROCESS- MINOR OFFENCES

2.1. Informal Counselling And Verbal Warning:

2.1.1. Insofar as it is reasonably possible, formal disciplinary action will only be taken to maintain standards of acceptable behaviour after informal counselling and verbal warnings have failed to produce the desired results.

2.1.2. If a learner's behaviour is unacceptable, his/her teacher/tutor will, where appropriate, counsel him/her before resorting to formal disciplinary action. The problem is brought to the attention of the learner. He/she is informed about what is expected of him/her and is encouraged to solve the problem. The learner is warned of the possible consequences if the unsatisfactory conduct or behaviour should continue. Referral to detention shall be deemed to constitute informal disciplinary action.

3. DISCIPLINARY PROCEDURE- SERIOUS OFFENCES

3.1. Investigation of alleged misconduct:

Where an infringement occurs which appears to warrant formal disciplinary action, the educator concerned will initiate the disciplinary process by reporting the incident to the head of the department or by completing a Notice of Complaint. Where it is considered appropriate, a party will be mandated to conduct a preliminary investigation into the alleged misconduct

3.2. Task of the investigation:

3.2.1. The educator or the HOD if required, may investigate an infringement reported, or a notice of complaint received, to decide upon appropriate corrective measures. This investigation generally takes the form of an informal hearing, and wherever possible includes an opportunity for the learner to state his/her case in response to the complaint.

3.2.2. If, after investigation, the infringement is confirmed and considered to be of a nature which does not require further action, the responsible educator / HOD may counsel the learner and issue an appropriate warning or demerit to the learner(s) concerned.



- 3.3. **Suspension of learner:**
The School reserves the right, at the sole discretion of the Head or a Deputy, to suspend the learner and to instruct him/her to immediately leave the School premises pending the implementation and completion of a disciplinary investigation or hearing. The parents/guardian/custodian of the learner will immediately be advised of the suspension.
- 3.4. **Notification of intention to conduct a formal disciplinary hearing:**
- 3.4.1. Where a serious alleged infringement occurs and it is established that sufficient grounds exist to justify a formal disciplinary hearing, the school will arrange the date, time and place of the hearing and notify the parents/guardian/custodian of the learner accordingly.
- 3.4.2. The notice of the intended hearing will contain a brief description of the alleged misconduct and the learner will be informed that he/she is entitled to be accompanied by a parent or guardian / custodian of the learner who may act as a representative of the learner. The learner will also be informed of his / her right to call witnesses to testify on his/her behalf if necessary.
- 3.4.3. The learner's parents or guardian shall be notified of the hearing at least 48 hours (two working days) prior to the scheduled hearing.
- 3.5. **Conducting a formal disciplinary hearing:**
- 3.5.1. The hearing will be conducted in the presence of the learner unless he/she refuses to attend, is unable to attend, or behaves in such a way that the hearing cannot proceed in his/her presence.
- 3.5.2. In such instance the hearing may proceed in the absence of the learner concerned.
- 3.5.3. A parent or guardian or custodian of the learner shall be entitled to attend the hearing and to act as a representative for the learner concerned. The disciplinary process is deemed to be an internal school matter and external legal representation shall not be permitted unless both the school and the learner's parent / guardian agree.
- 3.6. **The Chairing of the Disciplinary Hearing:**
- 3.6.1. The Head or a Deputy shall nominate an appropriate party to Chair the hearing who may be an educator from within the School or an external party.
- 3.6.2. The role of the Chairperson will be to establish the facts impartially and objectively. At the start of the hearing, the Chairperson will explain the purpose of the hearing and the nature of the charges to the learner.
- 3.6.3. Evidence substantiating the allegation against the learner will be presented by the complainant and witness/es called by the school and the learner will be afforded the opportunity to cross examine evidence led against him / her.
- 3.6.4. The learner will be provided an opportunity to fully state his/her case and to lead any witnesses as available to support his/her cause.
- 3.6.5. The parent / guardian or custodian assisting the learner will be entitled to address the hearing and act as a spokesperson for the learner, cross examine the complainant and any witnesses, lead any evidence as appropriate and make concluding representations prior to the Chairperson making the final decision.
- 3.6.6. In weighing up the evidence presented, the Chairperson shall apply the test of the "Balance of Probabilities" and shall determine whether the allegation has been substantiated under the circumstances.
- 3.7. **Record Of Hearing:**
The Disciplinary proceedings will be minuted by the Chairperson and where the Chairperson deems it necessary, may be tape recorded for the purpose of compiling minutes.
- 3.8. **The Decision:**
- 3.8.1. On completion of hearing all the evidence, the Chairperson shall, if he / she believes it appropriate, adjourn the hearing to consider the evidence and decide whether or not the learner is adjudged to be guilty as charged.
- 3.8.2. The Chairperson shall thereafter reconvene and notify the hearing regarding his / her outcome.



