

Implementation of Circular 1 of 2016: Gauteng

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DATE: 10 February 2022



DIE VERANDERING IN ONDERWYS
THE CHANGE IN EDUCATION



MANAGEMENT OF EMPLOYEE DISCIPLINE BY THE PRINCIPAL



SAOOU

LEGISLATIVE FRAMEWORK

Public Servants:

- Public Services Act (Act no. 103 of 1994) as amended
- PSCBC Resolution No. 1 of 2003
- South African School's Act, 1996 (16A(2)(e))

Educators:

- Employment of Educators Act (Act no. 76 of 1998)
- Schedule 2 of the Employment of Educators Act (Act no. 76 of 1998)
- Labour Relations Act (Act no. 66 of 1995)
- Schedule 8 of the Labour Relations Act (Act no. 66 of 1995)
- South African School's Act, 1996 (16A(2)(e))

LEGISLATIVE AUTHORITY - PRINCIPAL

Gauteng Department Educators

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

School Governing Body (SGB) Educators

- ✓ Delegated authority as member of School Governing Body
- ✓ Responsible for management of all educators & supporting staff – s 16A(2)(a)(ii) of SASA



PURPOSE OF CIRCULAR 1 OF 2016

- ✓ To indicate the specific responsibilities and authority of Principals
- ✓ To clarify the correct procedure to follow
- ✓ To provide practical guidelines on administering the relevant disciplinary process
- ✓ To provide standard formats of relevant forms and letters to be used



DEFINITIONS

Disciplinary action is–

- Any corrective action
- Instituted against an employee
- In response to unacceptable behaviour, or
- Inadequate work performance
- Other than incompetence or incapacity

NB!! SHOULD ALWAYS BE CORRECTIVE NOT PUNITIVE!!

Misconduct:

- Non-compliance with work rules, performance standards and standards of conduct

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

THREE CATEGORIES OF DISCIPLINARY PROCEDURES

Disciplinary Code & Procedures for the Public Service

Disciplinary Code & Procedures for GDE Educators

Disciplinary Code & Procedure for School Governing Body Educators





Disciplinary Code & Procedures for PS STAFF

PSCBC Resolution No. 1 of 2003

The logo for SAOU, featuring the letters 'S', 'A', 'O', and 'U' in a stylized font. The 'S' is blue, the 'A' is yellow, the 'O' is yellow, and the 'U' is blue. The letters are bold and have a slight shadow effect.

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WHAT IS DEFINED AS MISCONDUCT? (PS)

ACTS OF MISCONDUCT

An employee will be guilty of misconduct if:

Fails to comply with the Code of Conduct.

Wilfully or negligently breaches the Code of Conduct.

Without permission, discloses confidential information.

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.

Wilfully, intentionally or recklessly fails to carry out a lawful order or routine instruction without just or reasonable cause.

Endangers the lives of others.

Prejudices the administration of the State.

Commits an act of sexual harassment.

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

Misuses his or her position.

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.

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.

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.

