

IMPLEMENTATION OF CIRCULAR 1 OF 2016

**SAOU (GAUTENG) EMPOWERMENT:
NEWLY APPOINTED PRINCIPALS**

25 FEBRUARY 2020



GAUTENG
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

Kuyasheshwa - "Gauteng working better"

INTRODUCTION

- Maintaining and exercising discipline is the one the key responsibilities of Principals.
- Principals must deal with the progressive discipline of employees within their authority.
- Dispute Management at Districts and Head Office should render only a support service in respect of progressive discipline.
- Serious acts of misconduct and cases of corporal punishment (assault) must be referred to the District Office's Dispute Management unit for a formal disciplinary inquiry.

PURPOSE OF CIRCULAR

- To indicate the specific responsibilities and authority of Principals.
- To clarify the procedures to be followed.
- To provide practical guidelines on administering the relevant disciplinary processes.
- To provide standardised formats of forms and letters to be used.

LEGAL FRAMEWORK AND AUTHORITY

- Educators:
 - Employment of Educators Act, 1998.
 - Schedule 2 of the Employment of Educators Act, 1998.
 - South African Schools Act, 1996 (s. 16(3), s. 16A(2)(e)).
- Public Servants:
 - Public Service Act, (Act No. 103 of 1994) as amended.
 - PSCBC Resolution No.1 of 2003.
 - South African Schools Act, 1996 (16A(2)(e)).
- Other provisions:
 - South African Schools Act, 1996 (s. 16A(3)).
 - Labour Relations Act (Act No. 66 of 1995) as amended.
 - Schedule 8 of the Labour Relations Act (Act No. 66 of 1995).
 - Employment contract of SGB employees.

DEFINITIONS

Misconduct -

- Sections 17 and 18, as well as Schedule 2 of the Employment of Educators Act, 1998.
- Other legislation - Section 18(1)(a) - failure to comply with or contravening any other statute, regulation or legal obligation relating to education and the employment relationship, e.g. PFMA, SASA, Child Care Act, Sexual Offences Act, etc.
- Annexure A of PSCBC Resolution No. 1 of 2003 - Public Service Code of Conduct.
- LRA's Schedule 8 - Code of Good Practice: Dismissals – not necessary to communicate well established rules.

WHAT IS DISCIPLINARY ACTION?

Disciplinary action –

- any corrective action
- instituted against an employee
- in response to unacceptable behaviour, or
- unsatisfactory work performance,
- other than incompetence or incapacity.

WHERE TO START?

