



Province of the
EASTERN CAPE
EDUCATION

SHARED LEGAL SERVICES

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MEMORANDUM

TO : CLUSTER CHIEF DIRECTORS
CHIEF DIRECTORS – IDS & G
DISTRICT DIRECTORS
EDUCATION DEVELOPMENT OFFICERS
CHIEF EDUCATION SPECIALIST
CHIEF EDUCATION SPECIALIST LABOUR /HRD
SCHOOL PRINCIPALS
SCHOOL GOVERNING BODIES

FROM : THE SUPERINTENDENT GENERAL

DATE : 20 AUGUST, 2013

SUBJECT : WARNING AGAINST EXPULSION OF LEARNERS

There is a disturbing trend that is developing in our Department wherein schools find it easy to deny learners their right to learn by expelling them sometimes for minor transgressions. This is a gross violation of learners' right to education set out in S.29 of the Constitution of the Republic of South Africa. As a Department we have a fiduciary duty towards our young citizens to safeguard their right to education. This right must be seen for what it really is, that it is an inalienable right which cannot be easily derogated from. As the custodians of education we will not countenance contravention of this right by anybody nor will we allow it to be undermined.

It should be clear to us all that education is a social justice issue and by implication, a human right issue. It requires that creative measures and remedies, short of expulsion, should be taken to deal with issues of ill discipline in schools. Our Constitution not only seeks to protect the right of learners to education but also imposes an obligation on the state and its organs to advance this right. Section 29 of the country's constitution put it thus:

(1) Everyone has the right-

(a) To education including, adult basic education; and

- (b) To further education, which the state, through reasonable measures, must make progressively available and accessible.

This assertion is buttressed by s28 of the constitution which stipulates that:

Every child has the right:

- (f) not to be required or permitted to perform work or provide services that-
 - (i) are inappropriate for a person of that child's age; or
 - (ii) place at risk the child's well being , education, physical or mental health or spiritual,, moral or social development;
- (2) A child's best interests are of paramount importance in every matter concerning a child.

The South African School's Act also, in line with the constitution of the RSA, stresses the importance of respecting the right of learners to education by rendering it extremely difficult to expel a learner from school. Section 9(2) puts it thus:

A learner at a public school may be expelled only-

- (a) by the Head of Department; and
- (b) if found guilty of serious misconduct after a disciplinary proceedings contemplated in s8 were conducted.

What this means is that the state and indeed all the role players operating on the terrain of schooling have a duty to ensure that all children of school going age are at school. This means therefore that our schools and all role players should endeavour by all means to ensure that all children of school going age remain within the fold of schooling, instead of systematically and deliberately engendering drop outs from the system through ill considered Disciplinary Codes and retributive disciplinary processes.

It is therefore the duty of schools to frame their code of conduct in a manner that recognises the primacy of the golden rule embodied in our Constitution as well as SASA- that the interests of the child must take precedence in dealing with any matter concerning the child. It will therefore be of no avail for any school to deal with disciplinary measures through a code of conduct that represents a gross violation of the precepts, the values and the purport of the Constitution of the RSA.

The essence of our Constitution is that education should be directed towards the development of the human personality and a sense of personal dignity. It must also be directed towards strengthening respect for human rights, fundamental freedoms and promoting understanding, tolerance and friendship among all South Africans. It is for this reason that we as the Department of education wish to urge the School Governing Bodies, the SMTs and other important role-players in education not to resort to expulsions as a quick fix remedy to the disciplinary challenges engendered by the socio economic conditions which most of our learners had the misfortune of coming from.

Schools are therefore urged to generate rehabilitative remedies in dealing with disciplinary issues in our schools and desist from retributive remedies that cannot be sourced from the



Ikamva eliqaqambileyo!

Constitution of RSA .We will not brook anyone or any school to resort to expulsion as a remedy to the issues of ill discipline. Expulsion is by nature retributive and not corrective and that is the antithesis of our new Constitutional order. We will be resolute in safeguarding the right of learners to education and as such we will not allow this fundamental right to be breached.


M.L. NGONZO
SUPERINTENDENT GENERAL

2013/08/23
DATE

