Circular 65/2007
Date: 10 September 2007

Topic
Management of Employee Discipline by Managers (Supervisors)

Enclosures
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Distribution
✓ Deputy Director Generals
✓ Chief Directors
✓ Directors at Head Office and District Offices
✓ Principals
✓ Members of School Governing Bodies
✓ Teacher Unions and Organisations
✓ College Councils

Enquiries
Relevant Labour Relations Officer at District Office

On request, this circular will be made available in Afrikaans, isiZulu or Sepedi within 21 days
Also available on the GDE website at: www.education.gpg.gov.za

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MANAGEMENT OF EMPLOYEE DISCIPLINE BY MANAGERS (SUPERVISORS)

1. INTRODUCTION

Exercising discipline is the one the responsibilities of all managers at all levels. The labour relations office must, as in the case of most other human resource management practices, render a support service to line managers. Labour relations officers will to a certain extent have to facilitate the formal process of disciplinary inquiries. They can, however, not take over the responsibility for discipline from managers.

2. PURPOSE

The purpose of this circular is to:

2.1 indicate the specific responsibilities and authority of managers.

2.2 clarify the procedures relating to discipline and disciplinary inquiries.

2.3 provide practical guidelines to managers on administering the relevant processes.

2.4 provide standardised formats of forms and letters to be utilised during these processes.

3. LEGAL FRAMEWORK

3.1 Public Service Act, (Act no. 103 of 1994) as amended.

3.2 PSCBC Resolution No. 2 of 1999.

3.3 PSCBC Resolution No. 1 of 2003.

3.4 PSCBC Resolution No. 4 of 2000.

3.5 Public Service Regulations.

3.6 Employment of Educators Act (Act no. 76 of 1998).

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

3.8 Labour Relations Act (Act no. 66 of 1995).

3.9 Schedule 8 of the Labour Relations Act (Act no. 66 of 1995).
4. DEFINITIONS

4.1 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.

4.2 Representation

May include a fellow employee, a trade union representative or official of a recognised trade union.

4.3 Supervisor (Manager)

Includes any person whose function and responsibility it is to monitor performance or discipline within a defined workplace, unit or section.

5. DEFINING MISCONDUCT

5.1 What Constitutes Misconduct?

5.1.1 Employers and employees should treat one another with mutual respect.

5.1.2 The Labour Relations Act of 1995 places a premium on both employment justice and the efficient operation of an organisation. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

5.1.3 Non-compliance with, or transgressions of stated and acceptable performance standards and standards of conduct would constitute misconduct.

5.1.4 The purpose of discipline is to maintain acceptable standards of behaviour and performance in a fair manner. The employer may set standards by means of applicable legislation, job descriptions, procedure guides, performance standards, circulars, etc.

5.2 Employees Employed in Terms of the Public Service Act, 1994

5.2.1 Annexure A of PSCBC Resolution No. 1 of 2003 contains a list describing actions of an employee that may be regarded as misconduct. This list is not exhaustive and managers may discipline employees for other unacceptable conduct.

5.2.2 Any contravention of the Public Service Code of Conduct as contained in the Public Service Regulations may also constitute an act of misconduct.
5.3 **Employees Employed in Terms of the Employment of Educators Act, 1998**

5.3.1 Sections 17 and 18, as well as Schedule 2 of the Employment of Educators Act, 1998 regulate misconduct for educators.

5.3.2 Section 17(1) provides that an educator must be dismissed if he or she is found guilty of the transgression listed in that section.

5.3.3 Section 17(2) states that formal disciplinary proceedings must be instituted if it is alleged that an educator committed any of these serious offences.

5.3.4 Section 18(1) lists some of the acts or omissions that are regarded as misconduct.

5.3.5 Section 18(1)(a) makes provision for an educator to be charged with misconduct if he or she fails to comply with or contravenes any other statute, regulation or legal obligation relating to education and the employment relationship. This section provides for statutory offences in terms of the *Public Finance Management Act*, *South African Schools Act*, *Child Care Act*, *the Constitution*, *Sexual Offences Act*, *Prevention of Family Violence Act*, as well as infringement of conventions e.g. the *African Charter on the Rights and Welfare of the Child* and the *UN Convention of the Rights of the Child*.

5.3.6 The definition of misconduct is therefore not limited to the offences in Sections 17 and 18 of the Employment of Educators Act, 1998.