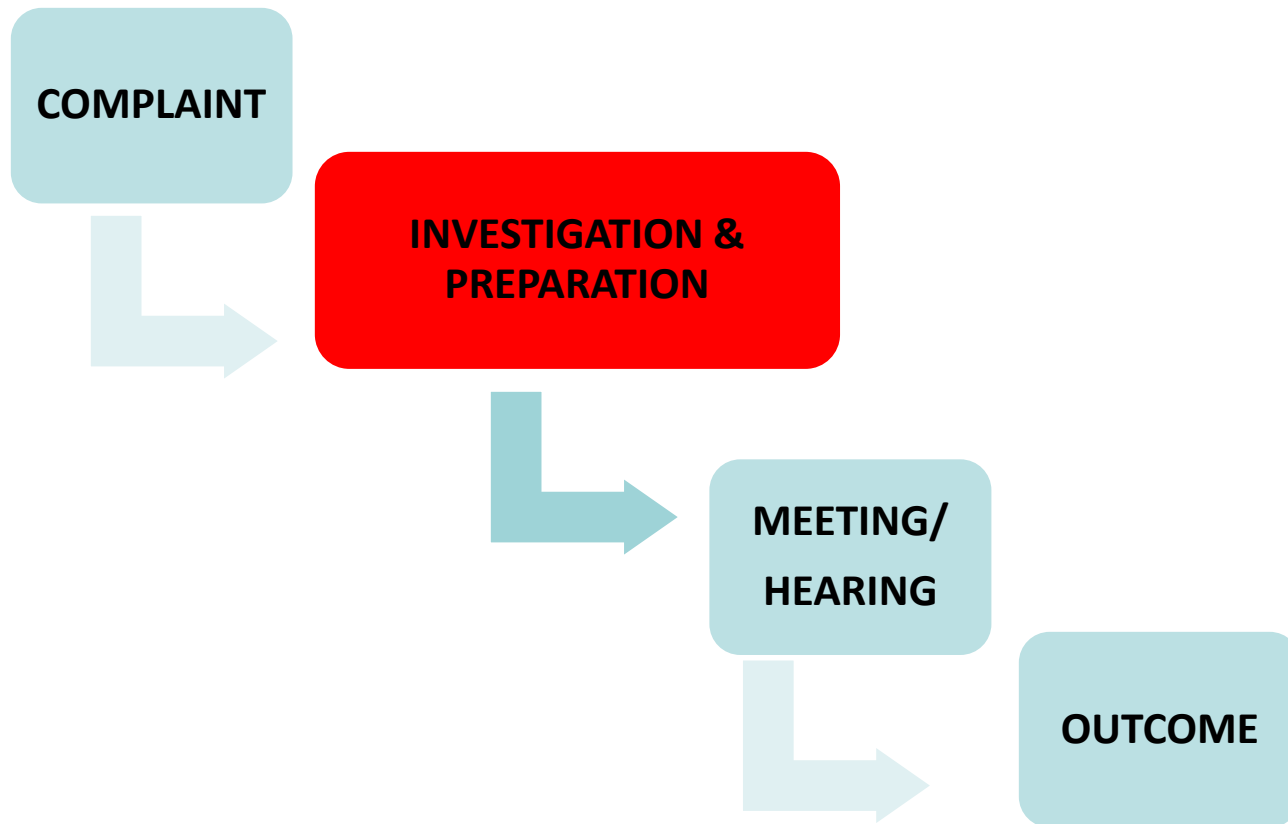
PRINCIPAL



EMPLOYER

**EMPLOYEE &
REPRESENTATIVE**

PROCESS



WHAT IS FAIR DISCIPLINE?

"HOW"
Fair procedure

"WHY"
Fair reason

Employment of Educators Act & Schedule 2
PSCBC Resolution No. 1 of 2003
Code of Good Practice (LRA)
SGB's Employment Contract

FAIR DISCIPLINE

WHAT GUIDES A FAIR PROCEDURE?

- **Section 23 of Bill of Rights** - right to fair labour practices.
- **Labour Relations Act (Schedule 8)** - a dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure.
- **Schedule 2 (Disciplinary Code and Procedures for Educators)** - discipline must be applied in a prompt fair, consistent and just manner.
- Procedural steps to be taken before an employee can be charged and found guilty of misconduct.
- Must follow the steps stipulated in the prescribed disciplinary code and procedures, legislation, etc.
- Failure to follow procedural requirements can result in negative outcomes – procedural unfairness.

ELEMENTS OF A FAIR PROCEDURE

- **Offence** - inform employee of nature of offence/details of complaint.
- **Timely** - within a reasonable period, avoid perception that offence was condoned.
- **Notice of meeting** - give sufficient notice of the date to allow employees to prepare their defence. Prepare witnesses, etc.
- **Representation** - employees may be represented by trade union representative or another employee based at the school.
- **Defence** - employees have a right to state their case or defend themselves on their own or via a representative.
- **Right to call a witness** - employees may call any witness.
- **Right to the finding** - an employee must be informed whether guilty or not. If guilty, he/she has the right to be fully informed of the facts and reasons for the guilty finding.
- **Appeal/Objection** -
 - Educators cannot appeal but only object to a finding or sanction following the informal disciplinary procedure (Item 4(6)(d)).
 - Employees employed to the Public Service Act may appeal any decision to item 2.4(d) of PSCBC Resolution 1 of 2003.

WHAT DETERMINES A FAIR REASON?



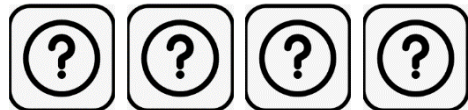
- Existence of rule



- Contravention of rule



- Knowledge of the rule



- Consistency



- Appropriateness of sanction

WHAT DETERMINES A FAIR REASON?