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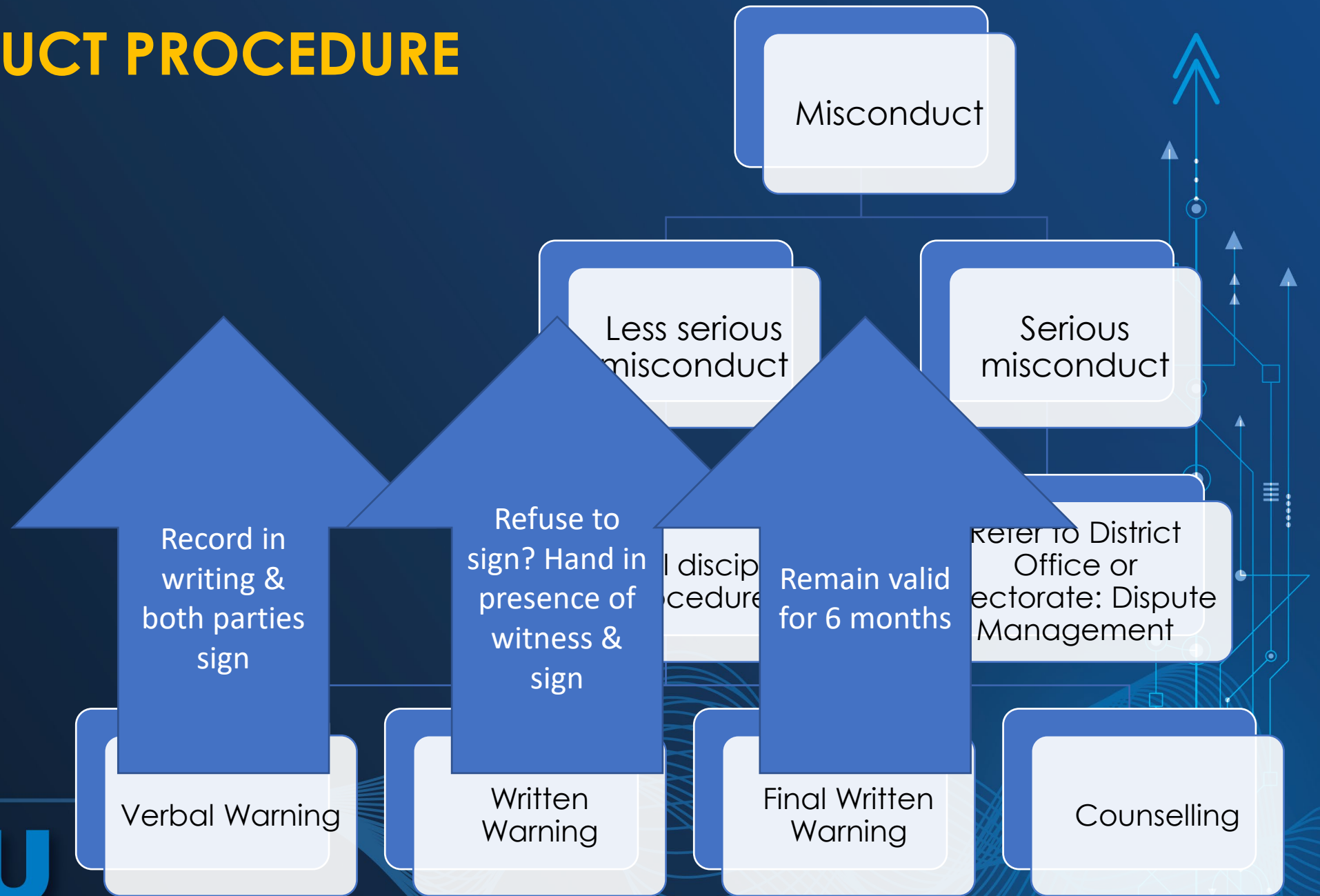
WHAT IS DEFINED AS LESS SERIOUS MISCONDUCT? (PS)

CIRCULAR 1 OF 2016 – ANNEXURE D

- ✓ Failing to carry out lawful order or instruction
- ✓ Absenteeism
- ✓ Poor performance other than incapacity
- ✓ Sleeping on duty
- ✓ Being under the influence
- ✓ Improper conduct
- ✓ Displaying disrespect

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MISCONDUCT PROCEDURE



SUGGESTED PROCEDURE – INFORMAL DISCIPLINE (PS)

STAGE & RESPONSIBLE PERSON	
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.

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SUGGESTED PROCEDURE – INFORMAL DISCIPLINE (PS)

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STAGE & RESPONSIBLE PERSON	
<p>Stage 4 - Deal with disputes of fact.</p> <p>Performed by all but controlled by Principal or Manager</p>	<p>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.</p>
<p>Stage 5 – Employee states case</p> <p>Employee/Rep</p>	<p>Employee should be asked to give his/her version.</p> <p>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.</p>

SUGGESTED PROCEDURE – INFORMAL DISCIPLINE (PS)

STAGE & RESPONSIBLE PERSON	
<p>Stage 6 -Closing the initial phase</p> <p>Principal or Manager</p>	<p>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.</p>
<p>Stage 7 –Making a decision and announce an outcome</p> <p>Principal or Manager</p>	<p>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.</p>

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SUGGESTED PROCEDURE – INFORMAL DISCIPLINE (PS)

