



Internal disciplining of staff by principals and managers



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THE CHANGE IN EDUCATION

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 STAFF – representation in DISCIPLINARY MEETINGS Resolution 1 of 2003



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

“7. DISCIPLINARY ENQUIRY

7.1 Notice of enquiry

- c. The written notice of the disciplinary meeting must use the form of Annexure D, and provide:
 - i. a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - ii. details of the time, place and venue of the hearing; and
 - iii. information on the rights of the employee to representation by a fellow employee or a representative or official of a **RECOGNISED TRADE UNION**, and to bring witnesses to the hearing.”

PS STAFF – representation in DISCIPLINARY MEETINGS Resolution 1 of 2003



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.*

MISCONDUCT PROCEDURE - PUBLIC SERVICE ACT



- Informal Disciplinary Procedure - less serious forms of misconduct, no formal inquiry shall be held.
- Corrective Counselling – Principal or Manager must follow par. 5.1 Verbal Warnings – record it in writing and must be signed by both parties for record purposes - par. 5.2
- Written Warning – par. 5.3 and Annexure B1. If employees refuse to sign, hand it in the presence of witness and both sign in confirmation that the content of the written warning was conveyed to the employee.



MISCONDUCT PROCEDURE - PUBLIC SERVICE ACT

- Final Written Warning - par. 5.4 and Annexure C1. File in the personal file and it will remain valid for six months. Inform the employee that further misconduct may result in more serious, formal disciplinary action.
- **Note that the employee may appeal against informal disciplinary actions terms of item 2.4(d).**

MISCONDUCT PROCEDURE - PUBLIC SERVICE ACT



Serious Misconduct

If the alleged misconduct justifies a more serious form of disciplinary action, the matter must be referred to the District Office or the Directorate: Dispute Management for the employer to appoint an employer representative to initiate a formal disciplinary inquiry.



CORRECTIVE COUNSELLING - PUBLIC SERVICE ACT

5.1 Corrective counselling. In cases where the seriousness of the misconduct warrants counselling, the manager of the employee must:

- a. bring the misconduct to the employee's attention;*
- b. determine the reasons for the misconduct and give the employee an opportunity to respond to the allegations;*
- c. seek to get agreement on how to remedy the conduct; and*
- d. take steps to implement the agreed course of action.*

COUNSELLING - GUIDELINES

- To take place in a semi-formal venue such as the Principal's or Manager's office
- Written notification should set out the perceived area of misconduct.
- More than one person may be there on behalf of the employer, e.g. Principal and the Deputy Principal.
- The employee should be told which standard he/she is not attaining and/or which work rule he/she is breaching.
- The employee should be asked to identify obstacles as to why he/she cannot attain the standard.
- An employee should be warned that if there is no improvement in performance it could lead to further steps.
- A record should be made and kept of the counselling session and be co-signed.
- The employee should be encouraged and motivated to attain the standard.



PREPARATION – THE DISCIPLINARY MEETING



Preparing the way so that no matter what the case has a high possibility of success:

- **The interview/investigation phase:**
 - All possible witnesses must be asked to write a statement.
 - Let the witness tell you his/her story – small things make big differences!
 - Make notes additional to Statement
 - (Investigate wider than what you require. (More witnesses))
- (LTSM Coordinator example)



PREPARATION – THE DISCIPLINARY MEETING



- **The interview/investigation phase:**
 - Build a relationship with your witness.
 - Build the puzzle of fact & credibility – Psychology of logic.
- **Preparation before the meeting/hearing:**
 - Create a logical & comprehensive Bundle (Neat/numbered)
 - Decide how to tell the story (Order of witnesses)
 - ✓ Work logically through your bundle
 - ✓ Cover all the elements of the charge
 - ✓ Back up each issue with at least 1 witness
 - ✓ (Lead at least one witness on procedure and policy)



PREPARATION – THE DISCIPLINARY MEETING



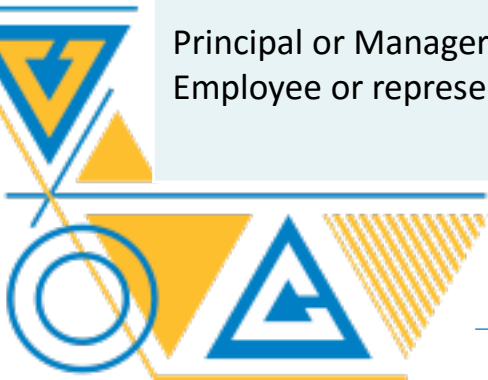
- **Preparation before the MEETING:**
 - Preparation is essential – know the background/witness and story. Never ask a question if you don't know the answer.
 - Preparation **IS NOT** coaching. You structure the information you have been given and ask witnesses to expand but you do not lie and you do not create!
 - Explain the process to the parties – what will happen.
 - If what witnesses say seems to contradict – speak to each witness to understand their language and thinking. Clear it up with each one!
 - Remember to explain to witnesses beforehand that they need to speak clearly and loud.



