



**DEPARTMENT OF EDUCATION &
SPORT DEVELOPMENT, NORTH WEST**

MANAGERS DISCIPLINING MANUAL

IN RESPECT OF

CS EDUCATORS

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MANAGERS DISCIPLINING MANUAL IN RESPECT OF CS EDUCATORS

1. PURPOSE OF MANUAL

The purpose of this Manual is to –

- 1.1 provide practical guidelines to managers, in their role as supervisors, on managing discipline;
- 1.2 elucidate certain principles applicable to misconduct and incapacity;
- 1.3 identify different role-players and their responsibilities in this regard;
- 1.4 provide a brief overview of the processes involved in regard to misconduct and incapacity/inefficiency;
- 1.5 indicate the specific responsibilities of managers in regard to disciplining; and
- 1.6 provide practical hints, where appropriate, on how to deal with relevant issues.

2. GENERAL NOTES

- 2.1 Disciplining refers to those activities that are undertaken with the view to correct behavioural and/or performance deviations from set norms or standards in the workplace. The two main procedures involved are those relating to misconduct and incapacity and these procedures are dealt with separately in the Manual.
- 2.2 Disciplinary actions also provide for correcting deviating behaviour and/or performance.
- 2.3 A transgression by an educator requiring that corrective action be taken, can consist of a specific act or omission on the part of the educator.
- 2.4 Managing effective discipline is an ongoing process that interfaces with a number of other human resource practices, i.e.
 - managing probationary appointments;
 - establishing job descriptions, procedure guides and performance standards;

- performance management; and
 - training and development.
- 2.5 In general terms, transgressions that will require corrective actions can be placed in two categories, viz. –
- deviations from performance standards;
 - or
 - behavioural deviations from set rules and norms or from normative standards.
- 2.6 Where the facts related to an alleged transgression point to deliberate neglect of duty, non-compliance with prescripts or gross negligence, the misconduct procedure will normally be applied.
- 2.7 Where the educator's conduct reflects an inability to comply with qualitative and/or quantitative performance standards after having been provided with sufficient guidance in regard to his/her duties, the educator's incapacity should be investigated.
- 2.8 Supervisors (all levels) must accept and carry out their responsibility to enforce and maintain discipline.
- 2.9 Educators must subject themselves to the disciplinary rules and procedures and must ensure that they are conversant with what is expected from them.
- 2.10 Supervisors should, within reasonable limits, ensure that staff members are aware of and understand what is expected of them in terms of rules and performance and behavioural standards that they have to comply with.
- 2.11 The focus must in the first instance be on the problem and not the person who has transgressed.
- 2.12 Emphasis should be placed on corrective measures rather than punitive measures but punitive measures shall serve as the vehicle to correct deviations from the norm, where required.
- 2.13 Problems must be addressed at the earliest possible stage and disciplinary action should not be withheld until a problem situation has grown out of proportion.
- 2.14 Supervisors should ensure that they are fully acquainted with the facts before they act.
- 2.15 Apply the *audi alteram partem*-rule in all instances - listen to and consider the other party's explanation/ response before action is taken. This should be done in writing for record purposes. Where the supervisor is involved as a first party, this should be dealt with at a higher level.

- 2.16 All actions taken and the procedure followed, must be fair - this is referred to as substantive and/or procedural fairness.
- 2.17 Punishment, if appropriate, must be handed out even-handedly - there ought to be consistency in handing down punishment for comparable transgressions.
- 2.18 Ensure that the requirements of prescripts are fully understood before acting.
- 2.19 Recognise the basic rights of an educator who is being disciplined –
- to be heard;
 - to be represented or assisted by a fellow educator or a representative of a trade union;
 - to have reasonable access to relevant documents to prepare a proper defence; and
 - to have his/her case considered objectively.
- 2.20 Apply the mind to the case/facts and do not prejudge a case.
- 2.21 Do not exceed authority - the fairness and validity of an action or the process can be jeopardised if authorised persons performs unauthorised actions.
- 2.22 Utilise the disciplinary procedure to address a specific identified problem only - do not engage in such actions with ulterior motives.
- 2.23 The following golden rules could be considered:
- Set and maintain standards.
 - Ensure that staff members are aware of and, within reasonable limits, understand and adhere to standards that have been set.
 - Undertake continuous monitoring of staff members' performance.
 - Act at an early stage if deviations are detected.
 - Be specific in regard to what a transgression/ shortcoming entails and how re-occurrence can be prevented and shortcomings can be overcome.
 - Allow the educator opportunity to improve - where applicable.
 - Allow the educator to respond to any allegation and consider the response.
 - If the desired effect is not elicited - act swiftly in instituting formal procedures.
 - Ensure that all relevant prescripts are fully complied with.

3. WHICH STAFF GROUPS ARE COVERED BY THIS MANUAL

- 3.1 This Manual covers educators appointed in terms of the Employment of Educators Act, No. 76 of 1998.
- 3.2 Please note that references to “managers” and “supervisors” are used interchangeable in this Manual. The subordinates of a specific manager are referred to as “staff members.”
- 3.3 The relevant acts and related consequential prescripts, contain standards of behaviour or conduct as well as specific procedures to be followed in regard to formal disciplinary procedures and incapacity inquiries.
- 3.4 Reference is made to “the employer” in many cases with regard to the execution of powers or the performance of roles. These references cannot be made in more detail at this stage. It will depend on the delegations of powers and the allocation of roles in a specific department on who will have to perform the functions.