6. **MISCONDUCT PROCEDURE IN TERMS OF THE PUBLIC SERVICE ACT, 1994 (RESOLUTION 1 OF 2003)**

6.1. **Informal Disciplinary Procedure**

   For less serious forms of misconduct, no formal inquiry shall be held.

   **6.1.1 Corrective Counselling**

   6.1.1.1 If the seriousness of the misconduct warrants counselling, the manager (supervisor) of the employee must follow the steps in paragraph 5.1 of Resolution 1 of 2003.

   6.1.1.2 The nature of the misconduct and counselling given must be recorded and such record must be acknowledged and signed by both parties.
6.1.2 Verbal Warnings

6.1.2.1 If the seriousness of the misconduct warrants a verbal warning, the manager of the employee may give a verbal warning that has to be reduced in writing and signed by both parties for record purposes.

6.1.3 Written Warning

6.1.3.1 The format of Written Warning (PS) (Annexure B) is prescribed for a written warning and the procedure to be followed is outlined in paragraph 5.3 of the Resolution.

6.1.3.2 The manager must give a copy of the written warning to the employee, who must acknowledge receipt of it.

6.1.3.3 If the employee refuses to sign, the manager’s warning must be handed to the employee in the presence of another employee. In such a case both the supervisor and witness must sign in confirmation that the written warning and the contents thereof were conveyed to the employee.

6.1.4 Final Written Warning

6.1.4.1 The final written warning must be recorded in the format of Annexure C (Final written warning).

6.1.4.2 It must be filed in the employee’s personal file and will remain valid for six (6) months, after which it must be removed from the employee’s personal file and destroyed.

6.1.4.3 If, during the six-month period, the employee commits the same or related offence, the matter must be referred to the District Office for employees at schools. Similarly for officials employed at FET institutions, District Offices or Head Office, the matter must be referred to the Directorate: Labour Relations at Head Office for formal disciplinary action.

6.1.4.4 The manager (supervisor) must inform the employee that further misconduct may result in more serious, formal disciplinary action. (See paragraph 5.4 of the Resolution.)

6.2 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: Labour Relations for the employer to appoint an employee as a representative to initiate the formal disciplinary inquiry.
7. MISCONDUCT PROCEDURE IN TERMS OF THE EMPLOYMENT OF EDUCATORS ACT, 1998

7.1. Informal Disciplinary Procedure

For less serious forms of misconduct, no formal inquiry shall be held. The procedure to deal with less serious misconduct cases is dealt with in paragraph 4 of Schedule 2 of the Employment of Educators Act, 1998.

7.1.1 Delegation of Authority

The function to deal with less serious misconduct (item 4 of Schedule 2 of the Employment of Educators Act, 1998) is hereby delegated 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.

7.1.2 Specific Acts of Misconduct

The specific acts of misconduct to be dealt with under the delegation referred to above is listed in Annexure D, but the list is just a guide and is not exhaustive. Also refer to Annexure E (PS & CS) for less serious acts of misconduct.

7.1.3 Corrective Counselling

If the seriousness of the misconduct warrants counselling, the manager (supervisor) of the employee must follow the steps in item 4(2) of Schedule 2 of the Employment of Educators Act, 1998.

7.1.4 Verbal Warnings (Item 4(3) of the Employment of Educators Act, 1998)

If the seriousness of the misconduct warrants a verbal warning, the manager (supervisor) of the employee may give a verbal warning that has to be reduced in writing and signed by both parties for record purposes.

7.1.5 Written Warning

7.1.5.1 Form A (CS) is prescribed for a written warning and the procedure to be followed is outlined in item 4(4) of the Employment of Educators Act, 1998.
7.1.5.2 The manager must give a copy of the written warning to the employee, who must acknowledge receipt of it. If the employee refuses to sign, the manager's warning must be handed to the employee in the presence of another employee, and both supervisor and witness must sign in confirmation that the written warning and the contents thereof were conveyed to the employee.

7.1.5.3 The written warning must be filed in the educator's personal file.

7.1.5.4 A written warning remains valid for six (6) months. If during the six-month period the educator is subject to disciplinary action, the written warning may be taken into account in deciding on an appropriate sanction.

7.1.5.5 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. The information and/or objection must be filed with the written warning.

7.1.6 **Final Written Warning**

7.1.6.1 The final written warning must be recorded on Form B (CS).

7.1.6.2 The procedure to be followed is similar to that of a written warning and is outlined in item 4(5) of the Employment of Educators Act, 1998.

