

Schedule 2

[Schedule 2 added by s. 15 of Act No. 53 of 2000 and amended by Act No. 57 of 2001 and by Act No. 50 of 2002.]

DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

Purpose and scope

1. The purpose and scope of this Code and Procedures is to –
 - (a) support constructive labour relations in education;
 - (b) promote mutual respect among educators and between educators and the employer;
 - (c) ensure that employers and educators share a common understanding of misconduct and discipline;
 - (d) promote acceptable conduct;
 - (e) provide educators and the employer with a quick and easy reference for the application of disciplinary measures;
 - (f) avert and correct unacceptable conduct; and
 - (g) prevent arbitrary or discriminatory actions by employers towards educators.

Principles

2. The principles underlying the Code and Procedures and any decision to discipline an educator are that –
 - (a) discipline is a corrective and not a punitive measure;
 - (b) discipline must be applied in a prompt, fair, consistent and just manner;
 - (c) discipline is the responsibility of an employer;
 - (d) a disciplinary code is necessary for the efficient delivery of service and the fair treatment of educators, and ensures that educators –
 - (i) have a fair hearing in a formal or informal setting;
 - (ii) are timeously informed of allegations of misconduct made against them;
 - (iii) receive written reasons for any decision taken; and
 - (iv) have the right to appeal against a finding or sanction contemplated in section 25(2);

[Sub-para. (iv) substituted by s. 8 of Act No. 57 of 2001.]
 - (e) as far as possible, disciplinary procedures are held at the place of work and are understandable to all educators;
 - (f) if an educator commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings; and
 - (g) disciplinary proceedings must be concluded in the shortest possible time frame.

Code of Good Practice

3. (1) The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to discipline, constitutes part of this Code and Procedure.
 - (2) (a) The conduct of an educator that may warrant a disciplinary action is listed in sections 17 and 18.
 - (b) After consultation with the trade unions, the Minister may prescribe other conduct which constitutes misconduct.
 - (3) In dealing with misconduct contemplated in section 18, the employer must assess the seriousness of the alleged misconduct by considering –
 - (a) the extent to which the misconduct impacts on the work of the Department of Education or provincial department of education, or the public school, public further education and training institution or public adult learning centre;
 - (b) the nature of the educator's work and responsibilities; and
 - (c) the circumstances in which the alleged misconduct took place.
 - (4) The form of disciplinary procedure to be followed in any case must be determined by the employer.

Sanctions and disciplinary procedures pertaining to less serious misconduct cases

4. (1) (a) The employer must delegate the function to deal with misconduct referred to in subitems (2) to (6), to –

(i) the head of the institution or office where the educator is employed; or

(ii) the immediate superior of the educator where the educator concerned is the head of the institution or office;

(b) The employer must determine in writing the specific acts of misconduct to be dealt with under the delegation referred to in paragraph (a).

(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 subitems (3), (4) or (5).

(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).

(4) In cases where the seriousness of the misconduct warrants it, the employer may give the educator a written warning. The following provisions apply to written warnings:

(a) The written warning must be in accordance with Form A attached to this Schedule.

(b) The employer must give a copy of the written warning to the educator, who must acknowledge receipt on the copy.

(c) If the educator refuses to sign the copy for acknowledgement of receipt, the employer must hand the warning to the educator in the presence of another educator, who shall sign in confirmation that the written warning was conveyed to the educator.

(d) The written warning must be filed in the educator's personal file.

(e) A written warning remains valid for six months.

(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;

[Para. (f) substituted by s. 9(a) of Act No. 57 of 2001.]

(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 (a) must be filed with the written warning.

(5) In cases where the seriousness or extent of the misconduct warrants it, the employer must give the educator a final written warning. The following provisions apply to a final written warning:

(a) A final written warning must be in accordance with Form B attached to this Schedule.

(b) The employer must give a copy of the final written warning to the educator, who must sign a copy to acknowledge receipt.

(c) If the educator refuses to sign a copy to acknowledge the receipt of the final written warning, the employer must hand the warning to the educator in the presence of another educator, who must sign in confirmation that the written warning was conveyed to the educator.

(d) The final written warning must be filed in the educator's personal file.

(e) A final written warning remains valid for six months.

