



NORTHERN CAPE PROVINCIAL ADMINISTRATION

TRANSVERAL FRAMEWORK POLICY ON PRECAUTIONARY SUSPENSIONS

ADOPTED BY THE HEADS OF DEPARTMENTS FORUM:

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1. PREAMBLE

- 1.1. The Northern Cape Provincial Administration is committed to ensuring fair labour relations management and practices are based on objectivity, fairness and transparency.
- 1.2. The Northern Cape Provincial Administration therefore recognises the need to develop a policy framework on issues relating to precautionary suspensions in endeavour to promote fair and consistent labour relations practices within the Provincial Administration.

2. POLICY STATEMENT

- 2.1. To provide all departments within the Northern Cape Provincial Administration with a uniform framework to assist with management of precautionary suspensions
- 2.2. To provide managers and employees with a precautionary suspension tool that will assist with fair employment relationship.
- 2.3. Promote a consistent approach by creating procedural certainty in the broader context as far as issues relating to precautionary suspensions are concerned.
- 2.4. Promote impartial and equitable precautionary suspension administration.

3. DEFINITIONS

- 3.1. **"Precautionary suspension"** is an interim measure imposed, not as a disciplinary sanction, but for reasons of orderly administration. Precautionary transfer is an alternative to precautionary suspension.
- 3.2. **"Disciplinary Code and Procedures for the Public Service"** means the Disciplinary Code and Procedures for the Public Service as contained in the Public Service Coordinating Bargaining Council Resolution 1 of 2003.
- 3.3. **"Suspension"** means precautionary suspension as contemplated in item 7.2 of the Disciplinary Code and Procedures or item 2.7(2) Chapter 7 of the SMS Handbook.
- 3.4. **"Transfer"** means precautionary transfer as contemplated in item 7.2 of the Disciplinary Code and Procedures for the Public Service.

- 3.5. **“Framework”** means the Disciplinary Code and Procedures for the Public service in conjunction with Chapter 7 of the SMS Handbook.
- 3.6. **“PSA”** means the Public Service Act, 1994
- 3.7. **“Employer”** refers to both national and provincial departments.
- 3.8. **“Employer”** means the Accounting Officer or any person delegated by him/her to perform any function in terms of the Public Service Disciplinary Code and Procedure for the Public Service.
- 3.9. **“PSCBC”** means the Public Service Coordinating Bargaining Council.
- 3.10. **“SMS”** Senior Management Service

4. SCOPE OF APPLICATION

- 4.1. The policy shall be applicable to all employees appointed in the Northern Cape Provincial Administration in terms of the Public Service Act, of 1994 and Employment Educators Act 76 of 1998, either on a full-term or on a fixed term contract, but excludes independent contractors

5. LEGAL AND REGULATORY FRAMEWORK

- 5.1. The Constitution of the Republic of South Africa, Act 108 of 1996.
- 5.2. Labour Relations Act 95 of 1995 as amended.
- 5.3. Public Service Act 103 of 1994 as amended.
- 5.4. Public Service Regulations as amended.
- 5.5. Employment of Educators Act 76 of 1998.
- 5.6. Regulation on Terms and Conditions of Employment Educators.
- 5.7. Promotion of Protected Disclosure Act, 26 of 2000.
- 5.8. PSCBC Resolution 1 of 2003
- 5.9. PSCBC Resolution 14 of 2002: Grievance Rules for the Public Service.

6. PROCEDURE OF THE POLICY

6.1. AUTHORITY TO SUSPEND

- 6.1.1. The power to suspend an employee shall rest with the Accounting Officer or his or her delegated authority.