- Substantive fairness - reasons for disciplinary action.
- Valid reasons and substantial, supporting evidence for misconduct.
- Determined by the following enquiries:
 - Did the employee break an existing, reasonable and valid workplace rule?
 - Was the employee aware or could he/she reasonably have been expected to be aware of the rule?
 - Did you act against the employee for a valid reason?
 - Are action being taken consistently?
 - Was the action taken appropriate given the proven reason?
- Factors to consider its reasonable action:
 - Seriousness of the transgression.
 - Nature of the post and of the workplace.
 - Employee's circumstances.
 - Employer's circumstances.
 - Other.

TYPES OF MISCONDUCT

Less Serious

Item 4 - Principal/
Immediate
supervisor if
offender is the
Principal

Discretion to refer

Absenteeism,
displaying
disrespect,
negligence, etc.

Serious

Item 5 – Head of
Department

Principal refers to
Dispute
Management via
District Director

Fraud, theft, wilful
damage, etc.
Corporal
punishment
(assault)

Priority

Head of
Department

Principal
MEC/HOD
Media
Parents/Community

Sexual offences,
discrimination,
racism, initiation
practices, etc.

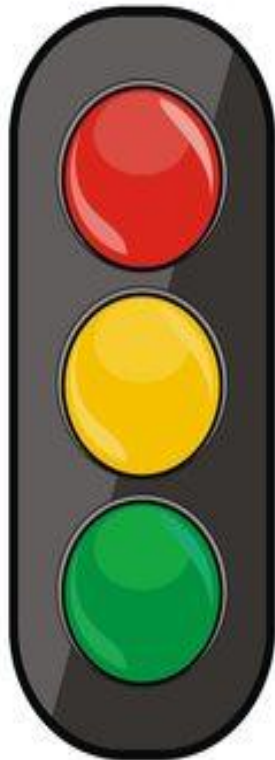
LESS SERIOUS ACTS OF MISCONDUCT

- Failing to carry out lawful order or instruction
- Absenteeism
- Sleeping on duty
- Being under the influence
- Improper conduct
- Displaying disrespect
- Abusive language
- Damage to property
- Insolence vs insubordination
- Negligence

SERIOUS ACTS OF MISCONDUCT - PRINCIPALS

- Financial mismanagement
- Fraud or corruption related to exams and reports
- Serious non-compliance with policies and procedures
- Disregarding safety and security rules and regulations
- Misusing position to promote/prejudice interests of self or others
- Bribery and corruption
- Improper conduct - social media
- Sexual harassment, abuse or relationships
- Discrimination
- Preventing exercise of labour rights