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

[Para. (f) substituted by s. 9(b) of Act No. 57 of 2001.]

(g) (i) If the educator disagrees with the final 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 subparagraph (i) must be filed with the final written warning.

(6) (a) If the seriousness or extent of the misconduct does not warrant a formal enquiry the procedures in paragraphs (b), (c) and (d) must be followed.

(b) The employer must convene a meeting where –

(i) the educator and, if he or she so chooses, the educator's trade union representative or other employee who is based at the institution, are present;

(ii) reasons are given to the educator as to why it is necessary to initiate this procedure; and

(iii) the educator or the educator's representative is heard on the misconduct and reasons therefor.

(c) After hearing the educator or his or her representative, the employer must –

(i) counsel the educator;

(ii) issue a verbal warning;

(iii) issue a written warning;

(iv) issue a final written warning;

(v) impose a combination of any of the above; or

(vi) take no further action.

(d) (i) An educator may not appeal against any of the above sanctions but may lodge an objection in writing, against the sanction imposed, or provide additional written information.

(ii) The objection or additional information must be filed together with a record of the sanction in the educator's personal file.

(7) For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator must be taken into account.

Notice of enquiry for misconduct cases other than those contemplated in item 4

5. (1) The educator must be given written notice at least five working days before the date of the hearing.

(2) The written notice of the disciplinary hearing must be given in accordance with Form C attached to this Schedule and must contain –

(a) a description of the allegations of misconduct and the main evidence on which the employer will rely;

(b) details of the time, place and venue of the hearing;

(c) when delivered by registered post, the date on which the letter was received by the educator as indicated by the post office;

(d) information on the rights of the educator to representation by a fellow educator or a trade union representative;

(e) information on the rights of the educator to representation by a legal representative, if the presiding officer so directs; and

[Para. (e) substituted by s. 10 of Act No. 57 of 2001.]

(f) information on the rights of the educator to call witnesses at the hearing.

(3) (a) The educator must acknowledge receipt of the notice by signing a copy of the notice.

(b) If the educator refuses to sign for the receipt of the notice, it must be given to the educator in the presence of a fellow educator, who must sign in confirmation that the notice was conveyed to the educator.

Suspension

6. (1) In the case of serious misconduct in terms of section 17, the employer may suspend the educator on full pay for a maximum period of three months.

(2) In the case of misconduct in terms of section 18, the employer may suspend an educator in accordance with the procedure contemplated in subitem (1), or transfer the educator to another post if the employer believes that the presence of the educator may jeopardise any investigation into the alleged misconduct, or endanger the well-being or safety of any person at the work-place.

(3) (a) If an educator is suspended or transferred, the employer must do everything possible to conclude a disciplinary hearing within one month of the suspension or transfer;

(b) The presiding officer may decide on any further postponement. Such a postponement must not exceed 90 days from the date of suspension.

(c) If the proceedings are not concluded within 90 days, the employer must enquire from the presiding officer what the reasons for the delay are and give directions for the speedy conclusion of the proceedings.

(d) At the time of the enquiry contemplated in paragraph (c) the employer may, after giving the educator an opportunity to make representations, direct that the further suspension will be without pay.

Conducting disciplinary hearing

7. (1) The disciplinary hearing must be held within ten working days after the notice referred to in item 5 is delivered to the educator.

(2) The presiding officer must be appointed by the employer.

(3) If the educator so chooses, he or she may be represented at the hearing by a fellow educator or a representative of a trade union.

(4) If the presiding officer deems it necessary, an interpreter must assist at the hearing.

(5) Subject to section 3(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), if the presiding officer so directs, the employer or educator may be represented by a legal representative.

(6) If the educator fails to attend the hearing and the presiding officer concludes that the educator does not have a valid reason, the hearing may continue in the absence of the educator.

(7) The presiding officer must keep a record of the notice of the disciplinary hearing and of the proceedings.

(7A)(a) The record referred to in subitem (7) includes an electronic recording of the proceedings.

(b) A transcript of electronic recordings or a portion of the transcript of a recording may be made on request of the educator or his or her representative on payment of the prescribed fee contemplated in section 22 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

[Sub-item (7A) inserted by s. 13(a) of Act No. 50 of 2002.]