7.1.7 **Informal Disciplinary Meeting**

7.1.7.1 If the alleged misconduct justifies a more serious form of disciplinary action, the matter must be dealt with in terms of item 4(6) of Schedule 2 of the Employment of Educators Act, 1998.

7.1.7.2 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 for misconduct.

7.1.7.3 After hearing the educator or his or her representative, the employer must:
(i) counsel the educator; or
(ii) issue a verbal warning; or
(iii) issue a written warning; or
(iv) issue a final written warning; or
(v) impose a combination of any of the above; or
(vi) take no further action.

7.1.7.4 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. The objection or additional information must be filed together with a record of the sanction in the educator’s personal file.

7.1.7.5 For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator must be taken into account. Annexure E (PS & CS) serves as guide in determining sanctions at informal disciplinary meetings.

7.1.7.6 A suggested procedure for this disciplinary meeting is attached as Annexure F (CS).

7.2. 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: Labour Relations for the employer to appoint an employee as a representative to initiate the formal disciplinary inquiry to be dealt with in terms of items 5 to 9 of Schedule 2 of the Employment of Educators Act, 1998.

8. SANCTIONS

8.1 Managers should take care that the sanction is appropriate.

8.2 When imposing a disciplinary sanction the manager must act consistently and follow a fair procedure.

8.3 If a manager acts unfairly, he or she is potentially guilty of an unfair labour practice.

8.4 The circumstances in which an offence occurs must be taken into account in determining appropriate disciplinary action. The substance rather than the form of the offence is important.

8.5 Premeditation makes the offence more serious.
8.6 Factors to consider when deciding on the sanction may include:

- 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;
- the initial response of the employee;
- the scale of the offence; and
- the impact of the offence on the employment relationship.

8.7 Managers must give due consideration to mitigatory and aggravating factors in determining the appropriate disciplinary sanction.

8.8 Aggravating factors in deciding whether the reason for dismissal is fair may include:

- wilfulness on the part of the employee;
- lack of remorse;
- previous valid warnings or a long record of infringements; or
- the employer having previously brought the seriousness of the relevant infringement to the attention of the employee.

8.9 Mitigating factors may include:

- long service;
- previous exemplary service even if the period of service is relatively short;
- an unblemished disciplinary record;
- remorse;
- coercion by fellow employees to commit the infraction;
- the employee acting out of fear for his or her own safety; and
- the employee’s personal circumstances.

8.10 While an employer must consider aggravating and mitigating factors, the nature of the job and the circumstances of the infringement are more significant than the employee’s personal circumstances.

MALLELE PETJE
HEAD OF DEPARTMENT
Annexure A

ACTS OF MISCONDUCT

Annexure A of PSCBC Resolution 1 of 2003

An employee will be guilty of misconduct if she or he, among other things (this list is not exhaustive):

- Fails to comply with, or contravenes an Act, regulation or legal obligation.
- Wilfully or negligently mismanages the finances of the State.
- Without permission possesses or wrongfully uses the property of the State, another employees and/or a visitor.
- Wilfully, intentionally or negligently damages and or causes loss of state property.
- Endangers the lives of self or others by disregarding safety rules or regulations.
- Prejudices the administration, discipline or efficiency of a department, office or institution of the State.
- Misuses his or her position in the public service to promote or to prejudice the interest of any political party.
- Steals, bribes or commits fraud.
- 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.
- 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.
• Carries or keeps firearms or other dangerous weapons on state premises, without the written authorisation of the employer.
• Refuses to obey security regulations.
• Gives false statements or evidence in the execution of his or her duties.
• Falsifies records or any other documentation.
• Participates in unprocedural, unprotected and/or unlawful industrial action.
• Commits a common law or statutory offence while on state premises.

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**;

(ff) **victimises** an employee for, amongst others, his or her association with a trade union.
WRITTEN WARNING (PS)

[DATE]

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, the 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. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is:

If you object the warning, you may direct an appeal to [name] within five working days.

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF MANAGER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE
[DATE]
[NAME OF EMPLOYEE]
[PERSONAL DETAILS OF THE EMPLOYEE]

This is a final written warning in terms of the disciplinary procedure. Should you engage in further transgressions, 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. After six months the written warning will be removed from your personal file and be destroyed.

The nature of the misconduct is;

If you object the warning, you may direct an appeal to [name] within five working days.