3.9. The Penalty:

- 3.9.1. Should the learner be deemed to be “Guilty” as charged, the Chairperson shall, where appropriate, refer to the learner’s personal file and disciplinary history and the record of past practice within the School.
- 3.9.2. The Chairperson shall further request the learner or his / her representative to address the hearing in mitigation and shall provide the complainant an opportunity to address the hearing on points in aggravation of sentence.
- 3.9.3. In considering the appropriate sanction the Chairperson may consider the following factors during the Disciplinary Process:
- Whether the rule which the employee breached is a ‘reasonable’ or ‘valid’ rule in the context of the school’s environment?
 - Whether the employee knew of the rule or should reasonably have been expected to have known the rule?
 - How the school has consistently applied the rule in the past.
 - What sanction is appropriate for the contravention of the rule and the gravity of the offence?
 - What mitigating or aggravating factors apply to the case in question?
 - In light of this total evidence the Chairperson will decide on the appropriate penalty.
- 3.9.4. **Informing The learner of the outcome:**
- The penalty that may be imposed for a failure to maintain the School’s standards of acceptable behaviour includes, but is not limited to, expulsion, community service, the withdrawal of benefits, suspension for a specified period or a written warning with conditions relating to future enrolment at the School.
 - Any penalty decided by the Chairperson shall be conveyed to the learner in writing and shall provide an outline of the reasons for the decision.
- 3.9.5. **Appeal Review Procedure:**
Should the Learner be dissatisfied with the outcome of the disciplinary hearing, he/she shall, within five (5) working days of receiving the disciplinary finding, notify the Chairperson in writing of his/her intention to appeal the decision and motivate the basis for such an appeal, (see below).
- An Appeal will only be constituted where the learner alleges that one or more of the following circumstances apply:
- The Disciplinary Procedure was not properly adhered to;
 - New evidence, which relates to the learner’s conduct and which was not previously submitted, has become available. Both the school and the learner may lead such new evidence;
 - The learner contends that the decision was too harsh;
 - The learner perceives that the Chairperson was biased;
 - The learner perceives that proper consideration was not given to all the relevant factors;
 - Strong mitigating factors are present which were not previously considered.
- 3.9.6. In the absence of agreement to the contrary, the Appeal Review shall be conducted by the Chairperson of the Board of Governors or his / her designated appointee/s within ten (10) working days of the appeal being lodged and shall be undertaken solely on the basis of written submissions from the parties concerned.
- 3.9.7. The learner will be entitled to submit a written representation to the Appeal Chairperson outlining the basis of the appeal and elaborating on any information, which he/she wishes to be considered in the review.
- 3.9.8. The appeal shall be conducted on the basis of such written submissions together with any minutes, tape recording and written documentation arising out of the initial disciplinary hearing.
- 3.9.9. Should the person /s conducting the Appeal Review deem it appropriate, he/she may choose to constitute a full appeal rehearing.
- 3.9.10. Where an Appeal rehearing is considered appropriate, the hearing shall be conducted in keeping with the procedural provisions applicable to the disciplinary hearing.
- 3.9.11. The Chairperson conducting the Appeal Review shall deliver a decision in writing.
- 3.9.12. At the conclusion of the Appeal Review, the School’s Disciplinary procedure shall be deemed to have been exhausted.



- 3.9.13. Should the learner be dissatisfied with the written outcome of the appeal review, he/she may refer the matter to compulsory arbitration in accordance with the dispute resolution process as provided for in the School's Dispute Resolution Policy.

DISPUTE RESOLUTION ARISING FROM THE APPLICATION OF THE DISCIPLINARY PROCEDURE FOR LEARNERS.