PERFORMANCE MANAGEMENT

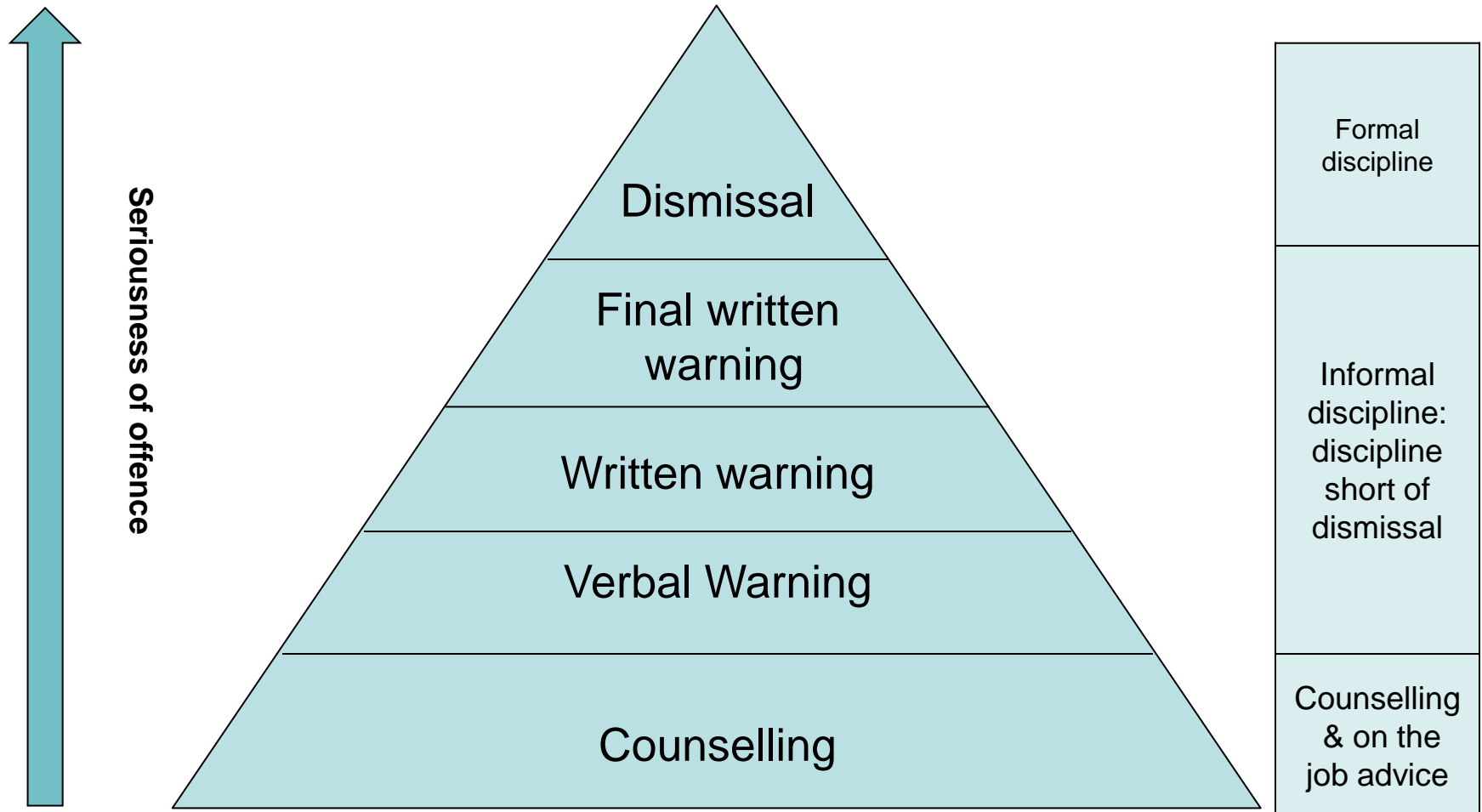


Warnings, final written warning, dismissal.

Informal advice and correction, counselling

Acceptable conduct and work performance

DISCIPLINE - STAGES & SANCTIONS



INFORMAL ADVICE AND CORRECTION

- Not prescribed but advised
- Informal
- Formal venue not required
- Person-to-person, usually nobody else present
- Refer to commonly known standard or rule violated
- Indicate how employee has transgressed or failed
- Enquire if there is any reason for transgression or failure to meet the standard
- Try to get a positive response and buy-in
- Listen and be diplomatic

COUNSELLING



WHY COUNSELLING?

Employment of Educators Act (Schedule 2, item 4(2))

PSCBC Resolution 1 of 2003, par 5.1

- Determine the reasons and the nature of the misconduct.
- Bring the misconduct to the employee's attention in writing.
- Give the employee a formal opportunity to respond to the allegations.
- Seek agreement during consultation and decide on a method to remedy the conduct.
- Take steps to implement the decision.

COUNSELLING - GENERAL

- First step of disciplinary procedure
- Adopt a problem solving approach, not confrontational
- Semi-formal, appropriate venue, e.g. Principal's office, boardroom
- Formal appointment, i.e. scheduled meeting
- Advise of right to have representative present
- Inform about the rule broken or standard not attained
- If standard not obtained -
 - inform employee how he/she is failing
 - identify obstacles preventing attainment of standard
 - consider assistance and/or training required
 - encourage and motivate
- Multiple sessions may be required
- Warn employee of escalation if behaviour is not corrected
- Keep record, e.g. recording and/or minutes co-signed by employee
- Schedule a follow-up session

VERBAL WARNING

Employment of Educators Act (Schedule 2, item 4(3))

PSCBC Resolution 1 of 2003, par 5.1

- In cases where the seriousness of the misconduct warrants it, the employer of the educator may give the educator a verbal warning.
- Inform the educator that further misconduct may result in more serious disciplinary action.
- Record the warning in writing, to be signed by both parties for record purposes.