SIGNATURE OF EMPLOYEE
DATE

SIGNATURE OF REPRESENTATIVE OF THE EMPLOYER
DATE

SIGNATURE OF WITNESS (If applicable)
DATE
Annexure D

LESS SERIOUS MISCONDUCT (CS)

Misconduct refers to a breakdown in the employment relationship and an educator may commit misconduct if he or she is guilty of, for example—

- Failing to carry out a lawful order or routine instruction without just or reasonable cause;
- Absenteeism without a valid reason or permission;
- Poor performance for reasons other than incapacity;
- Sleeping on duty;
- Being under the influence of an intoxicating, illegal, unauthorised or stupefying substance, including alcohol;
- Improper, disgraceful or unacceptable behaviour while on duty, or
- Displaying disrespect towards others in the work-place or demonstrates abusive or insolent behaviour.
WRITTEN WARNING (CS)

[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

FINAL WRITTEN WARNING (CS)

[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
GUIDE FOR DETERMINING SANCTIONS

The summary that follows gives a guideline of what could be considered an appropriate sanction for a first offence. Whether a lesser or harsher sanction will be imposed depends on many factors, such as the gravity of the offence, circumstances surrounding the offence, mitigating and/or aggravating factors, whether the employment relationship has irretrievably broken down, whether the trust relationship between employer and employee has been breached, etc.

The proposed sanctions that follow serves as a guidelines only.

<table>
<thead>
<tr>
<th>ACT OF MISCONDUCT</th>
<th>PROPOSED SANCTION</th>
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<tbody>
<tr>
<td></td>
<td>1st offence</td>
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<tr>
<td>Isolated incidents of absence with little effect on the employer’s operations or absence of limited duration, e.g. absence from place of work without permission</td>
<td>Counseling</td>
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<td>Reporting late for duty and failing to improve the practice after verbal reprimands</td>
<td>Written warning</td>
</tr>
<tr>
<td>Extended absence from duty: PS - in excess of 1 (one) calendar month as per section 17(1)((5)(a) of the Public Service Act, 1994 CS – in excess of 14 (fourteen) consecutive days as per section 14(1)(a) of the Employment of Educators Act, 1998</td>
<td>Follow the prescribed procedure and refer the case to District Office to treat as abscondment (desertion).</td>
</tr>
<tr>
<td>Willful or prolonged absence which affects orderly operation of the employer’s operations</td>
<td>Final written warning</td>
</tr>
<tr>
<td>Absence that displays disregard for agreements or procedures where dishonesty or insubordination underlies the absence (e.g. fraudulent medical certificate)</td>
<td>*Formal disciplinary enquiry</td>
</tr>
</tbody>
</table>

* Formal disciplinary enquiry – refer all these cases of serious misconduct to the relevant District Labour Relations Officers for a formal disciplinary enquiry in terms of (a) item 5 of Schedule 2 of the Employment of Educators Act, Act 76 of 1998, as amended or (b) item 7 of PSCBC Resolution No. 1 of 2003. Sanctions effected at a formal disciplinary hearing can be anything between warnings and dismissal.
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<tr>
<td>Abusive language</td>
<td>Depends on the practices and circumstances of a workplace. A distinction should be made between rude language and language which undermines the authority of the employer.</td>
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<td></td>
<td>Abusive language directed at superior may constitute insolence/insubordination</td>
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<td></td>
<td>Racial abuse and sexually abusive remarks constitute serious misconduct</td>
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<tr>
<td>Assault and Fighting</td>
<td>Assault of a serious nature</td>
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<td></td>
<td>Threat of assault</td>
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<td></td>
<td>Assault which has racial undertones</td>
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<td></td>
<td>Assault on a superior</td>
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<td></td>
<td>Fighting in the presence of public/learners</td>
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<tr>
<td>Conflict of interests</td>
<td>An employee is obliged to maintain good faith and to further the employer’s interests. The degree of dishonesty and potential prejudice to the employer are relevant:</td>
</tr>
<tr>
<td></td>
<td>Making secret profits</td>
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<td>Additional employment which interferes with the employee’s normal work</td>
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<td></td>
<td>Moonlighting without employer’s permission or in breach of a prohibition</td>
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<tr>
<td></td>
<td>Where employee has an interest in an entity which has dealings with the employer</td>
</tr>
</tbody>
</table>