4. ORIGIN OF EMPLOYER’S POWERS

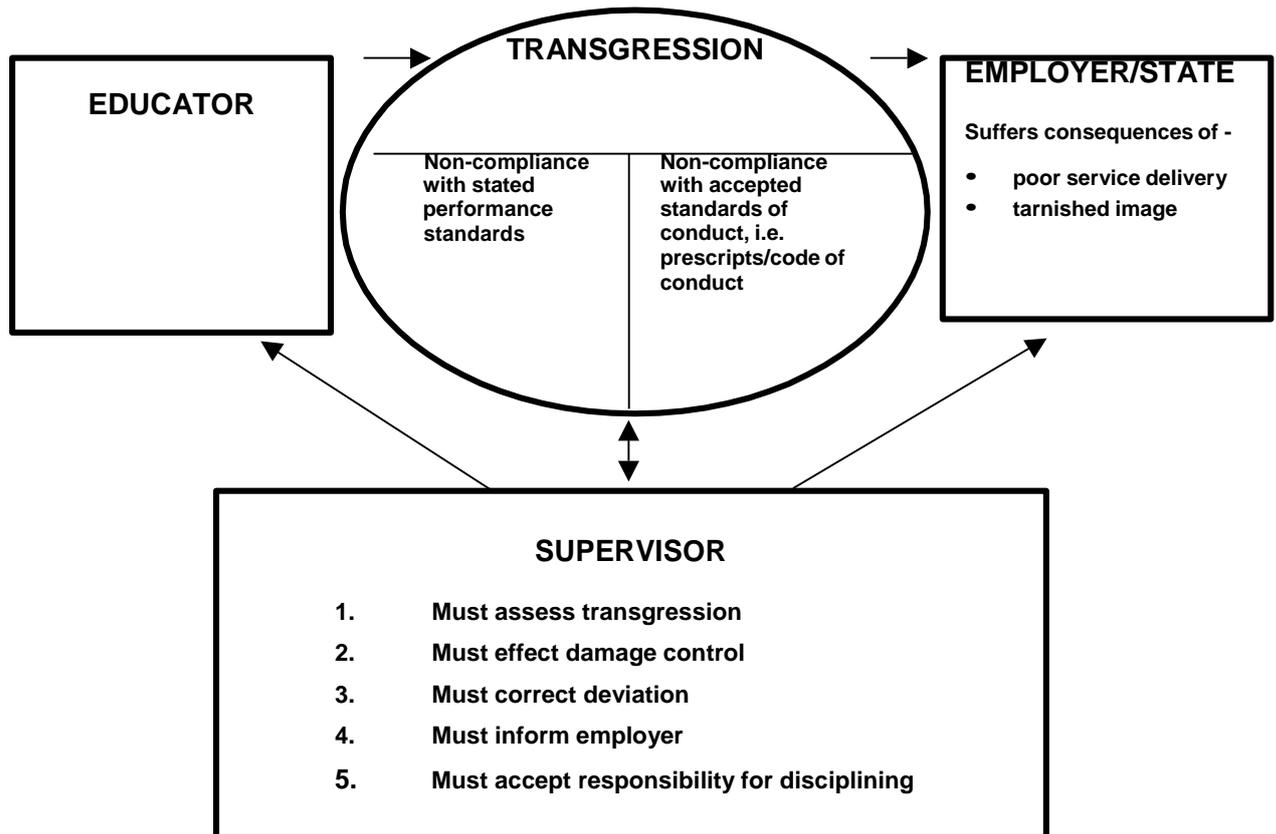
- 4.1 The authority to act against incapable educators and educators who make themselves guilty of misconduct and the approach and procedure to be followed in this regard, are found in –
- sections 11(1)(d) and (e), 14, 16, 17, 18 and 25 and Schedules 1 and 2 of the Employment of Educators Act 76 of 1998; and
 - applicable directives issued by the Director-General of Education at national level and/or the head of the relevant Department of Education.
- 4.2 This manual must at all times be read with and applied within the context of relevant statutory and related prescripts, with due consideration to appropriate principles contained in Labour, Common and Administrative Law.

5. RESPONSIBILITIES OF DIFFERENT ROLE-PLAYERS

- 5.1 The responsibility to ensure that sound discipline is managed in a department, vests with –
- the head of department in the first instance;
 - managers (supervisors) at all levels as custodians of the interests of the State as Employer and in terms of delegated powers (where applicable);
 - staff functionaries (personnel and labour relations practitioners) who have the responsibility of providing suitable policy and advice to line functionaries and to assist them where and when required to do so; and

- educators who are appointed in terms of the relevant prescripts to conduct investigations into misconduct, officiate at misconduct hearings/inquiries and inquiries into incapacity as presiding officers of such inquiries or as prosecutors. They have to ensure that due (fair) process is followed in accordance with the prescripts.

5.2 The central role that supervisors at all levels have to fulfil in managing discipline, cannot be over-emphasized and can best be explained based on the following illustration:



6. MISCONDUCT

6.1 INTRODUCTION

Misconduct is regulated by the EEA, Sections 17, 18 and 25 as well as Schedule 2 are very important and managers must take great care to ensure that the provisions are complied with.

6.2 GENERAL

(a) Role of Manager

The manager's (supervisor's) involvement in the total process is crucial. Whereas there is a number of other role-players who will assist in carrying out certain activities, managers remain responsible to ensure that proper disciplining takes place.

(b) Identifying/detecting and reporting an alleged transgression

- (i) Incidents of alleged misconduct can come to the attention of a supervisor or the department in different ways, i.e. –
- through the monitoring/control/inspection functions that supervisors have to exercise in respect of staff members;
 - through the control functions exercised by staff functionaries such as departmental officials, internal auditors, transport officials or financial control staff;
 - through reports by the Auditor-General;
 - through complaints emanating from a member of the public or colleagues;
 - through a referral from the Public Protector or a provincial public protector;
 - through inspections carried out by staff attached to Circuits, Areas, Districts or Regional Offices; or
 - through reports from the courts where an employee/educator has been prosecuted.
- (ii) As will be evident from the above, the supervisor might not always be the first person to become aware of such an incident. The Public Protector will, for instance, normally direct his/her correspondence to the head of department.
- (iii) It is extremely important that the person who first detects or receives a complaint/report on an incident of alleged misconduct, shall obtain as much information as is possible to enhance the further possible actions to follow, without entering into the process of initiating a formal disciplinary enquiry.
- (iv) In practical terms this means that if a member of the public should for instance lodge a complaint on the conduct of an educator, a sworn affidavit or declaration reflecting the date on that the alleged transgression took place, the venue, a detailed version of the actions of the educator, the involvement of other educators or employees (if applicable) and particulars of witnesses, should be obtained. Copies of relevant documents must also be obtained.

- (v) The central role that a supervisor must play in maintaining discipline in respect of staff members must at all times be acknowledged and honoured. He/she must be informed of the matter as soon as possible where the incident was not detected by or reported to the supervisor herself/himself. The supervisor's opinion on whether a disciplinary enquiry/a further investigation of the matter is required or not, should also be obtained.
- (vi) Where a supervisor initiates actions related to a possible disciplinary enquiry/charge of misconduct, that supervisor must submit the matter via the normal channels to the Labour Relations: Directorate/ Sub-Directorate. A standardised format of a submission that can be used for this purpose is appended as Annexure G.
- (vii) Supervisors must provide the Labour Relations: Directorate/ Sub-Directorate with all relevant information and documents and must also make a recommendation whether a further investigation of the matter is required.
- (viii) Care must be taken not to propose further investigation of the matter where prima facie evidence exists merely to avoid taking action. It is expected from supervisors to, as far as possible within the normal constraints experienced within an organisation, investigate and obtain all relevant facts relative to an alleged transgression. If sufficient evidence is available to initiate a disciplinary enquiry/to continue with a charge of misconduct, the supervisor must also indicate what the contents of the charges should be.
- (ix) If circumstances should require it, the question of suspension or temporary transfer of the relevant educator will also have to be addressed by the supervisor and this matter will then have to be included in the submission on further action as a recommendation.
- (x) The manager in charge of a specific component, school, etc, where such a manager is not the direct supervisor of the educator against whom a disciplinary enquiry is being initiated/educator being charged, will naturally be involved in all relevant activities and all correspondence entering or leaving that component will flow through him/her.
- (xi) The Labour Relations: Directorate/ Sub-Directorate will, based on the recommendations made by the supervisor and/or head of the relevant component advise the head of department (or delegate) whether a further investigation of the matter is required or whether the educator should be charged on the available facts.