STAGE & RESPONSIBLE PERSON	
<p>Stage 8 - Recording the outcome</p> <p>Principal or Manager</p>	<p>If there was counselling or a verbal warning a record should be kept of this.</p> <p>If a warning or final written warning is issued the appropriate form should be completed and handed to the employee.</p> <p>A copy should be kept in the employee's personal file.</p>
<p>Stage 9 - Notify employee of rights to object</p> <p>Principal or Manager</p>	<p>The employee should be advised of his/her right to object as the case may be.</p>

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Disciplinary Code & Procedures for Educators

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

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WHAT IS DEFINED AS MISCONDUCT? (CS)

Section 17 and Section 18 of the Employment of Educators Act, 76 of 1998

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).

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;
- (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**;
- (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.

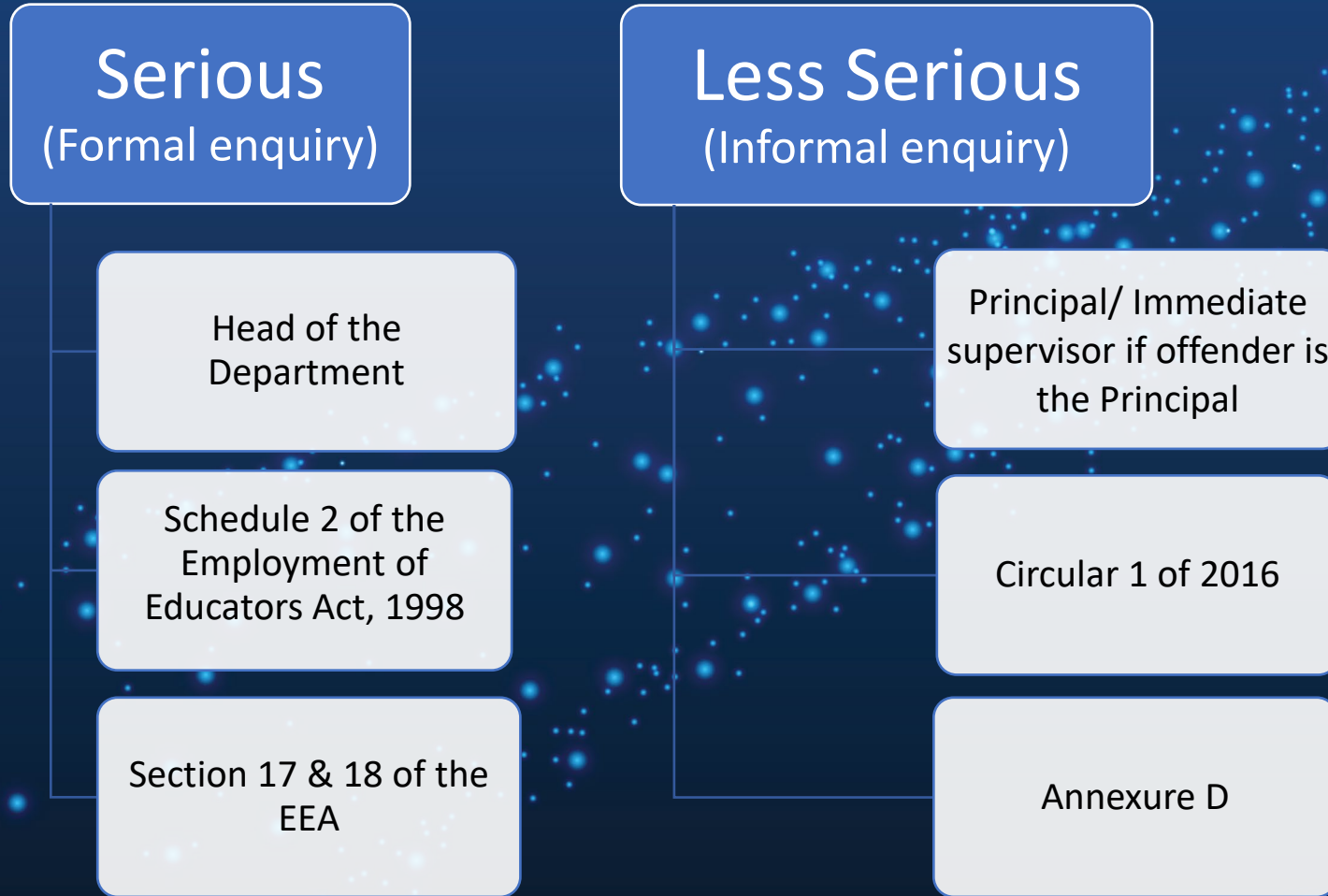
WHAT IS DEFINED AS LESS SERIOUS MISCONDUCT? (CS)