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<tr>
<td></td>
<td>1(^{st}) offence</td>
</tr>
<tr>
<td><strong>Damage to property</strong></td>
<td>An employee is obliged to exercise reasonable care when using departmental property:</td>
</tr>
<tr>
<td>Malicious damage to company property</td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td>Disregard of safety rules which holds potential damage to property and/or safety of others</td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td><strong>Disclosing confidential information</strong></td>
<td>An employee is obliged to maintain <em>bona fides</em> and not to disclose confidential information. Disclosure constitutes a serious breach of the trust relationship</td>
</tr>
<tr>
<td><strong>Dishonesty</strong></td>
<td>Any form of dishonesty jeopardises the trust relationship:</td>
</tr>
<tr>
<td>Making false statements</td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td>Withholding relevant information</td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td>Falsifying documents</td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td>Failure to disclose secret commission/ profit or receipt of gifts</td>
<td>*Formal disciplinary enquiry</td>
</tr>
</tbody>
</table>

* Formal disciplinary enquiry – refer all these cases of serious misconduct to the relevant District Labour Relations Officers for a formal disciplinary enquiry in terms of (a) item 5 of Schedule 2 of the Employment of Educators Act, Act 76 of 1998, as amended or (b) Item 7 of PSCBC Resolution No. 1 of 2003. Sanctions effected at a formal disciplinary hearing can be anything between warnings and dismissal.
<table>
<thead>
<tr>
<th>ACT OF MISCONDUCT</th>
<th>PROPOSED SANCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1st offence</td>
</tr>
<tr>
<td><strong>Drug and alcohol use</strong></td>
<td></td>
</tr>
<tr>
<td>Under the influence of alcohol or</td>
<td>Written</td>
</tr>
<tr>
<td>drugs (refer to EAP if applicable)</td>
<td>warning</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Drinking on duty (refer to EAP if</td>
<td>*Formal</td>
</tr>
<tr>
<td>applicable)</td>
<td>disciplinary enquiry</td>
</tr>
<tr>
<td>In possession of drugs or the use</td>
<td>Written</td>
</tr>
<tr>
<td>thereof (refer to EAP if applicable)</td>
<td>warning</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Alcohol level exceeds prescribed</td>
<td>Written</td>
</tr>
<tr>
<td>level (refer to EAP if applicable)</td>
<td>warning</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fraud</strong></td>
<td></td>
</tr>
<tr>
<td>The intention to defraud the employer</td>
<td></td>
</tr>
<tr>
<td>and actual or potential prejudice</td>
<td></td>
</tr>
<tr>
<td>must be proved.</td>
<td></td>
</tr>
<tr>
<td>Fraudulently non-disclosure of</td>
<td>*Formal</td>
</tr>
<tr>
<td>relevant information</td>
<td>disciplinary enquiry</td>
</tr>
<tr>
<td>Making secret profits at the expense</td>
<td>*Formal</td>
</tr>
<tr>
<td>of the employer</td>
<td>disciplinary enquiry</td>
</tr>
<tr>
<td>Failing to disclose a previous</td>
<td>*Formal</td>
</tr>
<tr>
<td>dismissal where the employee would</td>
<td>disciplinary enquiry</td>
</tr>
<tr>
<td>not have been employed had the true</td>
<td></td>
</tr>
<tr>
<td>facts been known</td>
<td></td>
</tr>
<tr>
<td><strong>Insolence and insubordination</strong></td>
<td></td>
</tr>
<tr>
<td>Insolence (disrespect, rudeness,</td>
<td>Written</td>
</tr>
<tr>
<td>cheekiness)</td>
<td>warning</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Insubordination (defiance, disobeying</td>
<td>Written</td>
</tr>
<tr>
<td>lawful and reasonable instructions,</td>
<td>warning</td>
</tr>
<tr>
<td>undermining employer’s authority)</td>
<td></td>
</tr>
</tbody>
</table>

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<th>PROPOSED SANCTION</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1(^{st}) offence</td>
</tr>
<tr>
<td><strong>Intimidation</strong></td>
<td>*Formal disciplinary enquiry</td>
</tr>
<tr>
<td><strong>Negligence</strong></td>
<td>Means a failure to comply with the standards of care exercised by a reasonable person. Gross negligence, such as severe loss or damage caused by negligence, justifies holding a formal disciplinary enquiry.</td>
</tr>
<tr>
<td><strong>Poor performance (other than incapacity)</strong></td>
<td>Deliberate sub-standard performance of any form, e.g. loafing or inefficiency.</td>
</tr>
<tr>
<td><strong>Sleeping on duty</strong></td>
<td>Is similar to failing to do one's work.</td>
</tr>
<tr>
<td><strong>Offences involving government vehicles</strong></td>
<td>Driving a government vehicle without license, negligent or dangerous driving, driving under the influence, carrying passengers without permission</td>
</tr>
<tr>
<td><strong>Sexual harassment</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Smoking in a non-designated and/or unsafe area</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Theft/unauthorised possession of departmental property</strong></td>
<td>Theft (i.e. the intention to permanently deprive another of his property)</td>
</tr>
</tbody>
</table>

