

STANDARD OPERATING PROCEDURE FOR THE EMPLOYERS OF EDUCATORS



basic education
Department:
Basic Education
REPUBLIC OF SOUTH AFRICA



STANDARD OPERATING PROCEDURE FOR THE EMPLOYERS OF EDUCATORS, THE SOUTH AFRICAN COUNCIL FOR EDUCATORS, THE DEPARTMENT OF SOCIAL DEVELOPMENT THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT THE EDUCATION LABOUR RELATIONS COUNCIL ON THE MANAGEMENT OF EDUCATORS' CONDUCT.

AGREED TO BY

DEPARTMENT OF BASIC EDUCATION

(Herein referred to as the “**DBE**”):

And represented by **Mr HM Mwel**, in his capacity as the **Director-General**

PROVINCIAL EDUCATION DEPARTMENTS

(Herein referred to as the “**PED**”):

And represented by **each Head of Department**, in his/her capacity as the employer

AND

THE SOUTH AFRICAN COUNCIL FOR EDUCATORS

(Herein referred to as the “**SACE**”)

And represented by **Ms E Mokgalane**, in her capacity as the **Chief Executive Officer**

AND

DEPARTMENT OF SOCIAL DEVELOPMENT

(Herein referred to as the “**DSD**”)

And represented by _____ in his/her capacity as the Director-General

AND

THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

(Herein referred to as the “**DoJ & CD**”)

And represented by _____ in his/her capacity as the Director-General

AND

THE EDUCATION LABOUR RELATIONS COUNCIL

(Herein referred to as the **ELRC**)

And represented by **Ms NO Foca**, in her capacity as the **General Secretary**

1. DEFINITIONS

“Association of school governing bodies” means a voluntary association of governing bodies representing public schools;

“Children’s Act” means Act No. 38 of 2005;

“Code of Professional Ethics” means the code as contemplated in section 5(c) (i) of the *South African Council for Educators Act, 2000 (Act 31 of 2000)*;

“Department” means any Department responsible for education;

“Directorates responsible for employee relations” means a unit or section in a Department responsible for management of labour relations matters.

“Disciplinary code” means the disciplinary code as contemplate in Schedule 2 of the *Employment of Educators Act, 1998*;

“Employers of educators” means any education department or a public school acting in its capacity as employer;

“Employer representative” means the person representing the employer in a disciplinary matter;

“Manager responsible for employee relations” means any official appointed or designated to manage labour relations in any office of an education Department;

“Parties” means the signatories to this protocol;

“Presiding Officers” means a person appointed by the employer to chair a disciplinary hearing;

“Protocol” means this document.

2. SCOPE OF PROTOCOL

This protocol deals with the relationship between the Department of Basic Education (“the DBE”), Provincial Education Departments (“the PED’s”) and the South African Council for Educators (“the SACE”) and the Department of Social Development, the Department of Justice and Constitutional Development, the Education Labour Relations Council and a school governing body as an employer insofar as it concerns the following:

- 2.1 The code of conduct for educators (“the disciplinary code”) as administered by the Departments;
- 2.2 The Code of Professional Ethics for educators as administered by the SACE;
- 2.3 The prevention of the employment of persons found to be unsuitable to work with children in terms of the Children’s Act;
- 2.4 Application for a clearance certificate from the Registrar in terms of Section 46(1), (2) and (3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007; and
- 2.5 Findings and or award of an arbitrator who presided over a compulsory inquiry in cases of disciplinary action against educators charged with sexual misconduct in respect of learners.

3. PURPOSE

- 3.1 **WHEREAS** the purpose of this standard operation procedure is to facilitate an understanding of the distinctiveness, interdependence and interrelatedness of the employers of educators, the SACE, the

Department of Social Development, the Department of justice and Constitutional Development, the Education Labour Relations Council and a school governing body in so far as it relates to the disciplinary Code and Procedure, the Code of Professional Ethics applicable to educators and the procedures relating to the care and protection of children determine in the Children's Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 respectively;

3.2 AND WHEREAS the standard operation procedure incorporates some of the pertinent legislations and sets out certain procedures that must be followed by relevant officials of employers to give effect to the requirement of reporting in general disciplinary matters to the SACE, the Department of Social Development, the Education Labour Relations Council and a school governing body in so far as it relates to the care and protection of children; and

3.3 AND WHEREAS it is necessary to enhance the working relationship between the employers, the SACE, the Department of Social Development, the Department of Justice and Constitutional Development, the Education Labour Relations Council and a school governing body so as to promote a systematic and efficient means of realizing a professional education service and the protection of children.

