



MANAGEMENT OF EMPLOYEE MISCONDUCT



LEGISLATIVE FRAMEWORK

- Public Service Act, (Act no. 103 of 1994) as amended.
- PSCBC Resolution No. 2 of 1999.
- PSCBC Resolution No. 1 of 2003.
- Public Service Regulations.
- Employment of Educators Act (Act no. 76 of 1998), as amended.
- Schedule 2 of the Employment of Educators Act (Act no. 76 of 1998).
- Labour Relations Act (Act no. 66 of 1995) as amended.
- Schedule 8 of the Labour Relations Act (Act no. 66 of 1995).



LEGISLATIVE AUTHORITY - PRINCIPAL



Gauteng Department of Education employees:

- Assist the Head of Department in handling disciplinary matters - s.16A(2)(e) of South African Schools Act, 1996 (SASA).
- Professional management of a public school, under the authority of the Head of Department – s. 16(3) of SASA.

School Governing Body (SGB) employees:

- A delegated authority as member of the School Governing Body.
- The management of all educators and support staff - s. 16A(2)(a)(ii) of SASA.



LEGISLATIVE AUTHORITY - PRINCIPAL



School Governing Body employees:

- Labour Relations Act, 1995 (as amended)
- Schedule 8 of the Labour Relations Act, 1995 (as amended) - Code of Good Practice
- School Governing Body employees' contract of service.



DEFINITIONS

Disciplinary Action - Any corrective action, including dismissal, instituted against an employee in response to unacceptable employee behaviour or unsatisfactory work performance, other than incompetence or incapacity.

Representation - Employee representatives may include a fellow employee from the same school or office, a trade union representative or official of a **recognised trade union**, i.e. a union represented in the ELRC or PSCBC.

Manager - Refers to any person whose function and responsibility it is to monitor performance or discipline within a defined workplace, unit or section, i.e. Principals at schools and supervisors or Managers in offices.



DEFINING

Non-compliance with work rules, performance standards and standards of conduct would constitute misconduct.

The purpose of discipline is to maintain acceptable standards of behaviour and performance in a fair manner (Annexure A of PSCBC Resolution No. 1 of 2003 and sections 17 and 18, of the Employment of Educator's Act, 1998)





DISCIPLINARY CODE AND PROCEDURE FOR THE PUBLIC SERVICE

**PSCBC Resolution No. 1 of
2003**



PS –representation in hearings

Resolution 1 of 2003

No trade union which does not have organizational rights with the employer (the state) may represent an employee in a hearing or arbitration!

Which Trade unions are recognised by the employer?

SADTU

CTU-ATU

National Professional Teachers Organisation of South Africa (NAPTOSA)

Suid-Afrikaanse Onderwysersunie (SAOU)

National Teachers Union (NATU)

Professional Educators Union (PEU)

Public Servants Association (PSA)

Health and Other Service Personnel Trade Union of Southern Africa (HOSPERSA) -



PRINCIPLES - RESOLUTION 1 OF 2003 (PS)

2. *The following principles inform the Code and Procedure and must inform any decision to discipline an employee.*

2.1 *Discipline is a **corrective measure** and not a punitive one.*

2.2 *Discipline must be applied in a **prompt, fair, consistent and progressive manner**.*

2.3 Discipline is a management function.

2.4 *A disciplinary code is necessary for the efficient delivery of service and the fair treatment of public servants, and ensures that employees:*

- a. have a fair hearing in a formal or informal setting;*
- b. are timeously informed of allegations of misconduct made against them;*
- c. receive written reasons for a decision taken; and*
- d. have the right to appeal against any decision.*

PRINCIPLES - RESOLUTION 1 OF 2003 (PS)

- 2.5 *As far as possible, disciplinary procedures shall **take place in the place of work** and **be understandable** to all employees.*
- 2.6 *If an employee commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings.*
- 2.7 *Disciplinary proceedings do not replace or seek to imitate court proceedings.*
- 2.8 *The Disciplinary Code and Procedures constitutes a framework within which departmental policies may be developed to address appropriate circumstances, provided such policies do not deviate from the provisions of the framework.*



Who may represent PS?



- f. In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless –
 - (i) the employee is a legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct; or
 - (ii) the disciplinary hearing is conducted in terms of paragraph 7.3.c.

