
SOUTH AFRICAN COUNCIL FOR EDUCATORS

DISCIPLINARY PROCEDURES

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**South African Council for Educators
Disciplinary Procedures**

1 Introduction

- 1.1 This document must be read together with the provisions of the South African Council for Educators Act, 2000 (Act 31 of 2000).
- 1.2 The purpose of this document is to provide a fair procedure governing the investigation and hearing of alleged breaches of the code of professional ethics for educators.
- 1.3 The Council commits itself through these procedures to the development of a high standard of ethics governing the teaching profession.
- 1.4 These procedures are intended to be corrective and not punitive, where this is possible and desirable taking into account the interests of the teaching profession as a whole.

2 Functions of the disciplinary committee

- 2.1 The disciplinary committee must:
 - 2.1.1 ensure that alleged breaches of the code are investigated;
 - 2.1.2 establish investigating panels to investigate alleged breaches of the code;
 - 2.1.3 establish disciplinary panels to conduct disciplinary hearings into alleged breaches of the code;
 - 2.1.4 ensure that disciplinary hearings are fair and comply with the procedures set out in this document; and
 - 2.1.5 on the basis of recommendations received from disciplinary panels, recommend findings and appropriate sanctions if any, to the Council in respect of breaches of the code.
- 2.2 The members of investigating and disciplinary panels established by the disciplinary committee need not be members of the Council.

3 Investigation of alleged breaches of the code

- 3.1 Any person who believes that an educator has breached the code may lodge a complaint with the Council.
- 3.2 The complaint should preferably:
 - 3.2.1 be in writing; and
 - 3.2.2 clearly disclose the alleged breach of the code.

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- 3.3 The disciplinary committee may investigate any alleged breach of the code, whether or not a complaint has been lodged.
- 3.4 The chief executive officer must, as soon as practicable after receiving a complaint, refer it to the disciplinary committee for consideration.
- 3.5 The disciplinary committee must refer an alleged breach to an investigating panel for investigation.
- 3.6 An investigating panel may, in investigating any alleged breach of the code:
 - 3.6.1 interview complainants and other possible witnesses;
 - 3.6.2 subject to clause 3.7, interview the educator who is alleged to have breached the code;
 - 3.6.3 notify the educator of the alleged breach and, subject to clause 3.7, give the educator an opportunity to respond within the period specified in that notice;
 - 3.6.4 gather evidence relevant to the alleged breach; and
 - 3.6.5 if necessary, cause summons to be served on any person who may assist the panel in its investigation as contemplated in section 14(4) of the Act.
- 3.7 Before interviewing an educator as contemplated in clause 3.6.2, and in any notice contemplated in clause 3.6.3, the investigating panel must warn the educator:
 - 3.7.1 of the educator's right against self-incrimination; and
 - 3.7.2 that any admission or explanation given by the educator may be used as evidence against the educator at a disciplinary hearing.
- 3.8 The investigating panel must keep a record of the investigation.
- 3.9 If an investigating panel is satisfied that there is sufficient evidence of a breach of the code by an educator, the disciplinary committee may refer the matter to a disciplinary panel for hearing.
- 3.10 A member of a panel that has investigated an alleged breach of the code cannot serve as a member of the disciplinary panel which hears the matter.

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4 The disciplinary hearing

- 4.1 Once a matter has been referred for hearing by a disciplinary panel, the chief executive officer or the chairperson of the disciplinary committee must issue a summons to the educator who has allegedly breached the code.
- 4.2 The summons must disclose:
 - 4.2.1 the nature of the alleged breach;
 - 4.2.2 the date, time and venue of the disciplinary hearing;
 - 4.2.3 the educator's right to be represented at the disciplinary hearing, including the right to legal representation;
 - 4.2.4 the educator's right to call witnesses to give evidence and to produce books, documents and other items in support of the educator's case; and
 - 4.2.5 the educator's right to make written submissions against any recommendation of the disciplinary panel to the disciplinary committee.
- 4.3 The summons must be served to the relevant postal, employment and/or residential address appearing on the SACE register by way of:
 - 4.3.1 delivery by hand;
 - 4.3.2 telefax; or
 - 4.3.3 registered post.
- 4.4 The date on which the summons is served is regarded as, in the case of:
 - 4.4.1 service by hand, the date of delivery;
 - 4.4.2 service by telefax, the dispatching date reflected on the telefax; and
 - 4.4.3 service by registered post, the date on which the letter was signed for in the absence of proof to the contrary.
- 4.5 The summons must be served on the accused at least twenty (20) days before the date of the disciplinary hearing.