4. RELEVANT LEGISLATION

4.1 Collective Agreements concluded in the ELRC

4.2 The Employment of Educators Act, 1998 (Act 76 of 1998) referred to in this document as “**the EEA**”, incorporating the Disciplinary Code and Procedures for Educators (Schedule 2 of the Act) read together with Sections 17 and 18 of the Act.

4.3 The Constitution of the Republic of South Africa,

4.4 The Children's Act, 2005

4.5 The Criminal law (Sexual Offences and related matters) Amendment Act 32 of 2007 allows a licensing authority not to issue a licence without first checking the Sex Offenders register.

4.6 The Labour Relations Act, 1995 (Act 66 of 1995).

4.7 The South African Council for Educators Act, 2000 (Act 31 of 2000) referred to in this document as “**the SACE Act**”, incorporating The *Code of Professional Ethics* developed and published by the Council under the provisions of this Act.

4.8 The South African Schools Act No. 84 of 1996

4.9 Pertinent provisions of legislation that would suffice for the purpose of this document are referred to in the paragraphs below. However, the provisions must be read in the contextual entirety of the legislation, together with any rules, regulations, policies or collective agreements developed under that legislation.

5. APPLICABLE PROVISIONS OF THE EMPLOYMENT OF EDUCATORS

5.1 Sections 17 and 18 of the EEA (***Annexure 1 hereto*** - errors and omissions excepted) read in conjunction with the applicable provisions of Schedule 2 to the EEA, comprise the disciplinary Code and Procedure for educators insofar as it concerns misconduct that would proceed to a disciplinary inquiry.

5.2 Section 18 (3) of the EEA provides for the following sanctions if an educator is found guilty of misconduct:

- (a) counselling;

- (b) a verbal warning;
- (c) a written warning;
- (d) a final written warning;
- (e) a fine not exceeding one month's salary;
- (f) suspension without pay for a period not exceeding three months;
- (g) demotion;
- (h) a combination of the sanctions referred to in paragraphs (a) to (f); or
- (i) dismissal, if the nature or extent of the misconduct warrants dismissal.

5.3 Section 26 of the EEA provides that in each case where steps were taken against any educator under section 18(3), other than the cautioning or reprimanding of the educator, *the employer shall furnish the South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto.*

5.4 Section 188A and ELRC Collective Agreement No. 3 of 2018

6. APPLICABLE PROVISIONS OF THE SOUTH AFRICAN COUNCIL FOR EDUCATORS ACTS

6.1 With regard to Professional Ethics, Section 5(c) of the SACE Act provides that the SACE Council:

- i. must compile, maintain and from time to time review a code of professional ethics for educators who are registered or provisionally registered with the council;
- ii. must determine a fair hearing procedure;
- iii. subject to subparagraph (ii), may -
 - (aa) caution or reprimand;
 - (bb) impose a fine not exceeding one month's salary on; or
 - (cc) remove from the register for a specified period or indefinitely, or subject to specific conditions, the name of, an educator found guilty of a breach of the code of professional ethics; and
- iv. may suspend a sanction imposed under subparagraph (iii) (bb) or (cc) for a period and on conditions determined by the council;

6.2 The Code of Professional Ethics approved by the SACE is attached (**Annexure 2 hereto** - errors and omissions expected).

6.3 Section 14 of the SACE Act provides for the council to establish a disciplinary committee which, in turn, may establish panels to investigate and hear complaints against educators.

6.4 The relevant panel will make recommendations to the committee in regard to the finding and, if any, disciplinary action concerning a complaint referred to it.

6.5 Having considered the recommendations of the panel, the disciplinary committee will recommend a finding

and appropriate action, if any, to the council.