WRITTEN AND FINAL WRITTEN WARNING

Employment of Educators Act (Schedule 2, item 4, 5 and 6):

PSCBC Resolution 1 of 2003, par 5.3 and 5.4

- If the seriousness of the misconduct warrants it, a written warning or a final written warning may be issued.
- Use Form A (written warning) and Form B (final written warning).
- Employees must acknowledge receipt on the copy. If he/she refuses, hand it to him/her in the presence of another educator, to sign and confirm that the warning was conveyed.
- Warnings must be filed in the employee's personal file.
- Warnings remain valid for six months.
- In case of further disciplinary action during this period, warnings and any written objection (CS) or appeal (PS) or additional information may be taken into account in deciding on a sanction.

OBJECTIONS, APPEALS & DISPUTES

Employment of educators act (schedule 2, item 4(4))

PSCBC resolution 1 of 2003, par 2.4(d)

- An educator may provide additional information or written objection against the finding or sanction, if he/she disagrees with it. The additional information and the objection must be filed on his/her personal file with the warning.
- Public Service employees may appeal to the MEC against decisions taken during informal disciplinary action in terms of item 2.4(d) and par 8 of PSCBC Resolution 1 of 2003.

NB. All employees have the right to refer an unfair labour practice dispute to the bargaining council or CCMA following disciplinary action – s. 186(2)(b).

WHAT ARE THE DUTIES OF A PRINCIPAL?

- Notify employees of the expected behaviour, performance requirements and possible consequences for failure to comply.
- Ensure that staff members know the rules, expected conduct and/or procedures.
- Make efforts to establish whether any rule or instruction of management was violated.
- Conduct a fair and objective investigation prior to disciplinary action.
- Provide substantial evidence and documentation to prove misconduct.
- Take informal disciplinary action appropriate to the seriousness and nature of the offence by considering these factors:
 - Circumstances surrounding violation.
 - Seriousness of the offence.
 - Past record of the offender.
 - Disciplinary actions taken in similar situations i.e. to apply rules consistently

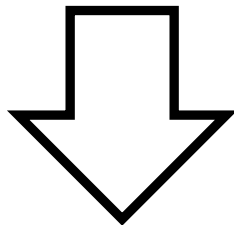
INVESTIGATION INTERVIEW - STEPS

- Interview the accuser/complainant.
- Interview witnesses.
- Interview others whom I have knowledge of the incident.
- Interview the accused.
- Reviewing relevant documents and/or evidence.
- Re-interview people as needed, i.e. conduct detailed and complete interviews.

INVESTIGATION INTERVIEW: PROCESS

- Ask open ended questions.
- Elicit facts and not opinions.
- Interview face-to-face whenever possible.
- Put the witness at ease.
- Explain the process.
- Start with broad open-ended in the questions.
- Get the chronology of events - repeat the dates.
- Ask one question at a time.
- Ask fact based questions – who, what, where, when, and how.
- Record the employees actual words - harassment, racism, etc.
- Focus on gathering information and not drawing conclusions.
- Ask if there are any other questions you should have asked in the interview.

WITNESS QUESTIONING



- **OPEN-ENDED**

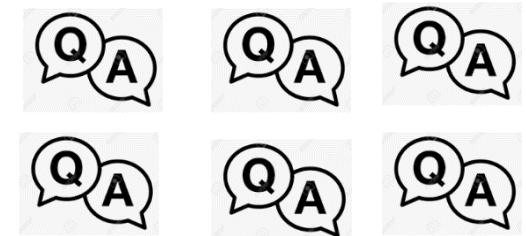
- **WIDE**



- **DIRECTIVE**



- **CLOSED**



CREDIBILITY ASSESSMENT

When there are conflicting versions of events, you must weigh the credibility of the witnesses. Factors to consider:

- Inherent plausibility - does it makes sense?
- Demeanour - nervousness, eye contact, etc.
- Is the employee/witness forthcoming with information or was it "dragged out"?
- Motive to lie
- Corroborative evidence – something to back up the witness.
- Past record.