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- 4.6 If in the opinion of the panel, the offence committed is of such a nature that the accused educator could commit said similar offence or worse, the panel may decide to proceed with the matter in the absence of proof of delivery of the summons.
- 4.7 The chief executive officer or the chairperson of the disciplinary committee may issue a summons to any other person to attend the disciplinary hearing in order to give evidence or to produce any books, documents or other items.
- 4.8 If the educator fails to attend a disciplinary hearing, the disciplinary panel may deal with the matter in the absence of the educator.
- 4.9 A witness who attends a disciplinary hearing is entitled to such allowance as the Council may from time to time determine.
- 4.10 Any person who fails to attend a disciplinary hearing when summoned to do so, or fails to stay in attendance until excused by the disciplinary panel, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six (6) months.

5 Procedure at the disciplinary hearing

- 5.1 The disciplinary panel may exclude any person or category of persons from attending a disciplinary hearing:
 - 5.1.1 on reasonable grounds; or
 - 5.1.2 if the orderly conduct of the inquiry so requires.
- 5.2 The disciplinary panel may postpone or adjourn a disciplinary hearing:
 - 5.2.1 at its discretion; or
 - 5.2.2 on the request of any party to the hearing, prior to the date set for hearing;
- 5.3 A postponement will not be granted where a particular educator's representative is otherwise engaged on the hearing date.
- 5.4 The disciplinary committee may appoint one or more suitably qualified assessors to be present at a disciplinary hearing, and to advise the disciplinary panel on matters of law, procedure and evidence, or other matters requiring specific expertise.

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- 5.5 An educator charged with an alleged breach of the code is entitled to representation, including legal representation at any disciplinary hearing.
- 5.6 The disciplinary panel must:
- 5.6.1 record the evidence at a hearing; and
 - 5.6.2 administer an oath or affirmation to any witness at a hearing.
- 5.7 At the commencement of the hearing, the disciplinary panel must:
- 5.7.1 put the charge to the educator and ask the educator to plead to the charge;
 - 5.7.2 inform the educator of the educator's rights:
 - (a) to representation, including legal representation;
 - (b) against self-incrimination;
 - (c) to an interpreter; and
 - (d) to adduce evidence and challenge evidence at the hearing.
- 5.8 If the educator:
- 5.8.1 pleads guilty to the charge, the disciplinary panel must decide whether or not to hear evidence regarding the charge;
 - 5.8.2 pleads not guilty, the disciplinary panel must hear the evidence regarding the charge;
 - 5.8.3 refuses or fails to plead, the disciplinary panel must enter a plea of not guilty and must hear evidence regarding the charge.
- 5.9 If the educator charged with a breach of the code fails to attend the disciplinary hearing, and the disciplinary panel decides to proceed with the matter in the absence of the educator, it must enter a plea of not guilty and hear evidence regarding the charge.
- 5.10 If the disciplinary panel decides to hear evidence pertaining to the charge, every party to a hearing or the party's representative is entitled to:
- 5.10.1 lead evidence in support of their case;
 - 5.10.2 cross-examine any witness of an opposing party; and

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5.10.3 re-examine any witness led by that party.

5.11 Members of the disciplinary panel may question any witness at the hearing.

5.12 The record of any evidence of a breach of the code in any criminal proceedings or disciplinary proceedings by an employer constitutes *prima facie* evidence of such breach by an educator for purposes of a disciplinary hearing in terms of the Act.

6 Recommendation of the disciplinary panel

6.1 The disciplinary panel must make its recommendation on whether or not there has been a breach only after:

6.1.1 evidence has been completed; and

6.1.2 every party to an inquiry has been given a fair opportunity to be heard.

6.2 If the disciplinary panel recommends that the educator has breached the code, the panel must request the parties to make representations on an appropriate sanction. This may include the leading of further evidence, including evidence on any previous convictions of the educator for breaches of the code. A certificate issued by the chief executive officer containing details of any previous convictions constitutes *prima facie* evidence of such previous convictions.

6.3 If the disciplinary panel recommends that the educator has breached the code and recommends a sanction it must:

6.3.1 record its recommendations;

6.3.2 inform the educator in writing of its recommendations; and

6.3.3 submit the record of the hearing and its recommendations to the disciplinary committee.

7 Recommendation of the disciplinary committee

7.1 On the basis of the recommendation of the disciplinary panel the disciplinary committee must recommend a finding and appropriate sanction, if any, to the Council and inform the educator concerned accordingly.

7.2 An educator who is dissatisfied with a recommendation of the disciplinary committee, may make written submissions to the Council

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within fourteen (14) days of his or her knowledge of the recommendation of the disciplinary committee.