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TYPES OF MISCONDUCT BY EDUCATORS



HOW DO I INVESTIGATE?

MAIN STATEMENTS

- Obtain the main statement of affected party

SUPPORTING STATEMENTS

- Obtain supporting statements from witnesses

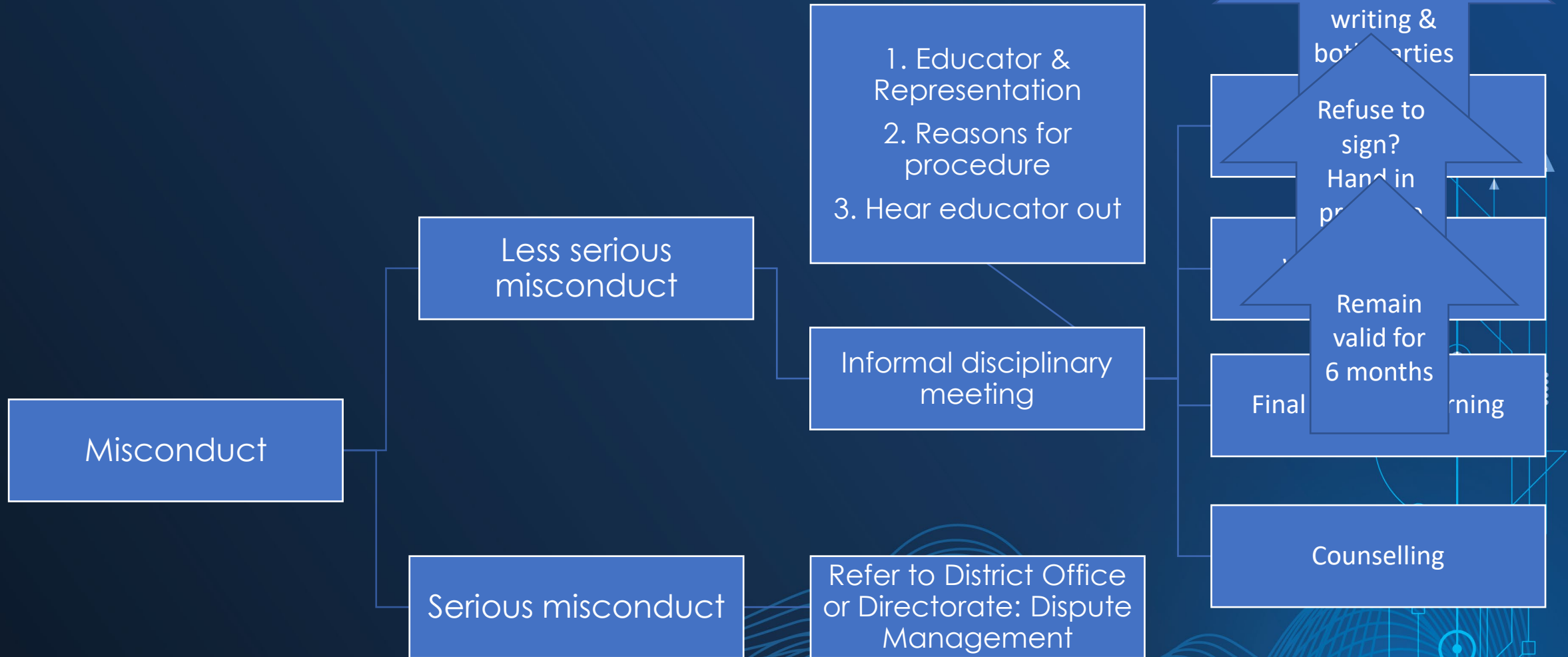
OTHER PROOF

- Video/Pictures/Audio/Documents



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MISCONDUCT PROCEDURE FOR EDUCATORS



REQUIREMENTS FOR A INFORMAL DISCIPLINARY MEETING

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Substantive Fairness – the “WHY”

- ✓ 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?