7. MANAGEMENT OF PRECAUTIONARY SUSPENSIONS

- 7.1.1. All precautionary suspensions shall be managed by the Labour Relations Components/Human Resource Components in the respective departments.
- 7.1.2. In the event of serious misconduct that justifies precautionary suspension, as contained in the Disciplinary Code and Procedure for the Public Service, the immediate supervisor shall by way of submission request the Accounting Officer to authorise the immediate suspension of an employee through the Human Resource Manager/Labour Relations Manager.
- 7.1.3. The employee may be relieved of his/her duties at this stage. An example of a notice of intention to suspend is attached as per **(Annexure A)**
- 7.1.4. Written confirmation of the transfer/reassignment of duty/suspension of an employee shall be served on an employee and take effect from a current date. (Example of a notification to transfer or reassign duties is attached as per **(Annexure B and C)**)

8. GUIDING PRINCIPLES

- 8.1. Employer must have valid and fair reason for imposing a precautionary suspension against an employee, based on fair labour relations principles.
- 8.2. That the basis for the invoking the precautionary suspension is clear;
- 8.3. That the reasons for the invoking the precautionary suspension are well defined;
- 8.4. The employee is afforded the right to be heard before being placed on precautionary suspension;
- 8.5. The employee has the right to be assisted or represented by a trade union representative or fellow employee if the employee so wishes;

- 8.6. The employee has the right to be given reasons in writing for the decision to be placed on a precautionary suspension;
- 8.7. The employee has the opportunity to respond to the impending suspension;
- 8.8. The period of precautionary suspension must be reasonable and justifiable but should not exceed 60 calendar days;
- 8.9. Precautionary suspension must be reviewed on regular basis;
- 8.10. If it is decided that the transfer/suspension should be extended, the employee must be informed of the valid reasons for the further extension and given opportunity to make representations;
- 8.11. The chair of the hearing must decide on any further postponement;
- 8.12. There must be a clear balance between the interests of the employee in continuing his or her daily work and the disciplinary and operational requirements of the employer.
- 8.13. If suspended, the employee is entitled to a speedy and effective finalisation of the disciplinary process.
- 8.14. The employee must return to work should the hearing not be concluded within 60 calendar days; however this does not prohibit/preclude the employer from continuing with the disciplinary process nor does it render the employee immune from the allegations preferred against him/her.
- 8.15. Precautionary suspension in terms of this policy framework does not constitute a judgement, and must be on full pay.

9. GROUNDS FOR SUSPENSION

- 9.1. Precautionary suspensions can only be invoked if any of the following elements are present:
- 9.2. If the employee is alleged to have committed serious misconduct;
- 9.3. If presence of the employee at the workplace might jeopardize any investigation into the alleged misconduct;

- 9.4. If the presence of the employee might endanger the well-being or safety of any person or state; and
- 9.5. The employee is likely to repeat the same offence.
- 9.6. If the employee is placed on a precautionary suspension or transferred as a precautionary measure, the employer must hold and finalise the disciplinary hearing within 60 (sixty) days, depending on the complexity of the case.
- 9.7. The Chairperson of the hearing will decide on any further postponements of the case.
- 9.8. The employee who has been placed on a precautionary suspension may lodge a grievance and lodge a dispute if he or she has a reason to believe the suspension constitutes an unfair labour practice as defined in the Labour Relations Act 66 of 1995 as amended.

10. FORMS OF PRECAUTIONARY SUSPENSIONS

10.1 TRANSFER OR RE-ASSIGNMENT OF DUTIES (ALTERNATIVE TO SUSPENSION)

- 10.1 (a) An employee will be temporarily transferred to another work location or re-assigned other duties as a precautionary measure.
- 10.1(b) An employee may not be removed from his or her post on the fixed establishment as a result of a precautionary suspension.
- 10.1(c) The re-assignment of duties or transfer shall always be given priority over a precautionary suspension in order to curb expenditure whilst salaries are paid with no services rendered.

10.2 SUSPENSION WITH FULL EMOLUMENTS

- 10.2(a) An employee will not be allowed to take up his/her duties until the suspension is lifted, but must be available at a location acceptable and accessible to the employer for the purpose of completing the investigation. Any condition attached to a suspension shall be regarded as a lawful instruction. Breach of the instruction could result in further disciplinary action in appropriate circumstances.