NOTE:

- **Long delays often occur where a department is notified that an educator has been or is being prosecuted in a court of law and it is decided to await the outcome of this process and/or a copy of the court proceedings, before departmental action is taken.**
- **Similar situations arise where the Police request a department to hold back on an internal investigation or misconduct charges, for the fear of its own investigation possibly being prejudiced.**
- **Managers must assess such situations carefully as it might, due to long delays being experienced in the courts and in respect of police investigations, not be in the best interest of the department or the educator concerned to delay taking departmental action. Educators who have been suspended can be affected very negatively by delays.**
- **Where a manager has to make a recommendation or advise on the way forward, the emphasis should thus always be to try and finalise departmental actions as soon as possible.**
- **Where it comes to the attention of a supervisor that an educator is being prosecuted in a court of law, the matter must be reported to the Labour Relations: Directorate/ Sub-Directorate without delay. The Labour Relations: Directorate/ Sub-Directorate will then endeavour to obtain information from the court/police where after, in consultation with the supervisor, it will be decided how the matter is to be dealt with.**
- **Where losses are incurred or financial irregularity has occurred, the matter must be reported to the accounting officer and if such losses are incurred through criminal or possible criminal acts or omissions on the part of an educator, the matter must also be reported to the Police. Where it involves monies under the control of a School Governing Body, the matter must also be reported to the chairperson of that body.**
- **It is a prerequisite that an educator must be registered with the South African Council for Educators in order to be employed/utilised as an educator. Supervisors must also immediately report incidents of educators having been struck from the roll to the Labour Relations: Directorate/ Sub-Directorate, should such matters come to their attention.**

- (xii) It should further be noted that if an employee resigns before a disciplinary enquiry has been concluded, the resignation must be processed and sent through to the staff office in the normal manner. Managers must clearly indicate in the covering letter that a disciplinary enquiry had been instituted against the employee and that it is still pending. The staff office will record this fact suitably on the employee's personnel record for future reference.
- (xiii) If the event provided for in paragraph (xii) above should occur, the disciplinary enquiry can be continued with if indications are that it can be reasonably concluded before the effective date of resignation.

(c) Investigations

- (i) If it is decided to appoint an investigating officer to determine whether there are sufficient grounds for a misconduct charge, the investigating officer may wish to conduct an interview with the supervisor and/or head of that component as well as other employees/ educators who might be able to contribute to the process. Managers have to facilitate this process by ensuring the availability of relevant documents and persons to be interviewed and making themselves available if required.
- (ii) If an educator who has been charged with misconduct resigns before the charge has been finalised, he/she is regarded as having been discharged on account of misconduct in terms of section 14 (l)(d) of the EEA and the educator's service record is endorsed as such. If such an event should occur, the matter is referred to personnel for further handling.

(d) The manager's role as a witness during an enquiry

- (i) If a manager is summoned to appear at a misconduct enquiry, the following must be noted:
- If the person to whom the summons is served, is unable to be present at the time and place specified in the summons or to produce any book, document or object, he/she must timeously submit to the person who signed the summons, reasons in writing why it is not possible for him/her to do so.
 - A person will not be excused from complying with the directions contained in the summons or extension be granted unless the person who originally signed the summons, has notified the person who has been summoned in writing that he/she has been excused or extension has been granted.

- Non-compliance with the stipulations of a summons without sufficient cause will be an offence and such a person shall, in accordance with section 34 of the EEA, be liable upon conviction to a fine or imprisonment for a period not exceeding six months, or both.
 - The law relating to privilege, as applicable to a witness summoned to give evidence or to produce a book, document or object in a civil trial before a court of law, shall *mutatis mutandis* apply in relation to the examination of, or the production of any book, document or object to the enquiry, by any person called as a witness.
- (ii) Managers must further note that if they have been summoned to appear at a misconduct enquiry, they must prepare themselves for purposes of facilitating the process. It is, however, extremely important to understand that a person can only testify within the parameters of personal knowledge of a specific topic, document, event, etc. The preparation referred to is thus limited to refreshing one's memory on possible earlier sworn statements, declarations, the contents of documents or reports, etc in respect of that the manager has first hand knowledge.
- (iii) In reasoning the intended action to be taken, the Labour Relations: Directorate/ Sub-Directorate may also approach managers for additional information not readily available on file, for instance, on the educator's general conduct where a performance assessment has not yet been carried out.
- (iv) During the appeal phase (if applicable), managers may also be approached by the Labour Relations: Directorate/ Sub-Directorate for its comments on representations submitted in support of an appeal.

6.3 PURPOSE AND SCOPE

The purpose and scope of disciplining are set out in Item 1 of Schedule 2 of the EEA and are intended to achieve the following:

- (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.
- (g) Prevent arbitrary or discriminatory actions by employers towards educators.

6.4 PRINCIPLES

Item 2 of Schedule 2 of the EEA provides as follows:

- (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 –
 - have a fair hearing in a formal or informal setting;
 - are timeously informed of allegations of misconduct made against them;
 - receive written reasons for any decision taken; and
 - have the right to appeal against any decision.
- (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.

6.5 CODE OF GOOD PRACTICE

Item 3 of Schedule 2 of the EEA provides as follows:

- (1) The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 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 of the EEA.

- (b) After consultation with the trade unions, the Minister may prescribe other conduct that constitutes misconduct.
- (3) In dealing with misconduct contemplated in section 18 of the EEA, the employer must assess the seriousness of the alleged misconduct by considering –
 - (a) the extent to that 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.

6.6 CATEGORIES

The Employment of Educators Act, 1998, provides for the following three categories of misconduct:

(a) Serious misconduct

- Section 17(1) provides that an educator must be dismissed if he or she is found guilty of the transgressions listed in that section.
- Section 17(2) further provides that if it is alleged that an educator committed a serious misconduct the employer must institute disciplining proceedings.
- The disciplinary proceeding must be in accordance with the disciplinary code and procedures provided for in Schedule 2 of the EEA.

(b) Misconduct

Section 18(1) lists the acts/omissions that are regarded as misconduct.

(c) Other misconduct

Item 3(2)(b) of Schedule 2 of the EEA provides that the Minister of Education may prescribe other conduct that constitutes misconduct after consultation with the trade unions.