REQUIREMENTS FOR A INFORMAL DISCIPLINARY MEETING



Procedural Fairness – the “HOW”

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

DECIDING ON A SANCTION FOR MISCONDUCT: FACTORS TO CONSIDER

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- ✓ Time over which the offence occurred
- ✓ Whether offence is a single action or a series of acts
- ✓ Potential repetition of the offence
- ✓ Intention of the employee
- ✓ Provocation
- ✓ Initial response of employee
- ✓ Scale of the offence
- ✓ Impact of the offence on the employee relationship



DECIDING ON A SANCTION FOR MISCONDUCT: MITIGATING v AGGRAVATING

Mitigating Factors:

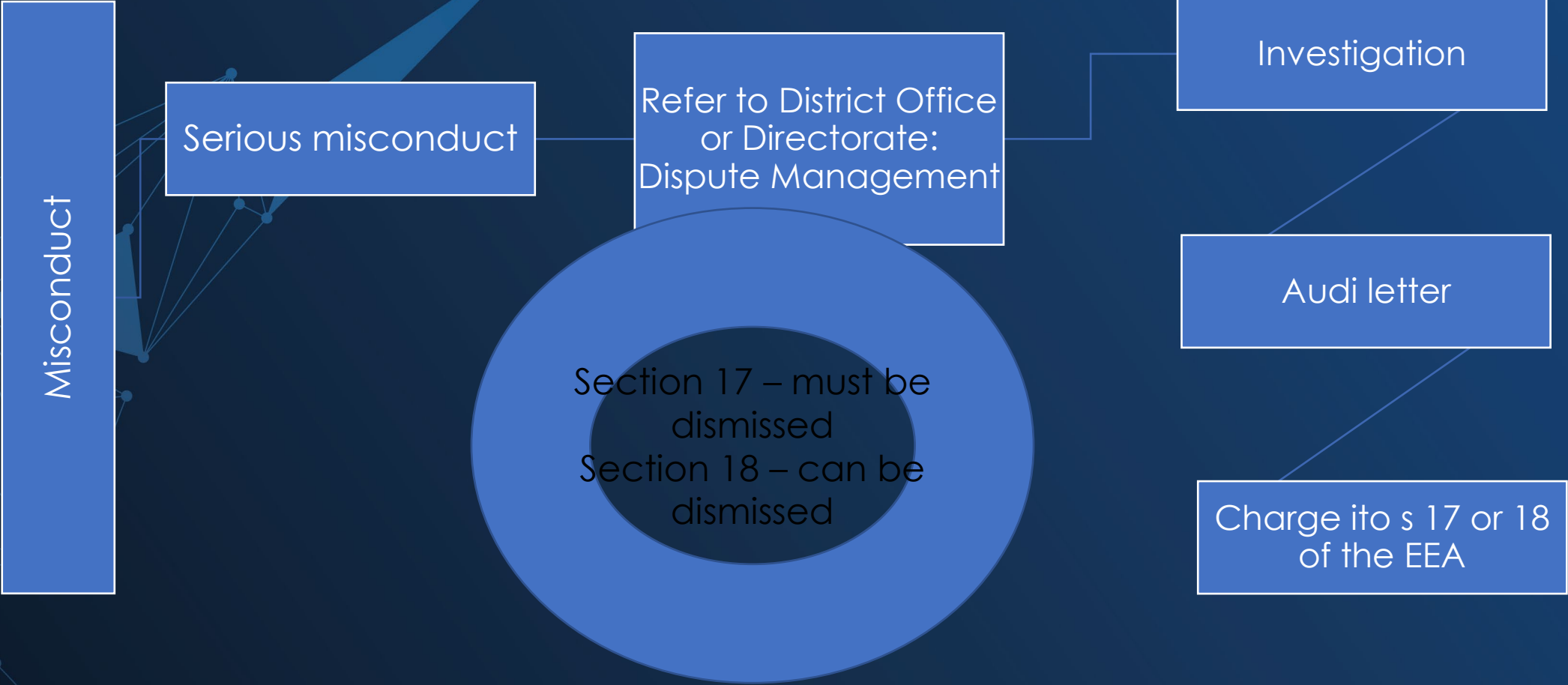
- ✓ Length of service
- ✓ First-time offender
- ✓ Remorse
- ✓ Acting out of fear
- ✓ Coercion by fellow employees to commit misconduct
- ✓ Personal circumstances