(8) The presiding officer must read the notice for the record before the start of the hearing.

(9) (a) The representative of the employer must lead evidence on the conduct giving rise to the hearing.

(b) The educator or the educator's representative may question any witness called by the representative of the employer.

(10) For the purposes of the investigation and hearing, the representative of the employer may summon any person who –

(a) may be able to give information of material importance concerning the subject of the investigation or hearing; or

(b) has in his or her possession, custody or control, any book, document or object which may have a bearing on the matter.

(10A) (a) Whenever disciplinary proceedings are pending before any presiding officer, and it appears to him or her that it would expose a witness under the age of 18 years to undue mental stress or suffering if he or she testifies at such proceedings, the presiding officer may, if practicable, appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

(b) (i) An examination, cross-examination or re-examination of a witness in respect of whom the presiding officer has appointed an intermediary under paragraph (a), except examination by the presiding officer, must not take place in any manner other than through that intermediary.

(ii) Such intermediary may, unless the presiding officer directs otherwise, convey the general purport of any question to the relevant witness.

(c) If the presiding officer appoints an intermediary under paragraph (a), he or she may direct that the relevant witness must give his or her evidence at any place which –

(i) is informally arranged to put that witness at ease;

(ii) is arranged in a manner in which any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(iii) enables the presiding officer and any person whose presence is necessary at the relevant proceedings to hear, through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

[Sub-item (10A) inserted by s. 13(b) of Act No. 50 of 2002.]

(11) Where the educator has requested that a person be present at a hearing as his or her witness, the employer must provide the educator with the assistance to ensure that such witnesses attend.

(12) The summons to appear at a disciplinary hearing, must be in accordance with Form D attached to this Schedule and served on the person by way of delivery by –

- (a) hand;
- (b) telefax; or
- (c) registered post.

(13) The date on which the summons is served will be when delivering by –

- (a) hand, the date of delivery;
- (b) telefax, the date reflected on the telefax; or
- (c) registered post, the date on which the letter was received by the educator as indicated by the post office.

(14) (a) The educator or his or her representative must be given an opportunity to lead evidence.

(b) The representative of the employer may question the witnesses of the educator.

(15) The presiding officer may ask any witness questions for clarification.

(16) The presiding officer must give a finding whether or not the educator has committed the misconduct, and must inform the educator of the finding and the reasons therefor.

(17) (a) Before deciding on a sanction, the presiding officer must give the educator an opportunity to present evidence in mitigation.

(b) The representative of the employer may present evidence regarding aggravating circumstances.

(18) The presiding officer must communicate the final outcome of the hearing to the employer and the educator within five working days after the conclusion of the disciplinary enquiry, and the outcome must be recorded on the personal file of the educator.

Steps after disciplinary hearing

8. (1) If the presiding officer finds that an educator has committed misconduct, the presiding officer must, on behalf of the employer, impose a sanction, as contemplated in section 18(3) of the Act, taking into account –

- (a) the nature of the case;
- (b) the seriousness of the matter;
- (c) the educator's previous record; and
- (d) any mitigating or aggravating circumstances.

(2) With the agreement of the educator, the presiding officer may impose the sanction of suspension without pay or demotion as an alternative to dismissal.

(3) If an educator is demoted, he or she may apply for promotion after a year without prejudice.

(4) The employer may not implement the sanction during an appeal by the educator.

Appeals

9. (1) An educator or an employer may appeal against a finding or sanction by making an application in accordance with Form E attached to this Schedule.

(2) The educator or the employer must, within five working days of receiving notice of the final outcome of a disciplinary hearing, submit the appeal form to the Member of the Executive Council or the Minister, as the case may be.

(3) On receipt of the application referred to in subitem (1), the Member of the Executive Council or the Minister, as the case may be, must request the employer to provide him or her with a copy of the record of the proceedings and any other relevant documentation.

(4) If the Member of the Executive Council or the Minister, as the case may be, chooses to allow further representations by the educator, his or her representative or the employer, he or she must notify the educator or the employer respectively of the date, time and place where such representation must be made.

(5) The Member of the Executive Council or the Minister, as the case may be, must consider the appeal, and may –

- (a) uphold the appeal;
- (b) in cases of misconduct contemplated in section 18, amend the sanction; or
- (c) dismiss the appeal.