- 6.6 The disciplinary procedure adopted by the SACE is of material interest to all educators and educators must also acquaint themselves with the disciplinary procedure adopted by their employers, i.e. as contained in Schedule 2 to the Employment of Educators Act or determined by each public school as an employer as the case may be.

7. APPLICABLE PROVISIONS OF THE CHILDREN'S ACT, 2005

- 7.1 Section 110 of the Children's Act implores everyone (including a teacher) who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the Provincial Department of Social Development or a police official.
- 7.2 In terms of section 125 of the Children's Act the DSD is obliged to disclose information to SACE and the employers for **purposes of promoting the best interest of the child**.
- 7.3 Section 126(1) of the Children's Act requires that before a person is allowed to work with or have access to children at a school, the person managing or operating the school must establish whether or not that person's name appears in part B of the register. In addition, the person managing or operating a school must establish whether the name of any person who works with or has access to children at the school appears in part B of the register.

8. APPLICABLE PROVISIONS OF THE CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT 32 OF 2007

- 8.1 The following sections are pertinent:
- 8.1.1 Section 44 in relation to an application for a declaration certificate;
 - 8.1.2 Section 45 in relation to the obligations of employers in respect of employees;
 - 8.1.3 Section 46 relation to obligations of employees; and
 - 8.1.4 Section 47 in relation to the obligations in respect of licence applications

9. APPLICABLE PROVISIONS OF THE SOUTH AFRICAN SCHOOLS ACT

- 9.1 The following sections are pertinent:
- 9.1.1 Section 20 in so far as it related to the obligations of the public school as an employer;
 - 9.1.2 No public school acting in its capacity as an employer is bound by the provisions of the Employment of Educators Act. Each public school must use its own disciplinary code to manage the discipline of its employees and to report offences by its educators to the South African Council for Educators and all employees who have been found to be unsuitable to work with children to the Department of Social Development.

10. AN OVERVIEW OF THE INTER-RELATEDNESS OF THE OBJECTIVES OF THE EMPLOYERS OF EDUCATORS, THE SACE, THE DEPARTMENT OF SOCIAL DEVELOPMENT AND DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

- 10.1 In simple terms, the Departments, the SACE and Department of Social Development are engaged in promoting the welfare of learners through ensuring a professional and efficient teaching and protection services.
- 10.2 *The educational welfare of learners is of paramount importance.* Section 28 (2) the Constitution, imposes a legal obligation to anyone to promote the *best interests the child in every matter concerning the child*.
- 10.3 As with any profession, one would expect that educators should have certain rules of conduct and ethical behavior that ensure professional excellence. Such rules are provided for in both the EEA and the SACE Act, which impose an obligation upon educators to comply with these rules. Besides, given the critical role played by educators in shaping young minds, there is indeed and a moral obligation for educators to conduct themselves professionally at all times.
- 10.4 Having regard to the importance of educators conducting themselves in a proper manner, the purpose of the Disciplinary Code and Code of Professional Ethics applicable to them are clear. It is to ensure that educators' conduct is above reproach in relation to the education service provided by them to the learners of our country.
- 10.5 Deviations from the rules of conduct have to be addressed and this brings into play the disciplinary procedures applied by the employers and the SACE. In this respect, both organisations have come to an understanding that a coordinated effort is necessary to give meaning and effect to the aims and objectives of the respective organisations as far as it concerns the conduct and ethical behaviour of educators.
- 10.6 All employers, the SACE and the Department of Social Development are integrally concerned with the welfare of every child and must cooperate for the sake of protecting the child.

11. PROCEDURES RELATING TO COOPERATION BETWEEN THE EMPLOYERS OF EDUCATORS, THE SACE, THE DEPARTMENT OF SOCIAL DEVELOPMENT, THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT, THE EDUCATION LABOUR RELATIONS COUNCIL AND APPLICANTS FOR EMPLOYMENT