**SCHEMATIC EXPOSITION OF MISCONDUCT PROCEDURE
IN RESPECT OF EDUCATORS**

CATEGORIES OF MISCONDUCT
<ol style="list-style-type: none">1. Serious misconduct [Section 17]2. Misconduct [Section 18]3. Other conduct that constitutes misconduct (As prescribed by the Minister) (Section 3 (2)(b) of Schedule 2)
NOTE: Employer determines form of disciplinary procedure

MISCONDUCT PROCEDURES
<ul style="list-style-type: none">• Misconduct procedure• Enquiry (Must be followed in all serious misconduct cases)

LESS SERIOUS MISCONDUCT PROCEDURE

- Employer, his or her delegate brings misconduct to educator's attention
- He or she determines nature of misconduct
- He or she gives educator opportunity to respond
- He or she decides on **method to remedy misconduct** and take steps to implement

verbal warning
(warning is recorded)

written warning
(valid for six months)

final written warning
(valid for six months)

convene a meeting

- counselling
- verbal warning
- written warning
- combination
- no further action

(sanction is recorded in personal file)

SERIOUS MISCONDUCT PROCEDURE

INSTITUTE DISCIPLINARY ENQUIRY - SEE ANNEXURE A.

6.7 SANCTIONS AND PROCEDURES

For purposes of sanction and procedure misconduct is divided into the following two categories:

- Less serious misconduct procedure
- Enquiry (hearing): A schematic exposition of an enquiry appears at Annexure A.

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

6.7.1 Less serious misconduct

[Items 4(2) to (7) of Schedule 2 of the Employment of Educators Act, apply]

6.7.1.1 Verbal warning

- (1) In cases where the seriousness of the misconduct warrants counseling, 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 sub-items (3), (4) or (5) of item 4 of Schedule 2 of the EEA.
- (2)
 - (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 referred to above.

6.7.1.2 **Written warning**

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 the form attached to Annexure B.
- (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 may be taken into account in deciding on an appropriate sanction.
- (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 subparagraph (i) must be filed with the written warning.

6.7.1.3 **Final written warning**

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 the form attached to Annexure C.
- (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 may be taken into account in deciding on an appropriate sanction.
- (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.

6.7.1.4 Meeting with the educator

- (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 –
 - counsel the educator
 - issue a verbal warning
 - issue a written warning
 - issue a final written warning
 - impose a combination of any of the above
 - or
 - 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.

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

6.7.2 Enquiry

6.7.2.1 Appropriateness

An enquiry (hearing) must be held for misconduct cases that are not classified as "less serious misconduct."

6.7.2.2 Notice of enquiry

Item 5 of Schedule 2 of the EEA provides as follows:

- (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 the form attached to Annexure D and must contain –
 - a description of the allegations of misconduct and the main evidence on which the employer will rely;
 - details of the time, place and venue of the hearing;
 - when delivered by registered post, the date on which the letter was received by the educator as indicated by the post office;
 - information on the rights of the educator to representation by a fellow educator or a trade union representative;
 - information on the rights of the educator to representation by a legal representative, if the presiding officer so directs; and
 - 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.

6.7.2.3 Disciplinary Hearings

Item 7 of Schedule 2 of the Employment of Educators Act, 1998, provides as follows:

- (1) The disciplinary hearing must be held within ten working days after the notice is delivered to the educator.
- (2) The presiding officer must be appointed by the employer.

Note: The presiding officer may be any appropriate person and is not restricted only to educators or officials.

- (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 6.5 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.
- (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 –
 - (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 that 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) • 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.
- 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-
- is informally arranged to put that witness at ease;
 - 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
 - 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 device, that intermediary as well as that witness during his or her testimony.
- (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 the form attached to Annexure E and served on the person by way of delivery by –
- hand;
 - telefax; or
 - registered post.

- (13) The date on that the summons is served will be when delivering by –
- hand, the date of delivery;
 - telefax, the date reflected on the telefax; or
 - registered post, the date on that 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.

6.7.2.4 Sanction

Item 8 of Schedule 2 of the EEA provides as follows:

- (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 EEA, taking into account –
- the nature of the case;
 - the seriousness of the matter;
 - the educator's previous record; and
 - 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.

6.8 APPEALS

Item 9 of Schedule 2 of the Act provides as follows:

- (1) An educator or the employer has a right to appeal against a finding or sanction by making an application in accordance with the form attached to Annexure F.
- (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 paragraph 6.8 (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 an employer, he or she must notify the educator or 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 –
 - uphold the appeal;
 - in cases of misconduct contemplated in section 18, amend the sanction;or
 - 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.

Note: An educator or an employer has a right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing, and against the sanction imposed in terms of section 18 (3) (e) to (i) of the EEA.

In lodging an appeal, the educator or employer must comply with the procedure laid down in paragraph 6.8 (1) – (6) of this volume.

6.9 SUSPENSION

6.9.1 Suspension is regulated in terms of Item 6 of Schedule 2 of the EEA and reads as follows:

- (1) In the case of serious misconduct in terms of section 17(1) (serious misconduct), 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 (misconduct), 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 workplace.

Note: This means that if the misconduct is not serious, the employer can only suspend the educator if the employer believes (and can proof) that -

- the educator may jeopardise any investigation;

or

- the educator's presence may endanger the well-being or safety of any person at the workplace.

- (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.

6.9.2 Managers' involvement in the practice of (precautionary) suspension, is basically limited to two main areas, viz.

- considering, recommending and motivating the suspension of an employee

or educator, where applicable; and

- performing certain activities related to the suspension.

6.9.3 Managers must note that, due to the far-reaching effects of a suspension, an educator may only be suspended on approval by a properly authorised person.

6.9.4 The Labour Relations: Directorate/ Sub-Directorate will play a central role in administering suspensions by obtaining the required approval, and in the case of educators proposing the conditions related to a suspension, notifying the salary division of conditions that will affect the educator's salary payments, if applicable, etc.

6.9.5 Even though it might be decided at senior level to suspend an educator, a recommendation to suspend an educator can also be made by the manager (supervisor) or head of a component. Where this decision originates from a different point, the supervisor should be involved in the process. If it is the intention to suspend an educator, the employer must be able to justify such a step.

6.9.6 Unless suspension is imposed as sanction in terms of item 8(2) of Schedule 2 of the EEA, a suspension may never constitute a judgment or have the intention to punish an educator. Before suspension is considered, alternatives such as the following ought to first be considered:

- (a) Instructing the educator in writing not to interfere with specified matters, not to interfere with an investigation, not to have contact with specified persons and/or not to enter specified areas.
- (b) Temporarily transferring the educator to other duties, a post or location.
- (c) Directing/ordering an educator to temporarily perform other functions as provided for and under the conditions as set out in section 33(2) of the Employment of Educators Act, 1998.