NB! None of these factors create conclusive presumptions of guilt or are determinative as to credibility.

DECIDING ON A SANCTION

- Informal disciplinary sanctions must be appropriate.
- Annexure E (PS&CS) of Circular 1 of 2016 serves as a 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.
- Focussing on the substance rather than the form of the offence is important.

SANCTION - FACTORS TO CONSIDER

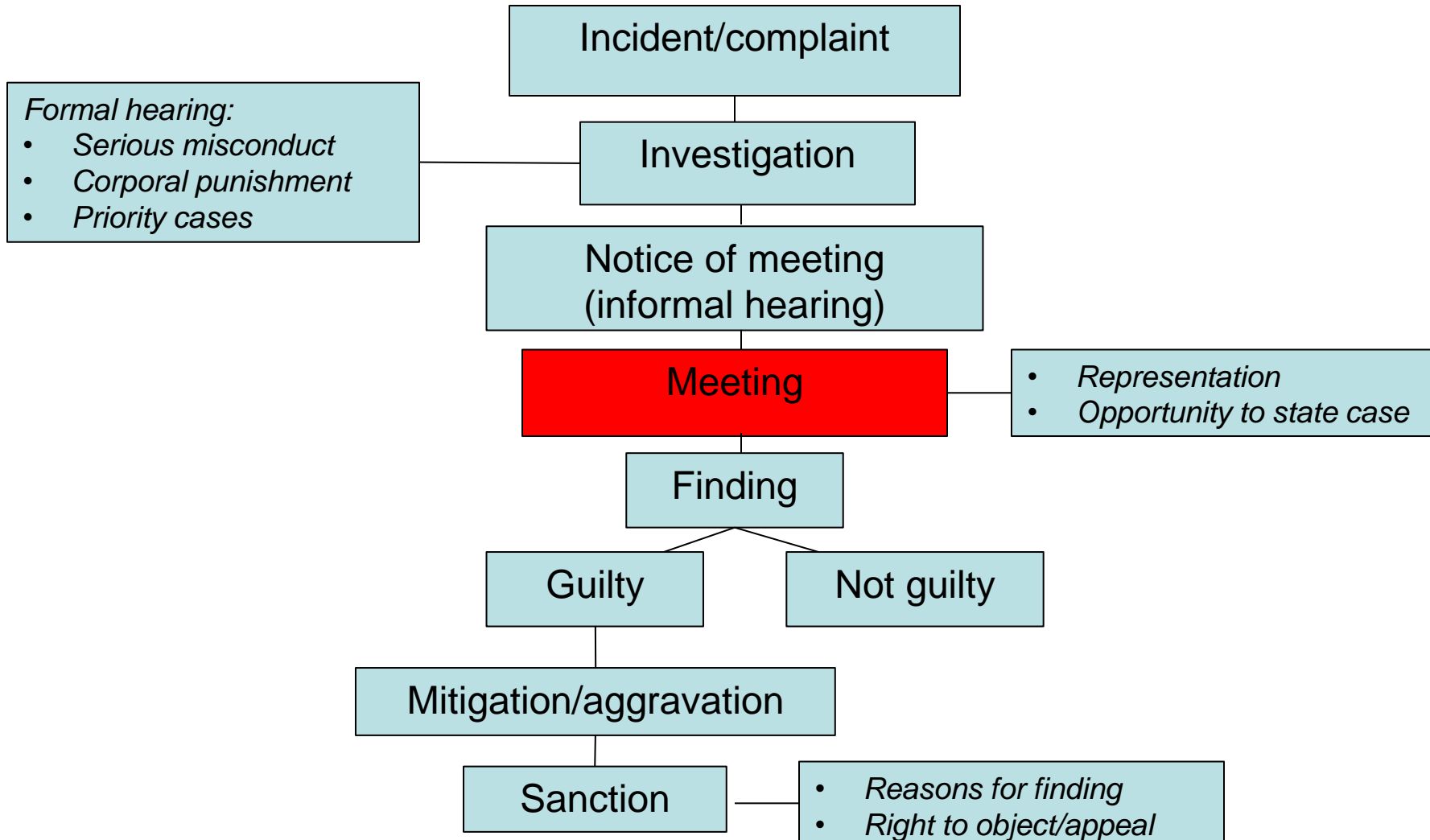
Factors to consider when deciding on the sanction may include:

- 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 – premeditation makes the offence more serious.
- Provocation may only result in a more lenient sanction, not a not guilty finding.
- The initial response of the employee.
- The scale of the offence.
- 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/her own safety, and the employee's personal circumstances.
- NB - The nature of the job and the circumstances of the infringement are more significant than the employee's personal circumstances.