- 11.1 The protocol further seeks to ensure efficient management of cases, thus fostering and expediting the management of serious misconduct including but not limited to; *sexually related, severe assaults and human relations* cases as soon as they are lodged or become known in either office.
- 11.2 As far as the Departments are concerned, the legal requirement is that each must comply with Section 26 of the EEA which provides that in each case where steps have been taken against any educator under section 18(3) of the EEA, other than the cautioning or reprimanding of the educator, *the employer shall furnish the South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto*.
- 11.3 **As far as it relates to a public school**, the legal requirement is that **as an employer** the employer of an educator must furnish the SACE, at its request, with such information as is reasonably required by the council for the performance of its functions (see section 26 of the SACE Act).
- 11.4 The Directorates responsible for employee relations in the Departments are responsible for providing the SACE with the information as required. This implies that the Directorates must co-ordinate all disciplinary cases in their respective Departments and obtain the required information from Presiding Officers and employer representatives (as well as the Office of the MEC as far as it concerns cases where appeals are lodged).
- 11.5 The onus vests with each *presiding officer* of a disciplinary inquiry to ensure that upon conclusion of the inquiry, copies of the records of the proceedings and documents related to the inquiry are delivered to the Manager responsible for employee relations (One copy must be forwarding to the SACE and the relevant

employing Department must keep a copy for record purposes).

- 11.6 In the case of a finding and or an award issued by the ELRC relating compulsory inquiries by arbitrators in cases of disciplinary action against educators employed by the education departments who is charged with sexual misconduct in respect of learners, the onus vests with the ELRC to send the finding or award to the SACE, the relevant employer and the DSD.
- 11.7 The onus vests with the *employer representative* of a disciplinary inquiry to furnish the Manager responsible for employee relations with copies of any documents that relate to the case but which may not have been utilized in the hearing (e.g. investigation reports, written statements, etc.) (copies must be forwarded to the SACE).
- 11.8 The *Manager responsible for employee relations* must ensure compliance with the provisions of Section 26 of the EEA and that the required documents/ information is furnished to the SACE by not later than ONE WEEK from the date the **final** outcome of the relevant inquiry is made known (i.e. following the outcome of any appeal lodged by the employee).
- 11.9 The *Director responsible for employee relations* must also:
- 11.9.1 Designate *one or more employees from his/ her staff* to give effect to the provision of information to the SACE and attend to enquiries from SACE in regard to such cases, i.e. to also serve as the liaison officer/s between the SACE and the Department; and
 - 11.9.2 Equally SACE must designate one employee to liaise with the manager responsible for employee relations on a regular basis.
- 11.10 It may transpire that disciplinary and other cases (such as grievances, complaints, etc.) are reported directly to the SACE *without the Department being aware of the incidents*. Such cases may be brought to the attention of the relevant Department by the SACE for comments, investigation or report-back. In respect of such cases referred by the SACE to the Departments:
- 11.10.1 By arrangement between the SACE and the Department, **the Manager responsible for employee relations must serve as the liaison between the SACE and the Department.**
 - 11.10.2 Where necessary, the **Manager responsible for employee relations** must cause the relevant **Manager of the unit affected by the incident/s** to arrange for the **immediate** investigation into the incident/s. As always, investigations are expected to be thorough. This will also assist the SACE in its evaluation of the case.
- 11.11 The Director-General of the Department of Social Development must in terms of section 111 of the Children's Act keep and maintain a National Child Protection Register contemplated in sections 112 to 114 of the Children's Act.
- 11.12 The Director-General of the Department of Social Development may in terms of section 115 of the Children's Act and after consultation with the Heads of Departments of the Provincial Education Departments and the Chief Executive Officer of the SACE and on such conditions as the Director-General of the Department of Social Development may determine, allow access to the register to a designated official of a Provincial Education Department, the SACE or a designated school governing body representative who may be the principal of the school.
- 11.13 The National Registrar for Sex Offenders must disclose contents contained in the National Register for Sex Offenders only to those entitled to apply for a clearance certificate.