Note:

(aa) The actions stipulated above as well as an actual suspension must be preceded by the application of the audi alteram partem-rule. This means that the educator must be informed of the employer's intention to act in this manner, must be afforded the opportunity to forward representations against such intended action and that the employer must consider such representations before taking a decision in the matter.

(bb) Suspensions are technically involved and managers should limit their activities in this regard to the making of a motivated recommendation on a suspension to the Labour Relations: Directorate/ Sub-Directorate, where applicable, who will then take the matter up with the authorized persons in the department, apply the audi alteram partem-rule and

obtain approval for the conditions that will apply to the suspension.

6.9.7 Managers have the responsibility to make arrangements to give practical effect to the suspension. They must charge a specific person, if they don't undertake it themselves, to attend to, *inter alia* the following, where applicable:

- Ensuring that any cash, cheques, warrant vouchers, receipt books, journals and any other financial documents are reconciled and taken over properly.
- Inspecting and taking over subsidized vehicles.
- Safeguarding official documents.
- Overseeing the removal of "personal property" from the office and premises.
- Collecting security and parking passes and informing security if the employee/educator is not to be allowed on the premises again.
- Physically escorting the employee/educator from the premises.

6.9.8 (a) Suspension can be effected and withdrawn at any time before or during the process of an investigation into misconduct or after a disciplinary enquiry has been initiated/formal charges have been laid.

(b) If an educator who has been suspended resigns or without permission of the employer assumes employment in another position, he/she is regarded as having been discharged on account of misconduct and the educator's service record is endorsed accordingly. Where managers receive resignation forms or it comes to their attention that such an educator has assumed other employment, the staff office must be informed of this promptly.

(c) Whenever a suspension is lifted, the relevant notification to the educator must contain a direction as to the date on that he/she has to resume duties.

(d) Managers must ensure that the date of assumption of duty is reported to the staff office promptly.

7. INCAPACITY

7.1 DEFINITION

(a) Incapacity is defined in section 16 of the Employment of Educators Act,

1998 (to be read with Schedule 1 of the EEA).

- (b) If an educator is unfit for the duties attached to the educator's post or incapable of carrying out those duties efficiently, the employer must assess the capacity of the educator and may take action against the educator in accordance with the incapacity code and procedures.

7.2 GENERAL NOTES ON INCAPACITY

- (a) Incapacity is part of the performance management process.
- (b) The applicable prescripts should be complied with fully.

7.3 PHASES BEFORE THE INCAPACITY PROCEDURE IS INITIATED

7.3.1 In general the following phases take place before the incapacity procedure is initiated:

- **Setting standards** - these consists of the employer articulating its requirements in terms of work performance.
- **Training** - to create awareness of the employer's expectations with the employee/educator and to enable the employee/educator to comply with such set standards.
- **Monitoring and Reporting** - to ensure that transgressions deviations/shortcomings are detected and addressed at an early stage.

(a) THE SETTING OF STANDARDS

- (i) Where a relationship exists between two or more parties, it is normal to find that rules are put into place that serve to regulate and enforce the rights and responsibilities of such parties.
- (ii) The relationship that is established between an educator and an employer, has similar requirements.
- (iii) In practice it will be found that the educator's rights are protected and enforced through legislation, structures and procedures such as the LRA, the EEA, Resolutions of Bargaining Councils at different levels, subordinate policy prescripts, trade unions and the structures within that they operate as well as the grievance procedure.

- (iv) The educator's responsibilities and the employer's rights are typically embodied in those prescripts that are intended to regulate performance and conduct.
- (v) The following documents ought to be put in place in order to regulate performance standards:

(aa) **Job descriptions:**

- In a number of cases general job descriptions have been agreed upon and are in force, for example educators in education institutions. To these job descriptions are added job allocations, for example in an educational institution's timetable. Further detailed jobs should be added by the principal, for example managing the institution's textbooks and prescribed books.
- In the case of office-based posts, each post must have a job description and/or duty sheet indicating the specific main activities to be performed by the incumbent of such post. This document must sufficiently indicate what are the incumbent's responsibilities. The purpose and functions of a component as indicated on the organisational chart will not suffice for this purpose as these are normally too vague to tie down the incumbent or to direct training.

(bb) **Procedure guides:**

- The procedure guides should indicate how each of the main activities is to be executed. A systematic break down of each activity, listing the sub-activities to be performed chronologically, is required. References to applicable national and departmental policies to be complied with in executing such sub-activities must be included.
- In many cases the "how" is part and parcel of the technical, academic and/or other training of people as, for example, didactics in the case of teachers. It is a prerequisite that these people should be *au fait* with these "hows" to qualify for employment.
- Procedure guides are not always documents attached to a specific post. They may also be found in, for example, regulations, resolutions, publications on new initiatives, professional guides and circulars.

(cc) **Performance standards:**

- Performance standards deal with the desired outcomes or outputs to be realised and will in many instances indicate the quantity (how many) and quality (standard) of work required.
- It means that products of a specific quality must be completed within a given time or that objectives as agreed upon must be realised.
- As a general guideline in respect of staff at more junior levels, it could be said that in determining quantity, the time to be spent on a certain activity can be prescribed while, for example, the percentage mistakes that will be tolerated could be set as a quality standard.
- Performance standards can be formulated in general for a group of people, for example teachers in a learning area, or be determined individually.
- Attention is invited to the fact that quite a number of national prescripts such as the Public Finance Management Act, 1999 (Act 1 of 1999), Financial Regulations, the Provisioning Administration System, Circulars, etc may contain specific prescripts that have to be complied with and that form part of performance standards. Transgressions in regard to performance standards could result in an inefficiency investigation being instituted against an employee/educator but could also result in disciplinary procedures being instituted/a charge of misconduct being laid against such an individual where there is wilful non-compliance.

(vi) **Practical hints**

The contents of the paragraphs above to a large extent describe the ideal situation that the Public Service is working towards, but that might still take some time before it is attained. In the meantime it is proposed that the following activities be undertaken to bridge the situation.

(aa) **Job descriptions**

- The above-mentioned agreed upon job descriptions for educators in education institutions should be utilised as a point of departure.
- Part III/I of the Public Service regulations of 1999

can be utilised as a guide for office-based staff. It prescribes the establishment of job descriptions for each post or group of posts.

- Job descriptions must place emphasis on service delivery and must indicate-
 - the main objectives of each post or group of posts;
 - the inherent requirements of the job; and
 - the requirements for promotion or progression.
- Where these do not exist at present, a combined effort by the relevant subordinate and his/her supervisor should be made to identify the contents (duties) of each post.
- Where a work study report or job evaluation formed the basis for the creation of posts, it should be possible to obtain sufficient indicators from the report or evaluation on what the incumbent of the post is intended to do.
- Where posts have been advertised, the activities related to the post as indicated in the advertisement, could also be of assistance.