- 7.3 The written submissions must set out the grounds on which the educator believes the recommendation to be wrong.

8 Decisions of the Council

- 8.1 The Council, after considering the recommendation by the disciplinary committee and submissions by the educator concerned, if any, may:

8.1.1 accept, reject or substitute the recommendation of the disciplinary committee wholly or in part; or

8.1.2 refer the matter to the appeals committee for review.

- 8.2 The Council may impose the following sanctions on an educator who is found guilty of a breach of the code:

8.2.1 a caution or reprimand;

8.2.2 a fine not exceeding one month's salary; or

8.2.3 the removal of the educator's name from the register for a specified period or indefinitely, or subject to specific conditions.

- 8.3 Pending the completion of a disciplinary hearing, Council may request from an employer, the immediate suspension of an accused educator where said suspension would be in the interest of learners.

- 8.4 The Council may suspend any sanction contemplated in clause 8.2 for a period and on conditions determined by it.

- 8.5 The Council must inform the educator in writing of its decision.

- 8.6 The Councils' decision is final.

- 8.7 The Council:

8.7.1 may publish such information relating to the hearing as it deems reasonable; and

8.7.2 must not publish information relating to a hearing which reveals or may reveal the identity of any person affected by the proceedings who is under the age of eighteen (18) years.

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9 Appeal against the recommendation/s of the Disciplinary Committee

- 9.1 Any educator who is found guilty of a breach of the SACE Code of Ethics may, appeal to the Council against the recommended findings or sanction of the disciplinary committee or against both.
- 9.2 The appeal must be lodged with the Chief Executive Officer, within 14 days after the disciplinary committee has informed the accused of its recommendation.
- 9.3 The Council may-
 - 9.3.1 dismiss the appeal against the recommendation of the disciplinary committee and confirm the recommended findings or the sanction or both; or
 - 9.3.2 uphold the appeal against the recommendation of the disciplinary committee wholly or in part and it must, in this instance refer it to the appeals committee within 30 days of its decision reaching the accused referred to in 9.1.
- 9.4 The Council must appoint an appeals Committee of at least 3 persons to hear the appeal.
- 9.5 A person hearing an appeal must not have been a member of the Investigation Panel or Hearing Panel, which dealt with the matter.
- 9.6 Persons appointed to the Appeals Committee should not be members of the disciplinary committee or Council.
- 9.7 The appeal should be based on the record of the proceedings of the disciplinary panel. In exceptional cases, the Appeals Committee may hear new evidence in relation to the appeal but only where such evidence was not reasonably available at the time of the disciplinary hearing may have had a material impact on the outcome of the disciplinary hearing.
- 9.8 The Appeals Committee must consider the appeal within 30 days after the notice is delivered to the Chief Executive Officer.
- 9.9 An accused whose appeal was dismissed by the Council may appeal to the appropriate High Court.

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- 9.10 A person referred to in 9.4 must, after giving notice to the Council, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of Council

10 The Appeal

- 10.1 The appeal referred to in Section 9 above must specify the grounds upon which the accused believes the finding/s and sanction to be wrong.
- 10.2 The appellant, the Council and the complainant or their representatives should be given an opportunity to present argument on the appeal before the Appeal Committee reaches a decision.
- 10.3 The Appeals Committee will make a recommendation to the Council based on their findings.
- 10.4 The Council, after considering the finding and penalty recommended by the Disciplinary Committee or the Appeals Committee, may-
- 10.4.1 confirm or set aside the finding;
 - 10.4.2 confirm or set aside the sanction; or
 - 10.4.3 refer the matter back to the Disciplinary Committee or Appeals Committee as case may be for further deliberations.
- 10.5 A disciplinary finding and sanction only takes effect on confirmation by the Council.

11 Definitions

In this document, unless the context indicates otherwise, any word or phrase defined in the South African Council for Educators Act, 2000 has that meaning and:

- 11.1 **'Act'** means the South African Council for Educators Act, 2000 (Act 31 of 2000);
- 11.2 **'Appeals Committee'** means the disciplinary committee of the Council contemplated in section 15 of the Act;
- 11.3 **'code'** means the code of professional ethics for educators contemplated in section 5(c)(i) of the Act;
- 11.4 **'Council'** means the South African Council for Educators;
- 11.5 **'disciplinary committee'** means the disciplinary committee of the Council contemplated in section 14 of the Act;

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- 11.6 **'educator'** means any educator registered or provisionally registered with the Council;
- 11.7 **'chief executive officer'** means the chief executive officer of the Council;
- 11.8 **'register'** means the register contemplated in section 5(a)(iii) of the Act; and
- 11.9 **'registered address'** means the address of an educator as it appears in the register.