• 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:**
  - South African Schools Act, 1996 (s. 16(3), s. 16A(2)(e)).

- **Public Servants:**
  - PSCBC Resolution No.1 of 2003.
  - South African Schools Act, 1996 (16A(2)(e)).

- **Other provisions:**
  - South African Schools Act, 1996 (s. 16A(3)).
  - 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.
- LRA’s Schedule 8 - Code of Good Practice: Dismissals – not necessary to communicate well established rules.
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

COMPLAINT

INVESTIGATION & PREPARATION

MEETING/HEARING

OUTCOME
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 into the Public Service Act may appeal any decision into 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 ito 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

- Counselling & on the job advice
- Informal discipline: discipline short of dismissal
- Formal discipline

- Counselling
- Verbal Warning
- Written warning
- Final written warning
- Dismissal

Seriousness of offence
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.
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
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.
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

**Incident/complaint**

**Investigation**

**Notice of meeting**
- **Representa**
- **Opportunity to state case**

**Meeting**
- **Representation**
- **Opportunity to state case**

**Finding**

- **Guilty**
- **Not guilty**

**Mitigation/aggravation**

**Sanction**
- **Reasons for finding**
- **Right to object/appeal**

Formal hearing:
- Serious misconduct
- Corporal punishment
- Priority cases
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.
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.
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 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
• 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: PROGRESSIVE DISCIPLINE  
(ITEM 4 OF SCHEDULE 4 OF THE EMPLOYMENT OF EDUCATOR’S ACT, 1998 (AS AMENDED))

OFFICE/DISTRICT: ______________________  MONTH: ______________________

<table>
<thead>
<tr>
<th>DETAILS OF EMPLOYEE &amp; OFFENCE</th>
<th>Verdict (✓ tick applicable)</th>
<th>Sanction (✓ tick applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of school/ institution</td>
<td>Guilty</td>
<td>Final written</td>
</tr>
<tr>
<td>Employee surname</td>
<td>Not guilty</td>
<td>discipline</td>
</tr>
<tr>
<td>Initials</td>
<td>Counselling</td>
<td>taken in my institution/office within the period stated.</td>
</tr>
<tr>
<td>Persal number</td>
<td>Verbal</td>
<td></td>
</tr>
<tr>
<td>M/F</td>
<td>Written</td>
<td></td>
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<tr>
<td>Race (A,J,C,W)</td>
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<tr>
<td>Rank</td>
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<tr>
<td>Salary level</td>
<td></td>
<td></td>
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<tr>
<td>Nature of alleged misconduct</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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