For the purposes of this agreement, a legal practitioner is defined as a person who is admitted to practice as an advocate or an attorney in South Africa.



What is defined as misconduct? (PS)

(NOTE – LIST IS NOT EXHAUSTIVE!!)



ANNEXURE A

ACTS OF MISCONDUCT

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

Fails to comply with, or contravenes an Act, regulation or legal obligation.

Wilfully or negligently mismanages the finances of the State.

Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.

Wilfully, intentionally or negligently damages and or causes loss of state property.

Endangers the lives of self or others by disregarding safety rules or regulations.

Prejudices the administration, discipline or efficiency of a department, office or institution of the State.

Misuses his or her position in the public service to promote or to prejudice the interest of any political party.

Steals, bribes or commits fraud.



What is defined as misconduct? (PS)



Accepts any compensation in cash or otherwise from a member of the public or another employee for performing her or his duties without written approval from the department.

Fails to carry out a lawful order or routine instruction without just or reasonable cause.

Absents or repeatedly absents him/herself from work without reason or permission.

Commits an act of sexual harassment.

Discriminates against others on the basis of race, gender, disability, sexuality or other grounds outlawed by the Constitution.

Performs poorly or inadequately for reasons other than incapacity.

Without written approval from her or his department, performs work for compensation in a private capacity for another person or organisation either during or outside working hours.

Without authorisation, sleeps on duty.

While on duty, is under the influence of an intoxicating, illegal, unauthorised, habit-forming and/or stupefying drug, including alcohol.

While on duty, conducts herself or himself in an improper, disgraceful and unacceptable manner.

Contravenes any prescribed Code of Conduct for the public service.



What is defined as misconduct? (PS)



Assaults, or attempts or threatens to assault, another employee or person while on duty.

Incites other personnel to unprocedural and unlawful conduct.

Displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour.

Intimidates or victimises fellow employees.

Prevents other employees from belonging to any trade union or body.

Operates any money lending scheme for employees for own benefit during working hours or from the premises of the public service.

Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.

Refuses to obey security regulations.

Gives false statements or evidence in the execution of his or her duties.

Falsifies records or any other documentation.

Participates in unprocedural, unprotected and/or unlawful industrial action.

Commits a common law or statutory offence while on state premises.





DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

**Schedule 2 of the
Employment of Educators
Act (Act no. 76 of 1998)**



What is defined as misconduct? (CS)

17. Serious misconduct which carry mandatory dismissal.

- (1) An educator must be dismissed if he or she is found guilty of—
- (a) **theft, bribery, fraud or an act of corruption** in regard to **examinations or promotional reports**;
 - (b) committing an act of **sexual assault** on a learner, student or other employee;
 - (c) having a **sexual relationship** with a learner of the school where he or she is employed;
 - (d) **seriously assaulting**, with the intention to cause grievous bodily harm to, a learner, student or other employee;
 - (e) illegal possession of an **intoxicating, illegal or stupefying substance**; or
 - (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).



Yes i do go to anger management classes

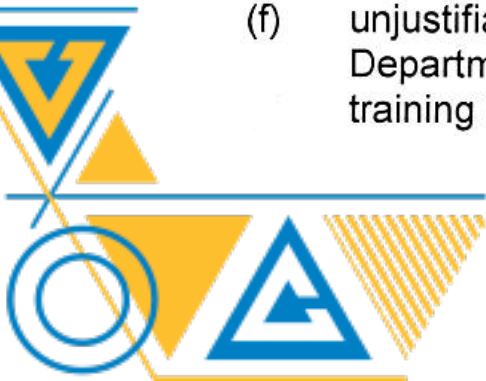
No i didn't pass !