(6) The employer must immediately implement the decision of the Member of the Executive Council or the Minister, as the case may be.

[Item 9 of Schedule 2 amended by S. 6 of Act No. 1 of 2004]

Form A

[Form A substituted by s. 11(a) of Act No. 57 of 2001.]

WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or additional information which will be filed together with this warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

DATE

SIGNATURE OF EMPLOYEE

DATE

SIGNATURE OF WITNESS (if applicable)

DATE

Form B

[Form B substituted by s. 11(b) of Act No. 57 of 2001.]

FINAL WRITTEN WARNING

[DATE]

[NAME OF EMPLOYEE]

[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further misconduct it could lead to formal misconduct proceedings being instituted against you.

This final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection to this final warning, or provide additional information which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF REPRESENTATIVE OF EMPLOYER

DATE

SIGNATURE OF EMPLOYEE
DATE
SIGNATURE OF WITNESS (if applicable)
DATE

Form C

[Form C substituted by s. 11(c) of Act No. 57 of 2001.]

NOTICE OF DISCIPLINARY MEETING

[DATE]
[NAME OF EMPLOYEE]
[PERSAL NO.]

[PERSONAL DETAILS OF THE EMPLOYEE]

You are hereby given notice to attend a disciplinary hearing in terms of item 6 of the Disciplinary Code.

The alleged misconduct is based on the following evidence:

[A DETAILED DESCRIPTION OF THE ALLEGED MISCONDUCT MAY BE ATTACHED.]

The hearing will held at[PLACE]
on [DATE] at.....[TIME].

If you do not attend and cannot provide reasonable grounds for failing to attend, the hearing will be held in your absence.

A fellow employee or a representative of a recognised union may represent you at the hearing. You may also be represented by a legal representative if the presiding officer so directs.

You may give evidence at the hearing and adduce evidence in the form of documents or through witnesses. You are entitled to question any witness called by the employer.

If the presiding officer finds that you are guilty of misconduct, you may present any relevant circumstances which you wish to be taken into account by the presiding officer in determining the sanction.

SIGNATURE OF REPRESENTATIVE OF EMPLOYER
DATE

ACKNOWLEDGMENT OF RECEIPT BY EMPLOYEE
DATE

SIGNATURE OF WITNESS (if applicable)
DATE

Form D

[Form D substituted by s. 11(d) of Act No. 57 of 2001.]

SUMMONS TO APPEAR AT DISCIPLINARY HEARING

DATE:
TO:
(Name and residential address of person summoned)

You are hereby summoned to appear personally on the day
of 20.....
at (time) at (place)

before the presiding officer of a disciplinary hearing in terms of Schedule 2 to the Employment of Educators Act, 1998 (Act No. 76 of 1998), for the purpose of giving evidence regarding the following misconduct:

and to submit the following book, document or object in your possession, custody or control, which may have a bearing on the matter;

(specify the book, document or object)

.....
SIGNATURE OF REPRESENTATIVE OF EMPLOYER

Form E

[Form E amended by S. 7 of Act No. 1 of 2004]

NOTICE OF APPEAL

[DATE]

[NAME OF APPEAL AUTHORITY]

I,, [NAME OF EMPLOYEE OR EMPLOYER] hereby appeal against the FINDINGS and/or SANCTION that have been imposed in terms of the Disciplinary Code and Procedure on.....[DATE]

at [PLACE].

I attach a copy of the final outcome of the disciplinary enquiry. [THE APPEAL REQUEST IS NOT VALID UNLESS THIS DOCUMENT IS ATTACHED]

My reasons for appeal are:

The desired outcome of the appeal is:

I wish/do not wish [CHOOSE ONE] to provide additional evidence not available at the time of the disciplinary proceedings.

SIGNATURE OF EMPLOYEE OR EMPLOYER

DATE

[PERSAL NO.]

PERSONAL DETAILS OF THE EMPLOYEE]

NB: Educators or employers may only appeal against the finding and resultant sanction of –

1. suspension without pay for a period not exceeding three months;
2. demotion;
3. a fine;
4. a combination of the above sanctions together with warnings; or
5. dismissal.