(bb) **Procedure guides**

- As has been indicated, many procedural matters are dealt with during the academic or technical or other training of staff, for example, educators.
- With regard to more operational procedures, it could also be considered to request selected educators who have occupied posts at a certain level for some time to describe how they perform their various duties and then to apply these descriptions to all generic (similar) posts at that level.

(cc) **Performance standards**

- At the production levels, the outputs of an employee/educator who performs on norm (preferably a person who has already been subjected to performance assessment), could be used for similar posts at that level.
- At the higher (managerial) levels, the outcome

objectives that have been set through an interactive process between the supervisor and staff members, can be utilised.

- The factors and elements as defined in the various performance assessment forms can also be used for this purpose as they represent articulated group standards that reflect the expectations of the employer in regard to the performance of educators at the different levels. The performance standards will have to be well communicated to all educators as well as their actual performance in relation to the set standards. Managers will have to comply with the requirements stipulated in a departmental performance management and development process.

(b) TRAINING/SUPPORT

- (i) It is a pre-requisite that before the employer may consider disciplining an educator, the employer must have made it possible for such an educator to make him-/herself acquainted with and capable of complying with both performance and behavioural standards.
- (ii) This implies that the employer (supervisors at different levels) is charged with the responsibility to inform/counsel/train/facilitate training of staff members in regard to standards that have been set.
- (iii) There are many ways to go about providing training in this regard and the full spectrum of available options should be contained in the department's training policy. Depending on the available infrastructure, supervisors must either programme for training to be offered by other support structures or else provide such training themselves.
- (iv) It should be taken into account that the supervisor should do everything in his/her power to train the staff member. The staff member should, however, actively participate in the process as it is impossible for the supervisor to train the staff member against his/her will or above his/her capacity. Neglect to fully utilise training opportunities or incapacity to absorb it, could also be a reason for disciplining, or instituting an inquiry in regard to incapacity/inefficiency.
- (v) The most important types/phases of training or informing staff members on standards to be met, are the following:

- (aa) **Induction:** It must be ensured that new appointees are introduced to the main body of performance and behavioural standards as well as to what constitutes misconduct as soon as possible after having assumed duty. The importance of this lies in the fact that the educator, on accepting the appointment and thus also the service contract, undertakes to subject himself/herself to, *inter alia*, the department's disciplinary code. Such a disciplinary code is, however, only given substance to once the standards have been laid down and disciplining can take place once the educator has been made aware of these standards.
- (bb) **Structured and unstructured (person-to-person) training:** Due to the volume and diversity of the subject matter to be covered, induction training has to be followed up and augmented by ongoing structured and person-to-person training. This type of training is intended to strengthen the standards of conduct and performance (norms) introduced during induction and can either be offered by supervisors or specialised training structures, where these exist.
- (cc) **Formal training:** This can encompass both appropriate formal studies or structured courses.
- (dd) **Guidance/counselling:** It is the responsibility of each and every supervisor to provide his or her staff members with ongoing guidance/ counselling. These activities should be directed towards contextualising standards on, for instance, stipulations contained in the Code of Conduct for Public Servants. They should also provide direction to staff members who might not fully meet or comply with standards and it touches on the first phase of progressive disciplining.
- (vi) Record should be kept of all training activities undertaken in regard to each staff member. It will assist managers in regard to disciplining, performance appraisal and the further development of staff members.

(c) MONITORING AND REPORTING

The supervisor must comply with the provisions regarding monitoring and reporting meticulously. The provisions set out in Schedule 1 of the Act apply.

(aa) Probationary assessments:

- This is a critical phase in the employer-employee relationship. There must be constant interaction

between the supervisor and educator on probation for the purpose of the supervisor informing, guiding and counselling the staff member in regard to performance and behavioural standards. Shortcomings and/or deviating conduct must be identified at the earliest possible stage and corrective action must be taken and support must be provided promptly and on a continuous basis.

- If the educator persists in his/her conduct, this must be clearly indicated in probationary reports, that must be completed strictly for, and within the prescribed period.
- The worst scenario is a situation where an educator on probation is left to her/his own device with little if any ongoing monitoring, counselling or reporting by the supervisor. It is extremely difficult, if not impossible, to try and rectify or address deviations experienced during a probationary period, near or at the end of such a probationary period.
- Many problems are experienced in practice where probationary appointments are not actively and properly managed by supervisors. It must be accepted that the foundation for the future employer-employee relationship should have been laid by then. Supervisors will then be faced with the daunting task of having to change entrenched performance and behavioural patterns or most likely having to apply the more formal disciplinary procedures.

(bb) **Performance assessments**

- This entails all forms of assessment related to developmental actions, or incentives for good performance.
- Assessments of this nature pre-supposes a continuous process of monitoring of a staff members' work performance and conduct and that deviations, if any, had been recorded and addressed timeously.
- It is again stressed that the fact that an otherwise high performer can at any stage commit a transgression that might require formal disciplinary action to be taken, such as theft or alcohol abuse, or that (minor) behavioural problems might not have been recorded in such reports, is acknowledged. However, it should be most unlikely to find an educator who has been given outstanding assessments and who might have been

awarded incentives for good performance, being investigated for incapacity/inefficiency soon afterwards.

- The desired correlation will only be effected if there is a continuous process of monitoring and interaction with staff members by their supervisors.