What is defined as misconduct? (CS)



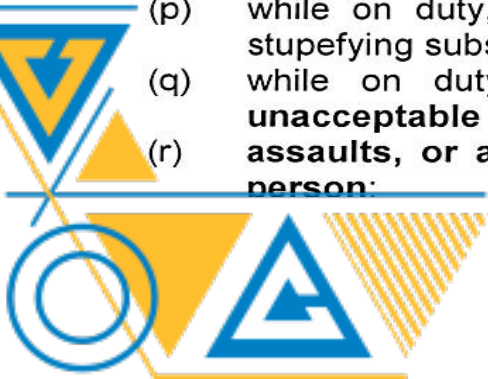
18. Misconduct.—

- (1) Misconduct refers to a breakdown in the employment relationship and an educator commits misconduct if s/he -
 - (a) fails to comply with or **contravenes this Act or any other statute**, regulation or legal obligation relating to education and the employment relationship;
 - (b) willfully or negligently **mismanages the finances** of the State, a school, a further education and training institution or an adult learning centre;
 - (c) without permission **possesses or wrongfully uses the property of the State**, a school, a further education and training institution, an adult learning centre, another employee or a visitor;
 - (d) willfully, intentionally or **negligently damages or causes loss to the property of the State**, a school, a further education and training institution or an adult learning centre;
 - (e) in the course of duty **endangers the lives of himself or herself or others** by disregarding set safety rules or regulations;
 - (f) unjustifiably **prejudices the administration, discipline or efficiency** of the Department of Education, an office of the State or a school, further education and training institution or adult learning centre;



What is defined as misconduct? (CS)

- (g) **misuses his or her position** in the Department of Education or a school, further education and training institution or adult learning centre **to promote or to prejudice the interests of any person;**
- (h) **accepts any compensation in cash or otherwise** from a member of the public or another employee for performing his or her duties without written approval from the employer;
- (i) **fails to carry out a lawful order** or routine instruction without just or reasonable cause;
- (j) **absents** himself or herself from work without a valid reason or permission;
- (k) **unfairly discriminates against other persons on the basis of race, gender, disability, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;**
- (l) **performs poorly or inadequately** for reasons other than incapacity;
- (m) without the written approval of the employer, **performs work** for compensation for another person or organisation either during or outside working hours;
- (n) without prior **permission of the employer accepts or demands** in respect of the carrying out of or the failure to carry out the educator's duties, **any commission, fee, pecuniary** or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;
- (o) without authorisation, **sleeps on duty;**
- (p) while on duty, is **under the influence** of an intoxicating, illegal, unauthorised or stupefying substance, including alcohol;
- (q) while on duty, conducts himself or herself in an **improper, disgraceful or unacceptable** manner;
- (r) **assaults, or attempts to or threatens to assault, another employee or another person;**



What is defined as misconduct? (CS)

- (s) **incites** other personnel to unprocedural and unlawful conduct;
- (t) displays **disrespect** towards others in the work-place or demonstrates abusive or insolent behaviour;
- (u) **intimidates** or victimises fellow employees, learners or students;
- (v) **prevents other employees from exercising their rights** to freely associate with trade unions in terms of any labour legislation;
- (w) operates any **money-lending scheme** for employees for his or her own benefit during working hours or from the premises of the educational institution or office where he or she is employed;
- (x) carries **or keeps firearms** or other dangerous weapons on State premises, without the written authorisation of the employer;
- (y) **refuses to obey security regulations**;
- (z) gives **false statements or evidence** in the execution of his or her duties;
- (aa) **falsifies records or any other documentation**;
- (bb) participates in unprocedural, **unprotected or unlawful industrial action**;
- (cc) fails or refuses to—
 - (i) follow a formal programme of counselling as contemplated in item 2 (4) of Schedule 1;
 - (ii) subject himself or herself to a medical examination as contemplated in item 3 (3) of Schedule 1 and in accordance with section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998); or
 - (iii) attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3 (8) of Schedule 1;
- (dd) commits a **common law or statutory offence**;
- (ee) commits an **act of dishonesty**; or
- (ff) **victimises** an employee for, amongst others, his or her association with a trade union.



REPRESENTATION - EDUCATORS



No trade union which does not have organizational rights with the employer (the state) may represent an employee in a hearing or arbitration!

The Personnel Administration measures in Chapter G refers to "recognised trade union" which means all the trade unions admitted to the ELRC as well as any other trade union that enjoys the relevant organisational rights.

"representative" means a fellow educator, a representative or official of a recognised trade union.



MISCONDUCT – TWO LEVELS

LOWER LEVEL – DISCIPLINARY MEETINGS

Nothing serious – day
to day oversteps of
slight nature
investigated and dealt
with by principal

Except anything with
sexual undertone and
corporal punishment
(4 of 2014)

HIGHER – DISCIPLINARY HEARINGS *

Principal does basic
investigation then
refers to district

MANAGERS
FACILITATES AND
ASSISTS DISTRICT

* Refer to District Office to the Directorate: Dispute
Management



MISCONDUCT – TWO LEVELS



HOW DO I INVESTIGATE?