- 11.14 Any person applying for employment, registration with the SACE or clearance certificates, must, in addition to the acquisition of the SAPS clearance certificate, also **disclose to their employers** (on affidavit) that they have never been convicted of a sexual offence against a child or a mentally disabled person provided for in terms of Section 46(1), (2) and (3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

12. FURNISHING THE SOUTH AFRICAN COUNCIL FOR EDUCATORS WITH RECORDS.

- 12.1 SACE must appoint a person from the Legal and Ethics division to serve as a liaison officer between the parties

12.2 The Manager responsible for employee relations referred to above must:

- 12.2.1 In each case where steps were taken against any educator under section 18(3), other than the **cautioning or reprimanding** of the educator, the employer must furnish the South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto;
- 12.2.2 Take steps to dispose of the matter, including reporting back to the SACE and providing it with a copy of the investigation report, through the normal channels of communication;
- 12.2.3 Furnish the Manager responsible for employee relations with a weekly progress report on the investigation so that he/she may address any inquiries that may originate from the SACE in regard to the case.
- 12.2.4 It is in the interests of education that the Departments are aware of all cases that concern the conduct of educators even if these are not reported directly to the Department.
- 12.2.5 As provided for in Collective Agreement No. 3 of 2018 the General Secretary of ELRC must furnish the South African Council for Educators with the record of the proceedings at the inquiry and all other documents relating thereto.
- 12.2.6 In the case of an educator appointed in terms of section 20 (4) of the South African Schools Act, it is the responsibility of the school principal to furnish the SACE with relevant information relating to the conduct of the educator which contravenes the SACE Code of Ethics.

13. FURNISHING THE EMPLOYERS WITH RELEVANT RECORDS.

- 13.1 It is in the interest of the SACE to furnish the schedules of its cases to the relevant employers so that each employer compares its records with those of the SACE and then be pro-active in addressing problems of conduct involving educators.
- 13.2 It is in the interest of education and for effective administration that the Departments record and act effectively in dealing with all cases where accused educators have been found guilty and struck off the register by the SACE. It is therefore imperative that the Departments includes in PERSAL System, all the names of educators whose names have been struck off the register kept by the SACE and to act decisively in line with the provisions of section 15(2) of the EEA.
- 13.3 It is the duty of the SACE liaisons officer to ensure that the information referred to above is communicated promptly and accurately to the relevant employer and the manager responsible for employee relations.
- 13.4 The manager responsible for employee relations must cause such name to be captured on the PERSAL system and notify the educator in question of the provisions of section 15(2) of the EEA

- 13.5 For the purposes of effective control of all cases in a Department, the onus vests with the respective Managers responsible for labour relations in that Department to maintain schedules of cases where disciplinary inquiries have been initiated or has sought to have been initiated or are being investigated in respect of personnel under its control.
- 13.6 Managers must also maintain schedules of employees suspended from duty/ temporarily transferred in terms of the disciplinary procedure. **Such schedules must be provided on a monthly basis, by the 7th of each month, to the Manager responsible for employee relations** who must maintain or cause to be maintained composite schedules of such cases for the relevant Department in its entirety. The format of the schedules must be provided by the Manager responsible for employee relations.
- 13.7 The Manager responsible for employee relations will, therefore, be responsible for overall control of all disciplinary matters in the relevant Department and maintain full and current records of such cases.
- 13.8 The Manager responsible for employee relations must ensure that the Head of Department is informed of any manager, presiding officer, employer representative or other employee of that Department who fails to fulfill the obligations imposed on him/ her in terms of this document or act; and must recommend to the head of Department any steps to be taken in this regard.
- 13.9 The Department of Basic Education and SACE shall develop a joint program to pro-actively deal with preventative mechanisms thus improve the morals of educators in respect of their professionalism.

14. FURNISHING THE DEPARTMENT OF SOCIAL DEVELOPMENT WITH RECORDS.

- 14.1 The SACE must notify the Director-General of the Department of Social Development of any finding in terms of section 120 of the Children's Act that an educator is not suitable to work with children or has been struck off the roll due to an offence against a learner.
- 14.2 The Head of Department of the employing Department must notify the Director-General of the Department of Social Development of any finding in terms of section 120 of the Children's Act that an educator is not suitable to work with children.
- 14.3 The General Secretary of ELRC must furnish the DSD with the findings or award that an educator is unsuitable to work with children, as provided for in Collective Agreement No. 3 of 2018.