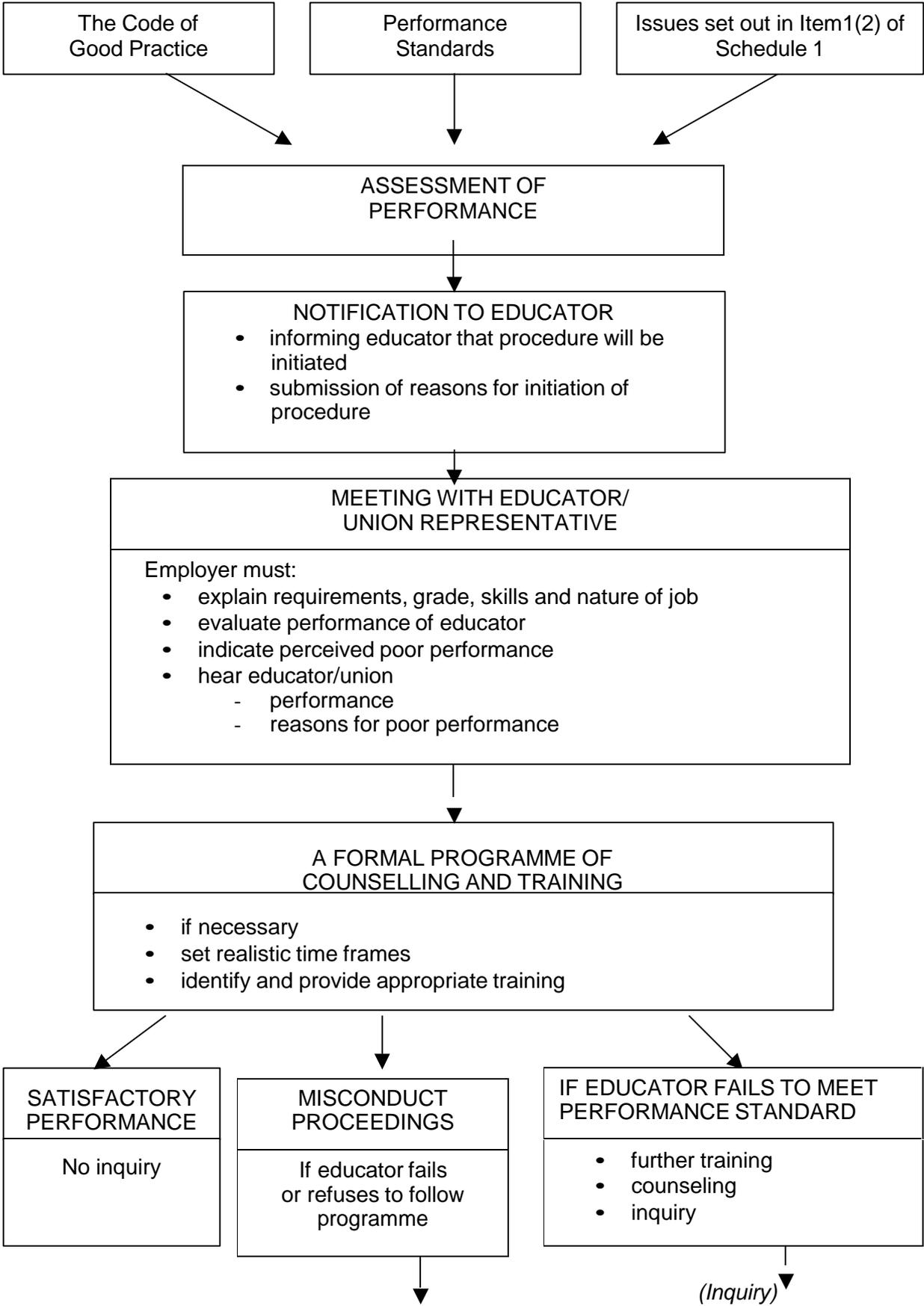
(cc) **Feedback from managers**

Apart from the more formal processes of monitoring and reporting on staff members' performance, managers should provide their staff members with directions related to meeting standards even on a daily basis. This is done through verbal feedback given to staff members on tasks performed and includes, for instance, corrections made to draft submissions, letters, etc. Managers should keep copies of such documents on their personal files on staff members as it could be required for, *inter alia*, disciplining purposes.

7.4 ASSESSMENT OF PERFORMANCE

- (a) The employer must assess the performance of the educator taking the following into account:
- The Code of Good Practice contained in section 6.5 of this volume.
 - The performance standards agreed upon by the parties to the Educators Labour Relations Council (Item 2(2) of Schedule 2 of the EEA).
 - The following issues set out in Item 1(2) of Schedule 1 of the EEA:
 - The extent to that the incapacity 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;
 - the extent to that the educator fails to meet the required performance standards as contemplated in item 2(2);
 - the extent to that the educator lacks the necessary skills to perform in accordance with the educator's job description;
 - the nature of the educator's work and responsibilities; and
 - the circumstances of the educator.

ILLUSTRATION OF INCAPACITY PROCEDURE (EDUCATORS)



INQUIRY

1. THE SAME PROCEDURE AS FOR DISCIPLINARY ENQUIRY APPLIES.
2. Employer appoints employee on a higher post level to conduct procedures
3. Educator has right to -
 - call, examine and cross-examine witnesses
 - provide documentation
 - have access to documents produced in evidence by employer.
 - be represented by co-employee or trade union representative
 - have an interpreter
 - lead evidence (also on mitigation)
4. Sanction, if appropriate -
 - transfer
 - demotion
 - terminate employment
5. If sanction of transfer, demotion or termination of employment is not appropriate, the issue is referred back to employer



APPEAL

- To Minister/MEC
- Notice of appeal form (Annexure F)
- Within 5 working days of receiving notice of final outcome
- Employer submits copy of record of proceedings and any other relevant documentation
- Minister/MEC may allow further representations by the educator or the employer (notifies the educator or the employer of date, time and place)
- Minister/MEC may –
 - uphold the appeal
 - dismiss the appeal
- Employer must immediately implement decision of Minister/MEC

7.5 FORMAL PROCEDURE

7.5.1 Informing of educator that procedure will be initiated

If the employer is of the view that an educator, whether on probation or a permanent staff member, is not performing in accordance with the job that the educator has been employed to do, the employer must –

- (a) give written reasons to the educator why it is necessary to initiate the procedure in respect of poor performance, and
- (b) after serving the written reasons referred to in paragraph (a), meet with –
 - the educator;
or
 - the educator and the educator's trade union representative or a fellow employee, if the educator so chooses.

(Item 2(1) of Schedule 1 of the EEA, refers)

7.5.2 Meeting with Educator/Union representative

In the meeting the employer must –

- (a) explain the requirements, grade, skills and nature of the job;
- (b) evaluate the educator's performance in relation to the job;
- (c) indicate the perceived poor performance; and
- (d) hear the educator or, if the educator agrees, the educator's trade union representative or a fellow employee on -
 - whether or not the educator has performed in accordance with the requirements of the job;
or
 - reasons why the educator has not performed in accordance with the requirements of the job.

(Item 2(3) of Schedule 1 of the EEA refers)

7.5.3 Formal programme of counselling and training

After hearing the educator, his or her trade union representative or the educator's fellow employee, the employer must, if necessary, develop and initiate a formal programme of counselling and training to enable the educator to reach the required standard of performance, that must include –

- (a) assessing the time that it would take for the educator to overcome the poor work performance;

- (b) on the basis of the assessment referred to in paragraph (a), the establishment of realistic time frames within that the employer will expect the educator to meet the required performance standard; and
- (c) the identification and provision of appropriate training.

(Item 2(4) of Schedule 1 of the EEA refers)

7.5.4 Failure to refuse to follow formal programme

If the educator fails or refuses to follow a formal programme of counselling and training as contemplated in paragraph 7.5.3, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

(Item 2(5) of Schedule 1 of the EEA refers)

7.5.5 Options if the Educator still fails to meet performance standard

- (a) If the educator, after being subjected to a formal programme of counselling and training as contemplated in paragraph 7.5.3, fails to meet the required performance standard for the post, the employer, after consulting the educator, may –
 - provide further training to the educator;
 - provide counselling to the educator;
 - transfer the educator;
 - demote the educator;
 - or
 - terminate the employment of the educator.
- (b) However, before transferring, demoting or terminating the service of the educator, the employer must convene an inquiry in order to give the educator the opportunity to make representations in response to the allegations against him or her.