Aggravating Factors:

- ✓ Wilfulness of the employee
- ✓ Lack of remorse
- ✓ Previous valid warnings
- ✓ Seriousness of misconduct

PROCEDURE FOR SERIOUS ACTS OF MISCONDUCT

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Disciplinary Code & Procedures for SGB EDUCATORS / STAFF

Labour Relations Act, 1995

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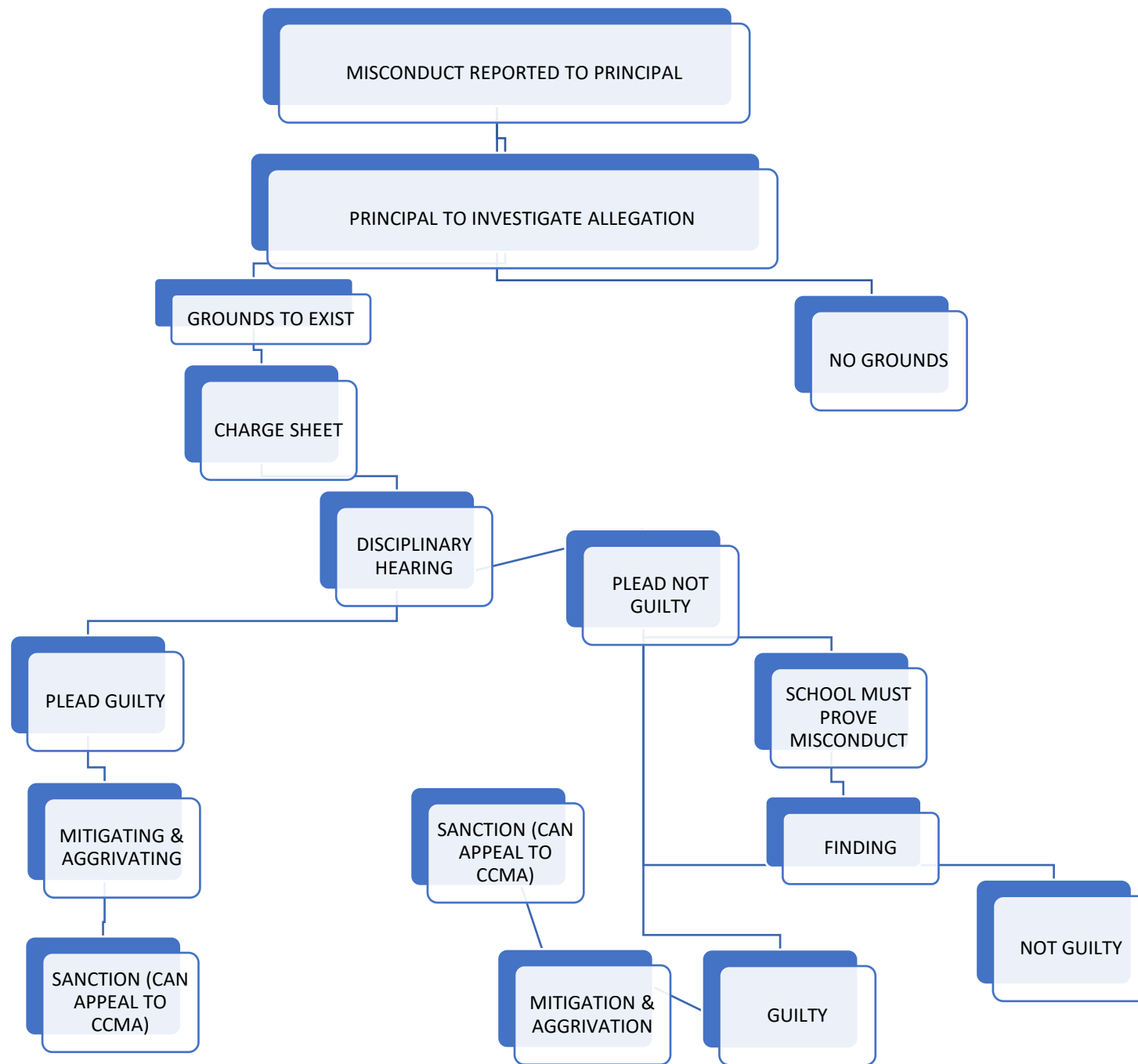
Disciplinary Code & Procedures for SGB Educators / Staff