- 1.1. In the event of any dispute or difference arising between the school and the learners, relating to or arising out of the implementation, interpretation, termination or cancellation of any agreement concluded between the parties and/or the enrolment of the learner at Somerset House, the parties will meet forthwith to attempt to settle such dispute or difference and failing such settlement within a period of 7 (seven) days, the dispute or difference shall, if demanded by any party on written notice to the other party/ies, be submitted for resolution to a referee in accordance with the provisions set out below.
- 1.2. The hearing will be held:
 - 1.2.1. At Somerset West;
 - 1.2.2. Informally but in accordance with the provisions of the Arbitration act No. 42 of 1965, as amended;
 - 1.2.3. With a view of its being completed within 30 (thirty) business days after it is demanded, having particular regard to any urgency regarding the matter in issue.
- 1.3. The referee will be, if the question in issue is:
 - 1.3.1. Primarily a legal matter, a attorney of not less than 10 years standing and failing agreement between the parties to the dispute within 48 (forty eight) hours after a hearing of the dispute has been demanded in terms of this clause, such person shall be nominated by the president for the time being of the Cape Law Society or such entity or body as may replace it from time to time hereafter;
 - 1.3.2. In any other matter, an independent person agreed to by the parties and failing agreement between the parties to the dispute within 48 (forty eight) hours after a hearing of the dispute has been demanded in terms of this clause, such person shall be nominated by the president for the time being of ISASA or such entity or body as may replace it from time to time hereafter.
- 1.4. If agreement cannot be reached between the parties within 48 (forty eight) hours after arbitration has been demanded as to whether the question in issue falls under sub-clause 1.3.1 or sub-clause 1.3.2, then a practising advocate of not less than 10 years standing will determine the nature of such issue.
- 1.5. The arbitrator:
 - 1.5.1. Will have regard to the desire of the parties to dispose of such dispute expeditiously, economically and confidentially;
 - 1.5.2. Need not observe or take into account the strict rules of law in arriving at his/her decision, which will be made as an expert and not as an arbitrator;
 - 1.5.3. Will determine the party liable for his/her costs and the costs of any experts he consults and the costs of the parties, and such party will pay his/the said costs;
 - 1.5.4. Will be entitled to consult with attorneys, counsel and/or any other expert with regard to any matter or issue as he/she may deem fit.
- 1.6. The parties irrevocably agree that the decision in any proceedings hereunder:
 - 1.6.1. will be final and binding on all of them;
 - 1.6.2. will forthwith be carried into effect;
 - 1.6.3. may be made an order of any court of competent jurisdiction.
- 1.7. The provisions of this clause will continue to be binding on the parties notwithstanding any termination or cancellation of the agreement between the parties.



4. OFFENCES

- 4.1. The offences listed below serve as a guide only. The intention is not to prescribe absolutely rigid rules, but to create just, fair and - as far as possible - consistent disciplinary action. When implementing disciplinary action it is important to bear in mind that the relative maturity and home backgrounds of learners differ.
- 4.2. In deciding on the appropriate penalty, the following facts will be taken into account, namely: the seriousness of the offence and the circumstances under which the offence was committed; the penalties imposed for similar offences; previous warnings issued to the learner or to the learner body as a whole; the learner's age and any other relevant factors.
- 4.3. Offences in respect of which disciplinary action may be instituted:
 - 4.3.1. intentional absence from the School or from a required part of the School programme without leave or without a valid reason;
 - 4.3.2. committing any act associated with bullying, harassment or initiation;
 - 4.3.3. inciting, encouraging or procuring any person to commit violence against any person or property;
 - 4.3.4. assault, or attempted assault, with intent to do grievous bodily harm;
 - 4.3.5. serious insubordination or disrespect;
 - 4.3.6. fraud, theft, unauthorised possession of School property, misappropriation of money, goods or property, or pilfering or dishonesty;
 - 4.3.7. malicious damage to property;
 - 4.3.8. the possession and/or use of liquor, tobacco or any other prohibited intoxicating or habit-forming substance or drugs, on the premises of the School or while engaged in any activity of the School or whilst wearing a School uniform or when recognised as a learner of the School even whilst not wearing a uniform;
 - 4.3.9. indecent, improper or contemptuous conduct;
 - 4.3.10. discriminatory behaviour, conduct or language in relation to race, gender, religion or any arbitrary ground;
 - 4.3.11. engaging in any unlawful activity or offence while at the School, or on the premises of the School or representing the school;
 - 4.3.12. inciting, encouraging or persuading other learners to disobey lawful and reasonable instructions, to refuse to do work, or to commence or resume work, or to wilfully disobey safety rules and procedures or standing school procedures;
 - 4.3.13. conduct which has the effect of damaging the good name or reputation of the School or which undermines the standard of conduct expected of learners of the School.
 - 4.3.14. Misuse of school facilities, equipment or technology contrary to standing instructions.
 - 4.3.15. Unauthorised possession of a dangerous weapon at the School;