- 10.2(b) A precautionary suspension shall not amount to a breach of contract by the employer because the employee remains on full pay although prevented by the employer from performing duties, which shall be within a month or 60 days, depending on the complexity of the matter and the length on the investigation.

11. PRECAUTIONARY SUSPENSIONS IN TERMS OF THE EMPLOYMENT EDUCATORS ACT, SECTION 20 (1)

- 11.1. Subject to the provision of section 20(1) of the Employment of Educators Act, the Labour Relations Act or any collective agreement concluded by the Education Labour Relations Council, the employer may at any time before or after charging an educator with misconduct suspend that educator from duty on such conditions as the employer may determine.
- 11.2. With regard to the Regulations on Terms and Conditions of Employment of Educators, the employer or his or her delegate may summarily suspend, in terms of section 14(2) of the Act, a person appointed in terms of regulation 92 from his or her duties without pay, in terms of Regulation 93, if:
- 11.2.1. Prima facie evidence exists that his or her appointment was based on false information; or
 - 11.2.2. In the opinion of the employer, reasonable evidence exists that the continued performance of duties by such a person may jeopardise the progress with and/or the integrity of the examination process.
 - 11.2.3. Upon completion of the said examination, a disciplinary investigation against the said person shall be conducted in terms of section 13 of the Act. If the employer decides not to charge the said person with misconduct or if the person is found not guilty of misconduct, the person will receive remuneration equivalent to what he or she would have been paid had he or she not been suspended.
 - 11.2.4. Before an employee is placed on a precautionary suspension it should be ensured that a hearing is conducted in compliance with the *audi alteram partem* rule, giving the employee an opportunity to present his reasons opposing the precautionary suspension.

12. RECORD KEEPING

- 12.1. The employer shall keep records of each transfer/suspended employee specifying the following:
- 12.1(a) The nature of the alleged transgression.
 - 12.1(b) The nature of the alleged transgression.
 - 12.1(c) The reasons for the transfer/suspension.
 - 12.1(d) The period of transfer/suspension.
 - 12.1(e) The financial implications of the transfer/suspension.
 - 12.1(f) The written notifications of the transfer/suspension.
 - 12.1(g) Responses from the employee in regard to the transfer/suspension.
 - 12.1(h) The reasons for the extension of a suspension.
 - 12.1(i) Date of termination of the transfer/suspension.

13. COMPLIANCE AND MONITORING

- 13.1 The effectiveness of this policy framework shall be monitored and evaluated by the by the Labour Relations Practitioners including the Labour Relations Forum.

14. POLICY IMPLEMENTATION AND REVIEW

- 14.1. This policy will be reviewed annually and as and when a need arises to reflect the current Human Resource trends and Labour Legislation.

POLICY ANNEXURES

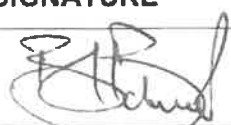
A. NOTICE OF INTENTION TO SUSPEND

B. NOTIFICATION OF RE-ASSIGNMENT OF DUTIES


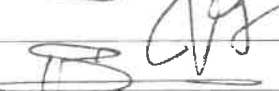



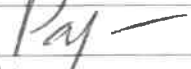
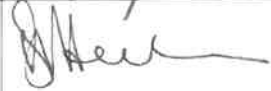
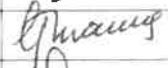