MAIN STATEMENTS

- From affected party
- Written from employee if lower level type
- verbal from employee if higher level type

SUPPORTING STATEMENTS

- From other witnesses
- If young - audio with witness

OTHER PROOF

- Pictures/Audio/video/CCTV/documents



Statements

- Do not let people who are writing statements sit together, talk together or write statements together unsupervised. This is essential with children especially!! Children contaminate each other's statements – especially younger children where they accept another child's story as their own.
- **Do not ever allow parties outside of the school/ district officials to sit with learners alone. (In loco parentis)**
- Let the child sit with the first disclosure or an educator of the same sex when talking about/ writing a statement.
- Do not give child statements or information to other educators, SGB or parents. You indicate only that disciplinary incident is being investigated (and has been reported to District).
- **SGB only involved with serious discipline of SGB employee.**
- Educator being disciplined has the right to privacy into details of their process

HOW DO I INVESTIGATE?

Main statements - children

- No statement from a child affected by a sexual – written by child. Sit with such a witness and write what the witness says. This must be reported to police and to District. Not discussed at all.
- Any children who are grade 3 and older – let them write ito open ended question: Do you remember what happened with Simon and Ms Peach, please tell me?
 - ❖ What happened
 - ❖ When
 - ❖ Where
 - ❖ How
 - ❖ Who saw/heard it
 - ❖ What do you think feel about what happened?

HOW DO I INVESTIGATE?

Main statements - other



- Comprehensive statement with as many details as possible. Ensure that it includes signature. Your employees - instruction
- The truth versus the lie – analyse what you see.
 - ❖ Get supporting evidence where you need it.
- Once you have the full picture – lower level discipline, go ahead
- **District Discipline**: Keeping in mind that as a manager to your employee you know your employee, keeping in mind that discipline is corrective – what is your feeling? **DISCRETION \ EQ**
- The tone (chubby/fat/obese) of your report is important. Remember that you will need to testify based on this report when the case sits.
- Short factual report to District.
- The purpose of charging is usually with dismissal in mind!!

HOW DO I INVESTIGATE?

Supporting statements

- May not always be about actual misconduct event – may support an angle of the case which is like building a puzzle. (intercom calling example)
- Shows how different aspects of witness information links together



HOW DO I INVESTIGATE?

Audio/Video/CCTV/ Picture

- Must be supported by the “author” testifying or writing a statement that they created this.
- In case of CCTV security company must write statement attesting to fact that they downloaded.



REQUIREMENTS - DISCIPLINARY MEETING

☐ **Substantive fairness** – This is the allegation and how it is proven

☐ **Procedural fairness:**

1. Was there an investigation?
2. Was the employee notified of the allegations against him/ her in a language in a form that he clearly understands?
3. Was he/she given a charge sheet?
4. Was he/she given enough time to prepare for the disciplinary meeting?
5. Was he/ she apprised of his/ her rights?
6. Was he/ she allowed representation of a colleague or union representative?
7. Was he/she allowed to call and question all witnesses?

(Lower Level – Children, statements)

☐ *Avril Elizabeth Home for the Mentally Handicapped v CCMA & Others:*

- ☐ need not be a formal inquiry
- ☐ not a criminal justice model

REQUIREMENTS - DISCIPLINARY MEETING



Mrs
Primary School

PERSAL:
Identity number:



Dear Madam

NOTICE OF DISCIPLINARY MEETING

Please be informed that your disciplinary meeting will take place as follows:

VENUE: School Library
DATE: February 2019
TIME: 09H00

Please note that should you fail to attend without a valid reason, the hearing will be held in your absence.

Your co-operation is appreciated.
Thank you

Mr S. D. Nogbeni
CHAIRPERSON OF SGB

DATE: _____

(Higher level SGB employee)

REQUIREMENTS - DISCIPLINARY MEETING



☐ NOTICE OF DISCIPLINARY MEETING

You are hereby given notice to attend a disciplinary meeting **in terms of** the Employment of Educators Act, - item 5 of the Disciplinary Code and Procedure for Educators.