SUGGESTED PROCEDURE – INFORMAL DISCIPLINE



Stage & Responsible person	Content
Stage 1 – Opening the meeting Principal or Manager	Welcome attendees and introduced all to the meeting. State purpose of the meeting, i.e. to deal with alleged misconduct in terms of relevant legal provision. Set out the procedure to be followed to create common perceptions around the procedure that will be used.
Stage 2 - Outlining alleged misconduct Principal or Manager	Briefly describe the alleged misconduct.
Stage 3 – Employee's response Principal or Manager Employee or representative	Principal or Manager should ask the employee whether he/she acknowledges or denies the misconduct. Employee or representative responds.



SUGGESTED PROCEDURE – INFORMAL DISCIPLINE



Stage & Responsible person	Content
Stage 4 - Deal with disputes of fact. Performed by all but controlled by Principal or Manager	Principal or Manager to check who could assist in determining what happened. These people should be called one by one to ask them to tell the meeting what happened. When they finish the Principal or Manager may ask questions of clarity and thereafter the Employee/Representative may ask questions. The person should then be excused. If the Principal or Manager is involved then he/she should state what happened.
Stage 5 - Employee states case Employee/Rep	Employee should be asked to give his/her version. The purpose is to give the employee an opportunity to deal with the allegations of misconduct which occurred or to argue that it did not occur.



SUGGESTED PROCEDURE – INFORMAL DISCIPLINE

Stage & Responsible person	Content
Stage 6 - Closing the initial phase Principal or Manager	Summarize the proceedings. Preferable to adjourn the meeting to later, fixed time. Gives the matter consideration before coming to a decision. Note - It is not unprocedural to make a decision and give an outcome there and then, i.e. at the same time. This will be particularly appropriate where the employee does not contest the misconduct at all.
Stage 7 – Making a decision and announce an outcome Principal or Manager	After consideration, indicate whether or not it was found that misconduct has been committed. Give brief reasons for the decision then go on to give an outcome.

SUGGESTED PROCEDURE – INFORMAL DISCIPLINE

Stage & Responsible person	Content
Stage 8 - Recording the outcome Principal or Manager	If there was counseling or a verbal warning a record should be kept of this. If a warning or final written warning is issued the appropriate form should be completed and handed to the employee. A copy should be kept in the employee's personal file.
Stage 9 - Notify employee of rights to appeal (object for educators) Principal or Manager	The employee should be advised of his/her right to appeal or object as the case may be.



DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

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



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.



REPRESENTATION - EDUCATORS

PAM CHAPTER G



G.4.4 A trade union registered with the ELRC may register a grievance with the head or supervisor or the head of a relevant department of education, as the case may be, on behalf of its members individually or collectively and represent such member or members during any stage of this grievance procedure. A non-member(s) may be represented by another employee.

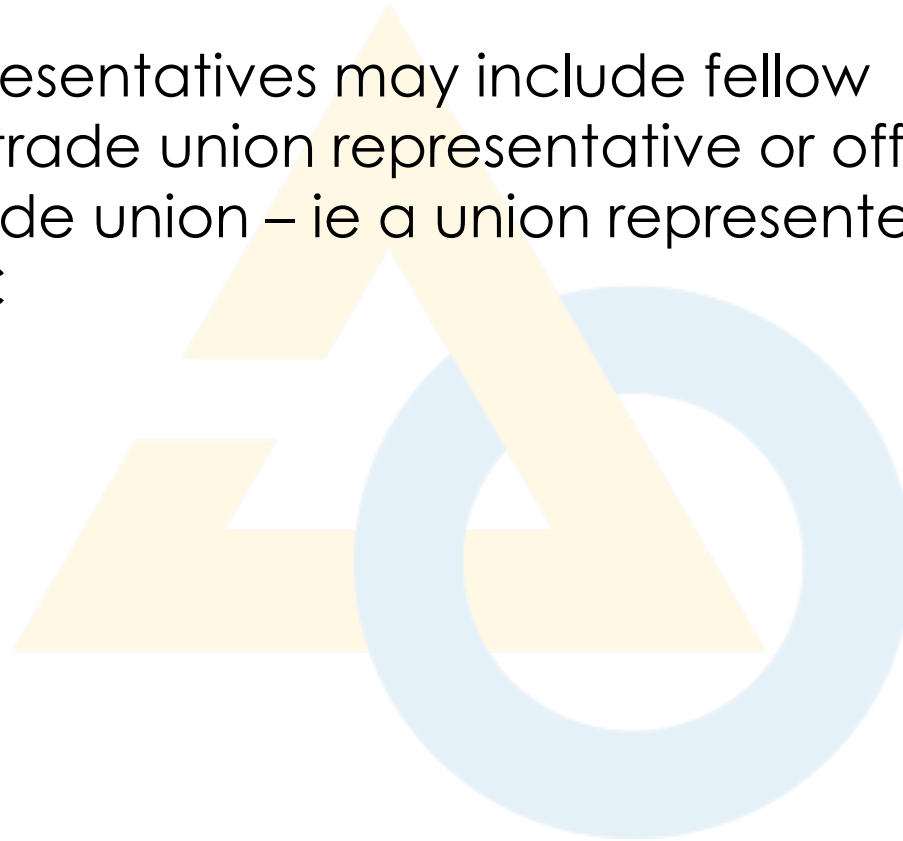


REPRESENTATION - EDUCATORS

CIRCULAR 1 OF 2016



Employee representatives may include fellow employees, a trade union representative or official of a recognised trade union – ie a union represented in the ELRC or PSCBC