C. NOTIFICATION OF SUSPENSION

THIS DONE AND SIGNED AT KIMBERLEY OF THIS 7th DAY OF MARCH 2016

ON BEHALF OF THE NORTHERN CAPE PROVINCIAL ADMINISTRATION

	NAME	SIGNATURE
NORTHERN CAPE PROVINCIAL ADMINISTRATION	Justice Bekebeko	

ON BEHALF OF THE PROVINCIAL DEPARTMENTS IN THE NORTHERN CAPE

NAME OF DEPARTMENT	NAME	SIGNATURE
OFFICE OF THE PREMIER	Justice Baeboe	
PROVINCIAL TREASURY	Vuyisile Gumbo	
ROADS AND PUBLIC WORKS	K. Ndzinze	
TRANSPORT, SAFETY AND LIAISON	L. Wolfe	
ENVIRONMENT AND NATURE CONSERVATION	GLADYS BOTHA	
SPORT, ARTS AND CULTURE	Ruth Palmer	
COOPERATIVE GOVERNANCE, HUMAN SETTLEMENTS AND TRADITIONAL AFFAIRS	DENVER VAN HEERDEN	 20160329
HEALTH	Gugulethu MATLAOPANE	
ECONOMIC DEVELOPMENT AND TOURISM	Hedinn Samson	
EDUCATION	G.T. PHARISI	
SOCIAL DEVELOPMENT	ICHABED MANYANE	
AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT	WONDERS V.D. MOTHEBE	

Annexure A

TEL:

FAX:

REF:

Mr/Ms.....

Rank

Office

Dear Mr/Ms

POSSIBLE SUSPENSION FROM SERVICE

The Department intends suspending you from service, with full salary, in terms of clause 7.2 of the disciplinary Code and Procedures/2.7(2) of the SMS Handbook Chapter 7 Misconduct and Incapacity (the framework) in view of a possible charge of misconduct against you, in terms of the said framework, it is alleged that you-

In order, however, to apply the audi alteram partem rule, I shall be glad to receive your representations as well in this regard as well as any possible reasons why you should not be suspended.

Your reply must please be forwarded within five working days from the date of receipt of this letter, through Mr/ Ms..... (inset name and designation).....for transmission to.....
Mr/Ms.... (Insert name and designation)..... at ... (inset address).....

Yours faithfully

DIRECTOR-GENERAL

DATE:

Annexure B

TEL:

FAX:

REF:

Mr/Ms.....

Rank

Office

Dear Mr/Ms

NOTIFICATION OF RE-ASSIGNMENT OF DUTIES

With reference to the meeting held on *(date and time)* regarding the appropriateness to re-assign your duties please be advised as follows:

It has been decided to re-assign your duties in terms of clause 7.2 of the Disciplinary Code and Procedure for the Public Service. You are therefore directed to report for duty at *(place of work)* on *(date and time)* to *(supervisor)* where you shall be responsible for the following duties:

(Give a short description of duties)

The nature of the allegations of misconduct being brought against you are as follows:

(State the allegations)

Reasons for the re-assignment of duties are as follows:

(State reasons)

Yours faithfully

DIRECTOR-GENERAL

DATE:

Annexure C

TEL:

FAX:

REF:

Mr/Ms.....

Rank

Office

Dear Mr/Ms

SUSPENSION FROM SERVICE

My possible suspension letter dated/Your comments in the above regard dated refer.

Kindly take note that, after careful consideration of the facts to its disposal, the Department has decided to suspend you from service, with emoluments, in terms of clause 7.2 of the Disciplinary Code and Procedures/2.7(2) of the SMS Handbook Chapter 7 Misconduct and Incapacity, as from the date of this letter, in view of pending misconduct charges against you in terms of Annexure A of the said Policy.

You are therefore, directed not to enter the premises of the Department during your period of suspension.

Please note that, if this suspension is not withdrawn/lifted before the last day of the disciplinary hearing it shall automatically lapse on the last day of the 60 day suspension period as prescribed in the framework and you will be allowed to resume duty with immediate effect.

You are kindly requested to acknowledge receipt of this letter by signing the attached copy thereof and return it to Mr/Ms..... for transmission to Mr/Ms..... at.....

Yours faithfully

DIRECTOR-GENERAL

DATE