Allegation 1

It is alleged that on--- February **2018** you displayed disrespect towards others in the work-place or demonstrated abusive or insolent behavior in that you shouted at ----- in front of the senior school management.

You shouted the following:

a)

In view of the above, you are thus charged with misconduct in terms of Section 18(1)(t) of the Employment of Educators Act, 76 of 1998, as amended.

Please note that should you fail to attend without a valid reason, the meeting will be held in your absence.

REQUIREMENTS - DISCIPLINARY MEETING



A fellow employee or a representative of a recognised union (site) may represent you at the meeting.

You may give evidence at the meeting and adduce evidence in the form of documents or through witnesses.

If you are not happy with the finding of the disciplinary meeting you may write an objection in terms of the Grievance procedure and this will be placed together with the sanction in your file for a period of 6 months after which it will be destroyed.

Yours faithfully

Mr.... - Principal of

Date: _____

(Name and signature of witness to serving)

(Acknowledgement of receipt by the employee)

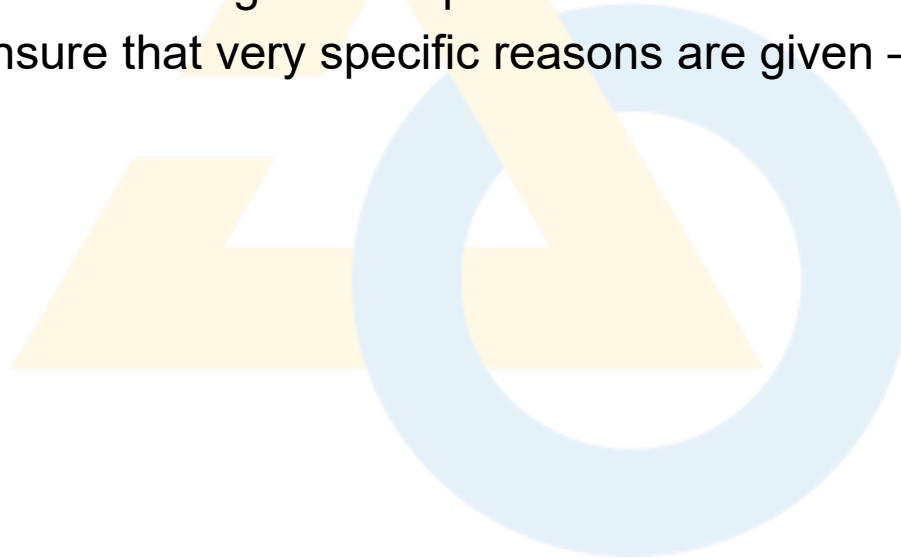
Date: _____



REQUIREMENTS - DISCIPLINARY MEETING



- Try not to postpone a disciplinary meeting.
- You need to be a firm chairperson!!
- Remember that a disciplinary meeting or even a hearing is not a court case.
- Do not let the union \ **lawyer** derail you.
- Remember that he who alleges must prove!
- In your finding ensure that very specific reasons are given – apply your mind.



Head Office in your school

- Ensure that logbook is filled in.
- Get specific name, surnames and units or directorates.
- Enquire who at Head office you can phone to check.
- Inform your Cluster Leader or Circuit immediately and ask them to come to your school.
- Ask these individuals who at District they have liaised with.
- If anything is required from you and your staff – you should have been given notice.
- Do not expose your learners/ staff to anyone alone.
- If not units at District, permission is needed - learners.
- Do not share private/confidential information.
- Do not hand over original documents or reports.
- Check jurisdiction.
- Do not speak to the press.
- Access measures and the police
- Be friendly but firm.
- Any instruction in writing – must be legal AND reasonable!!



Outsiders in your school



- Ensure that logbook is filled in.
- Get specific name, surnames and WHERE THIS INDIVIDUAL IS FROM.
- Inform your Cluster Leader or Circuit immediately and ask them to come to your school.
- Ensure access control
- Do not expose your learners.
- Do not give any statements or documents

ALWAYS REMEMBER WHAT YOUR REPORTING LINE IS!

CONCLUSION

The use of the guidelines serves to

- promote a common understanding of misconduct and discipline,
- encourage the practice of progressive discipline,
- prevent arbitrary or discriminatory actions of Principals and/or Managers toward employees.





THANK YOU