RECAP - SUGGESTED PROCEDURE



SUGGESTED HEARING/MEETING PROCEDURE

Stage 1 - Opening the meeting

- Principal welcomes 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

Stage 2 - Outlining alleged misconduct

- Principal briefly describe the alleged misconduct.

Stage 3 - Employee's response

- Principal must ask the employee if he/she acknowledges or denies the misconduct.
- Employee or his/her representative responds.

SUGGESTED PROCEDURE - WARNINGS

Stage 4 - Deal with disputes of fact if employee denies allegations - employer's case

- Principal to check beforehand who may assist to determine what happened (witnesses).
- Call witnesses one by one to ask them to tell the meeting what happened.
- Principal may ask questions of clarity and thereafter the employee/ representative may ask questions.
- Witness should then be excused.
- If the Principal is involved then he/she should state what happened and it should be recorded.

SUGGESTED PROCEDURE - WARNINGS

Stage 5 - Employee states case

- Employee should be asked to give his/her version.
- Employee given an opportunity to deal with the allegations of misconduct which occurred
- Employee may argue that that misconduct did not occur.
- Principal may ask questions.

Stage 6 - Closing the initial phase

- Principal to summarize the proceedings.
- Preferable to adjourn the meeting to a later, fixed time to give 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.
-

SUGGESTED PROCEDURE - WARNINGS

Stage 7 - Making a decision and announce an outcome

- After consideration, the Principal must indicate whether or not it was found that misconduct has been committed, i.e. to make a finding.
- Give brief reasons for the decision then go on to give an outcome (sanction).

Stage 8 - Recording the outcome

- If there was counselling or a verbal warning a record should be kept.
- If a warning or final written warning is issued the appropriate form must be completed and handed to the employee.
- A copy must be kept in the employee's personal file.

Stage 9 – Principal must notify the employee of the right to object or appeal

MONTHLY REPORT ON PROGRESSIVE DISCIPLINE

- Principals must submit a monthly report on progressive discipline to the relevant Dispute Management unit at the District Office on the prescribed reporting template.

MONTHLY REPORT - FORMAT

MONTHLY REPORT: PROGRESSIVE DISCIPLINE
(ITEM 4 OF SCHEDULE 4 OF THE EMPLOYMENT OF EDUCATOR'S ACT, 1998 (AS AMENDED))

OFFICE/DISTRICT: _____ MONTH: _____



DETAILS OF EMPLOYEE & OFFENCE									Verdict (✓ tick applicable)		Sanction (✓ tick applicable)					(✓) Refer for formal discipline
Name of school/ institution	Employee surname	Initials	Persal number	M/F	Race (A,I,J,C,W)	Rank	Salary level	Nature of alleged misconduct	Guilty	Not guilty	Counsel	Verbal	Written	Final written		



To be completed at institution/office:

☐ I declare that all the information provided is complete and correct for the period stated OR ☐ No progressive discipline was taken in my institution/office within the period stated.

PRINCIPAL/DIRECTOR: _____

DATE: _____

CONCLUSION

- Managing misconduct requires the manager to have a clear understanding of all requirements entailed for each case.
- We need to encourage the practice of progressive discipline within the Gauteng Department of Education.
- Employees charged with misconduct must be treated fairly.
- Actions taken must benefit those punished and the employer – corrective discipline.
- Prescribed procedures must be utilised in a consistent and fair manner to improve the working conditions of both the employer and the employee.

CONTACT DETAILS

011 355-0426

060 991 8452

Deidre.Viljoen@gauteng.gov.za