Where to find?

- ✓ Schedule 8 of the Labour Relations Act, 1995
- ✓ Contract of the SGB

Purpose of a disciplinary code and procedure?

- ✓ regulate standards of conduct and incapacity of employees within a company or organisation;
- ✓ correct unacceptable behaviour and adopt a progressive approach in the workplace.



FORMS OF DISCIPLINE

Depends on:

1. the seriousness of the offence; and
2. whether the employee has breached the particular rule before.

Forms:

- ✓ Verbal warning;
- ✓ Written warning;
- ✓ Final written warning;
- ✓ Suspension without pay (for a limited period);
- ✓ Demotion, as an alternative to dismissal only; or
- ✓ Dismissal

DURING THE HEARING, ASK YOURSELF...

Substantive Fairness:

- ✓ 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?
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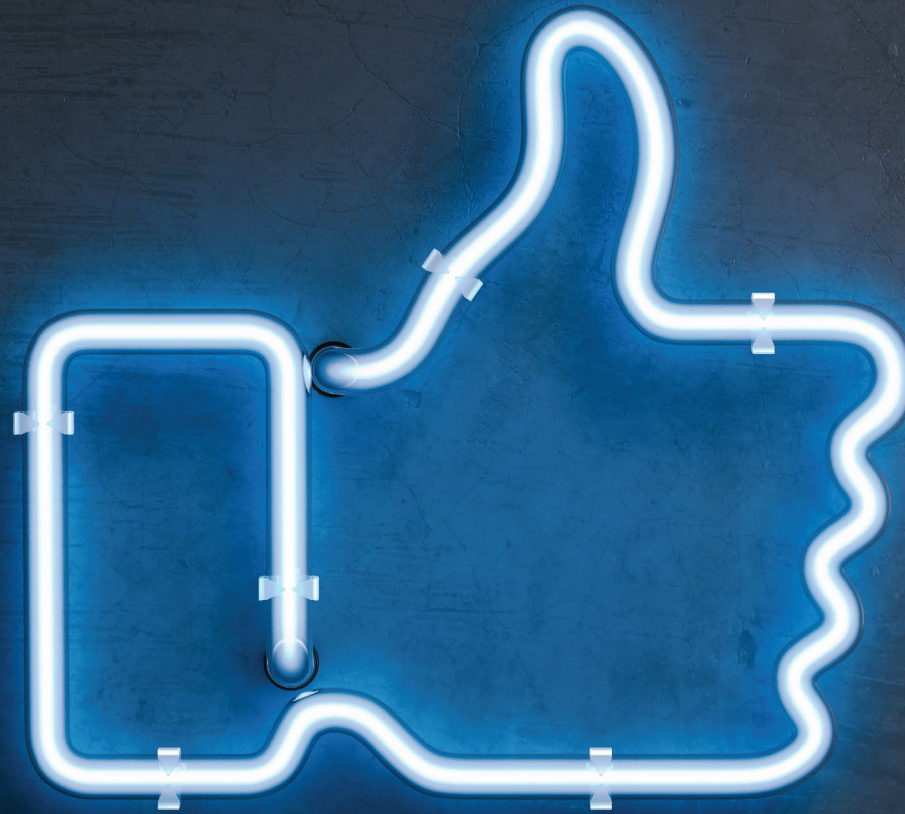
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IF ALL ELSE FAILS – CONTACT THE SAOU!

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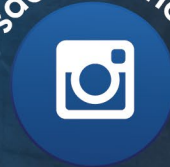
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