MISCONDUCT PROCEDURE - EDUCATORS



- Informal Disciplinary Procedure - less serious forms of misconduct, no formal inquiry - par 4 of Schedule 2 of the Act.
- Delegated to the head of the institution (Principal) or office or the immediate superior if offender is the head of the institution (e.g. Cluster Leader for Principal).
- Specific acts of misconduct listed in Annexure D Circular 1 of 2016 (PS & CS) as less serious acts of misconduct.



MISCONDUCT PROCEDURE - EDUCATORS

Corrective Counselling – steps in item 4(2) of Schedule 2.

4(2) In cases where the seriousness of the misconduct warrants counselling, the employer of the educator must –

- (a) bring the misconduct to the educator's attention;*
- (b) determine the nature of the misconduct and give the educator an opportunity to respond to the allegations;*
- (c) after consultation with the educator decide on a method to remedy the conduct; and*
- (d) take steps to implement the decision as contemplated in sub items (3), (4) or (5).*

MISCONDUCT PROCEDURE - EDUCATORS



Verbal Warnings - item 4(3), reduce it in writing and to be signed by both parties for record purposes.

- (3) *(a) In cases where the seriousness of the misconduct warrants it, the employer of the educator may give the educator a verbal warning.*
(b) The employer must inform the educator that further misconduct may result in more serious disciplinary action.
(c) The employer must record the warning contemplated in paragraph (b).



MISCONDUCT PROCEDURE - EDUCATORS

- Written Warning - Form A (CS), employee must acknowledge receipt. If the employee refuses to sign, hand it over in the presence of another employee, both supervisor and witness must sign in confirmation that the written warning and the contents thereof were conveyed to the employee.
- Final Written Warning - Form B (CS) – Annexure C2. Procedure in item 4(5) of the Employment of Educators Act, 1998.
- Filed in the educator's personal file. It remains valid for six (6) months – item 4(4)

OBJECTIONS - EDUCATORS



4(4)(g)

- (i) If the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction.*
- (ii) The additional information and the objection referred to in paragraph (i) must be filed with the written warning.*

4(4)(f)

If during the six-month period the educator is subject to disciplinary action, the written warning and the written objection or additional information contemplated in paragraph (g), may be taken into account in deciding on an appropriate sanction.



MISCONDUCT PROCEDURE - EDUCATORS



Serious misconduct – Educators

More serious matters must be dealt with in terms of item 4(6) of Schedule 2 of the Employment of Educators Act, 1998 in an formal disciplinary hearing by the Directorate: Dispute Management.



PROCEDURE - INFORMAL DISCIPLINARY MEETING

- Employer (Principal or Manager) must convene a meeting where:
 - the educator and his/her trade union representative or fellow employee who is based at the institution, are present;
 - reasons are given to the educator as to why it is necessary to initiate this procedure; and
 - the educator or his/her representative is heard on the misconduct and reasons for misconduct.
- **After hearing, the Principal or Manager must counsel the educator; issue a verbal, written or final written warning; impose a combination of any of the above; or take no further action.**

INFORMAL DISCIPLINARY MEETING



- Note - Educators may not appeal against any of the above sanctions, but may lodge an objection in writing or provide additional written information which must be filed together with a record of the sanction in the educator's personal file.
- Valid warnings for similar offences by the educator may be taken into account to decide appropriate disciplinary actions.



DECIDING ON A SANCTION



- Informal disciplinary sanction must be appropriate.
- Annexure E (PS & CS) serves as guide in determining sanctions at informal disciplinary meetings.
- Each case must be considered on its own merits.
- Act consistently and follow a fair procedure otherwise it may be an unfair labour practice.
- Take the circumstances in which an offence occurs into account.
- Focus on the substance rather than the form of the offence is important.



SANCTION – TO CONSIDER



Factors to consider when deciding on the sanction may include:

- the time frame over which the offence occurred;
- whether the offence is a single action or series of acts;
- the potential for repetition of the offence;
- the intention of the employee, e.g. premeditation makes the offence more serious;
- provocation may only result in more lenient sanction, not acquittal;
- the initial response of the employee;
- the scale of the offence; and
- the impact of the offence on the employment relationship



SANCTION – MITIGATING AND AGGRAVATING

- **Aggravating factors:** wilfulness; lack of remorse; previous valid warnings and if the employer previously brought the seriousness of the relevant infringement to the attention of the employee.
- **Mitigating factors:** long service; previous exemplary service; an unblemished disciplinary record; remorse; coercion; acting out of fear for his or her own safety and the employee's personal circumstances.
- The nature of the job and the circumstances of the infringement are more significant than the employee's personal circumstances.



VICTORY



THANK YOU
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