• Formal disciplinary enquiry – refer all these cases of serious misconduct to the relevant District Labour Relations Officers for a formal disciplinary enquiry in terms of (a) item 5 of Schedule 2 of the Employment of Educators Act, Act 76 of 1998, as amended or (b) item 7 of PSCBC Resolution No. 1 of 2003. Sanctions effected at a formal disciplinary hearing can be anything between warnings and dismissal.
PROCEDURE FOR DISCIPLINARY MEETING (CS)

Schedule 2 of the Employment of Educators Act: Item 4(6)

Disciplinary Code and Procedures for Educators

(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.
## TURNAROUND TIMES

### Serious Misconduct

<table>
<thead>
<tr>
<th>Activity</th>
<th>Expectation of [LR Unit]</th>
<th>Source</th>
<th>Target</th>
<th>Performance Metric</th>
<th>Expectation of the school</th>
<th>Performance Metric</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>To report misconduct</td>
<td>To receive a written request for charges from the school / HO or DO line function</td>
<td>Hand delivery, fax or email</td>
<td>Within 3 working days of the transgression or of the matter being reported to the Principal or Unit Head</td>
<td>Letter of referral</td>
<td>Assignment of an officer to investigate the allegations contained in the request</td>
<td>Letter of confirmation of appointment of investigating officer</td>
<td>Within 3 working days of the matter being reported to the LR unit</td>
</tr>
<tr>
<td>To initiate an investigation</td>
<td>The school or reporting unit must secure the availability of potential witnesses and relevant documentary material</td>
<td>To be finalised within 3 working days of the appointment of the I/O</td>
<td>Meeting between the witnesses and the I/O</td>
<td>Final report on the investigation</td>
<td>Final report on the investigation</td>
<td>Within 3 working days of the finalization of the investigation</td>
<td></td>
</tr>
<tr>
<td>To recommend charges of misconduct to head office LR Directorate</td>
<td>To receive charge sheet from head office</td>
<td>Hand delivery, fax or email</td>
<td>Within 3 working days after the finalization of the investigation report</td>
<td>Referral of misconduct</td>
<td>Charge sheet</td>
<td>Within 15 working days of receipt of recommendation for charges</td>
<td></td>
</tr>
<tr>
<td>To initiate a disciplinary hearing</td>
<td>To receive letters appointing the initiator and the P/O</td>
<td>Hand delivery, fax or email</td>
<td>Within 1 day of receipt of charge sheet</td>
<td>Letter of appointment of initiator and P/O</td>
<td>To receive notice of set down at least 5 days before the hearing</td>
<td>Sitting of the disciplinary hearing</td>
<td>Within 5 working days of service of charge sheet</td>
</tr>
<tr>
<td>To conclude the hearing</td>
<td>To receive the decision of the PO</td>
<td>Hand delivery, fax or email</td>
<td>Within 5 days of the conclusion of the hearing</td>
<td>Documented decision of the PO</td>
<td>Hearing should last for at least 5 consecutive days</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**Note:** The table outlines the turnaround times for various activities related to serious misconduct in an educational setting.
## Less Serious Misconduct

<table>
<thead>
<tr>
<th>Activity</th>
<th>Expectation of [LR Unit]</th>
<th>Source</th>
<th>Target</th>
<th>Performance Metric</th>
<th>Expectations of the school</th>
<th>Performance Metric</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>To report on discipline</td>
<td>To receive a quarterly report regarding informal disciplinary hearings that took place</td>
<td>Hand delivery, fax or email</td>
<td>At the end of each quarter</td>
<td>Disciplinary hearing report</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To initiate a disciplinary hearing</td>
<td>The Principal or unit head must convene a disciplinary meeting</td>
<td>Written notice</td>
<td>Within 3 days of the transgression</td>
<td>Disciplinary hearing meeting</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To conclude the hearing</td>
<td></td>
<td></td>
<td>Within 5 days of the transgression</td>
<td>Filed and signed decision of the disciplinary meeting</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>