7.5.6 Inquiry

A formal inquiry is then conducted in terms of paragraph 6.7.2.

7.5.7 Appeal

- (a) The educator has a right to lodge an appeal with the Minister/MEC against a decision to demote, transfer or terminate the services of an educator on the grounds of incapacity.
- (b) An educator or the employer has a right to appeal to the Minister or the Member of the Executive Council, as the case may be, against the finding by the presiding officer of a disciplinary hearing, and against the sanction imposed in terms of section 18 (3) (e) to (i) of the EEA.

- (c) The application must be in accordance with the form attached to Annexure F.
- (d) The appeal must also be submitted within 5 working days of receiving notice of the final outcome of the inquiry.
- (e) The Minister/MEC may uphold or dismiss the appeal.
- (f) In lodging an appeal, the educator or the employer must comply with the procedure laid down in paragraph 6.8 of this volume.

DISCIPLINARY ENQUIRY**1. WRITTEN NOTICE OF HEARING**

- At least 5 working days before date of hearing
- Notice of disciplinary meeting form (Annexure D)
 - f* description of allegations
 - f* main evidence
 - f* time, place and venue
 - f* date when educator received letter (if delivered by registered post)
 - f* right of educator to be represented by fellow educator or trade union representative
 - f* if the presiding officer so directs, right to legal representation
 - f* right to call witnesses
- Educator to acknowledge receipt
(Educator sign copy of notice or fellow educator confirms delivery of notice)

2. HEARING

- Within 10 working days after notice is delivered.
- Presiding officer is appointed by employer.
- Interpreter is designated if necessary.
- Employer or educator may have legal representation, if the presiding officer so directs.
- Presiding officer keeps record.
- Presiding officer must read notice.
- Representative of employer leads evidence.
- Cross-examination by educator (or his representative).
- Witnesses may be summonsed by representative of employer (Form D).
- Employer must provide educator with assistance to ensure educator's witnesses attend.
- Educator leads evidence.
- Representative of employer cross-examines witness.
- Presiding officer may ask questions for clarification.
- Presiding officer gives finding and inform educator of the reasons thereof.
- Educator presents mitigating circumstances.
- Representative of employer presents aggravating circumstances.
- Presiding officer imposes sanction
 - Issues to be taken into account
 - nature of case
 - seriousness of the matter
 - educator's previous record
 - mitigating circumstances
 - aggravating circumstances
 - Decides on appropriate sanction
 - (suspension without pay or demotion may be imposed as alternatives to dismissal, if the educator agrees).
- Presiding officer communicates final outcome of hearing to employer and educator within 5 working days after conclusion of enquiry.
- Outcome of hearing must be recorded on personal file.

3. APPEAL

- To Minister/MEC
- Notice of appeal form (Annexure F)
- Within 5 working days of receiving notice of final outcome
- Employer submits copy of record of proceedings and any other relevant documentation
- Minister/MEC may allow further representations by the educator or the employer (notifies the educator or the employer of date, time and venue)
- Minister/MEC may -
 - uphold the appeal
 - amend the sanction
 - dismiss the appeal
- Employer must immediately implement decision of Minister/MEC

ANNEXURE B

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

ANNEXURE C

FINAL WRITTEN WARNING

[DATE]
[NAME OF EMPLOYEE]
[PERSONAL 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.

The 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

ANNEXURE D

NOTICE OF DISCIPLINARY MEETING

[DATE]
[NAME OF EMPLOYEE]
[PERSAL NO.]
[PERSONAL DETAILS OF THE EMPLOYEE]

Your 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 be held at:

[PLACE] on[DATE] at [TIME].

If you do not attend and cannot give reasonable grounds for failing to attend, the hearing will be held in your absence. A legal representative may also represent you if the presiding officer so directs.

A fellow employee or a representative of a recognised union may represent you at the hearing.

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

ANNEXURE E

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
At (time) at (place) before the
presiding officer of a disciplinary hearing in terms of Schedule 2 of 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

ANNEXURE F

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 [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 or sanction or both 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 to gether with warnings;
- or
- 5. dismissal.

ANNEXURE G

**DRAFT SUBMISSION: REQUEST BY SUPERVISOR TO
CONSIDER APPOINTING AN INVESTIGATING OFFICER OR
CHARGING AN EDUCATOR WITH MISCONDUCT**

TO:
(Designation of the head of the Directorate: Labour Relations)

RE: POSSIBLE CHARGE OF MISCONDUCT:

MR/MS PERSAL. NO.
(Indicate rank and section where employed)

1. Mr/Ms has been in the service
(Name)
of the Department as a since
(Rank) (Date of appointment)

2. On at
(Date) (Place)
he/she
(Provide details of alleged transgression)

.....
.....
.....
.....
.....

3. Mr/Ms has previously received (a)
(Name)
verbal/written warning(s) in respect of similar or related transgressions which are still valid.

Copies of records in respect of these warnings which were issued
on..... are attached.
(Dates)

4. In respect of the most recent transgression, the following evidence/information is provided to substantiate the allegations:

.....
(Summarise main evidence and attach relevant documentary evidence)
.....
.....

5. In view of the aforementioned circumstances and facts, Mr/Ms
(Name)
..... is regarded to have made himself/herself guilty of
misconduct in terms of sectionof the Employment of
(Mention applicable section)
Educators Act, 1998,

in that he/she
.....
(Provide formulation of misconduct as mentioned in the relevant clause/section)
.....

6. In terms of sectionof the Employment of Educators
(Mention applicable section)
Act, 1998, you may request the head of the department (or his or her delegate) to either appoint a person to investigate the matter before an official charge of misconduct is brought against Mr/Ms; or to decide on the available facts to charge him/her with misconduct as indicated in paragraph 5 above.

7. I am of the opinion that insufficient evidence exists to charge the educator with misconduct at this stage and you are requested to approach the head of department to appoint and suitably empower a suitable person to investigate the matter to determine whether there are grounds for a charge of misconduct.

or

I am of the opinion that sufficient grounds exist to charge the educator with misconduct at this stage and you are requested to approach the head of department (or his or her delegate) to exercise his/her discretion in the matter in accordance with section 18(2), read with items 5 and 7 of Schedule 2 of the Employment of Educators Act, 1998.

8. I am further of the opinion that the educator should be suspended (in terms of item 6 of Schedule 2 of the Act)

.....
(Indicate conditions of suspension)

/ temporarily transferred (in terms of item 6 of Schedule 2 of the Act) - based on the following reasons:

.....
.....
.....

(Indicate justification for proposed suspension/transfer)

SIGNATURE OF SUPERVISOR

DESIGNATION

DATE