15. INQUIRY BY AN EMPLOYER OR THE SOUTH AFRICAN COUNCIL FOR EDUCATORS TO THE NATIONAL CHILD PROTECTION REGISTER AND THE NATIONAL SEX OFFENDERS REGISTER

- 15.1 Before any person can be appointed to work with children, the prospective employer or delegated official must ensure that the prospective employee:
- 15.1.1 Meets the prescribed minimum requirements as stipulated in the Personnel Administrative Measures (PAM);
- 15.1.2 Is registered with the SACE; and
- 15.1.3 In terms of section 126 of the Children's Act, before a person is allowed to work with or have access to children in a school, the person managing or operating the school must establish whether or not that person's name appears in Part B of the Register.
- 15.1.4 In terms of Section 46(1), (2) and (3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 employers in the public or private sector or an employee working with children or mentally disabled persons can apply for a clearance certificate from

the Registrar.

16. BINDING NATURE, DURATION AND AMENDMENT OF THE PROTOCOL

- 16.1 This Protocol (memorandum of understanding) binds its signatories and all members of the signatories;
- 16.2 This Protocol (memorandum of understanding) must commence on the date it is signed and shall remain in force until terminated by the parties by agreement; and
- 16.3 Any amendments agreed to by the parties must be in writing and must be incorporated into this protocol as an addendum.

17. DISPUTE RESOLUTION

- 17.1 Any dispute or disagreement arising between the parties with regard to the application, interpretation or breach of the memorandum shall be settled as follows:
- 17.1.1 The parties must take all reasonable steps to settle any dispute or disagreement through consultation;
- 17.1.2 If the parties are incapable of resolving the dispute or disagreement, the matter must be referred to the Ministers of the respective parties, whose decision must be final.

18. SIGNATURES OF THE PARTIES TO THE PROTOCOL

- 18.1 Thus done and signed by the following parties to the Protocol, in **PRETORIA** on this ____ day of March 2019.

PARTIES	NAME	SIGNATURE
 basic education Department: Basic Education REPUBLIC OF SOUTH AFRICA		
  Province of the EASTERN CAPE EDUCATION 100 years Centenary		
 GAUTENG PROVINCE EDUCATION REPUBLIC OF SOUTH AFRICA		
 education Department: Education PROVINCE OF KWAZULU-NATAL		

PARTIES	NAME	SIGNATURE
 		
 education DEPARTMENT: EDUCATION MPUMALANGA PROVINCE		
 Northern Cape Department of Education		
 education Lefapha la Thuto la Bokone Bophirima Noordwes Departement van Onderwys North West Department of Education NORTH WEST PROVINCE		
 Western Cape Government Education BETTER TOGETHER.		
 elrc EDUCATION LABOUR RELATIONS COUNCIL		
 SACE SOUTH AFRICAN COUNCIL FOR EDUCATORS		
 social development Department: Social Development REPUBLIC OF SOUTH AFRICA		
 the doj & cd Department: Justice and Constitutional Development REPUBLIC OF SOUTH AFRICA		

PARTIES	NAME	SIGNATURE
		
		
		
Governance Alliance (GA)		
		
United front for School Governing Bodies (UF4SGBs)		
National Congress of School Governing Body		

ANNEXURE 1

EXTRACTS FROM THE EMPLOYMENT OF EDUCATORS ACT

17. Serious misconduct.

- (1) An educator must be dismissed if he or she is found guilty of—

- (a) theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports;
 - (b) committing an act of sexual assault on a learner, student or other employee;
 - (c) having a sexual relationship with a learner of the school where he or she is employed;
 - (d) seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee;
 - (e) illegal possession of an intoxicating, illegal or stupefying substance; or
 - (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).
- (2) If it is alleged that an educator committed a serious misconduct contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures provided for in Schedule 2.

18. Misconduct.

- (1) Misconduct refers to a breakdown in the employment relationship and an educator commits misconduct if he or she—
- (a) fails to comply with or contravenes this Act or any other statute, regulation or legal obligation relating to education and the employment relationship;
 - (b) wilfully or negligently mismanages the finances of the State, a school or an adult learning centre;
 - (c) without permission possesses or wrongfully uses the property of the State, a school, an adult learning centre, another employee or a visitor;
 - (d) wilfully, intentionally or negligently damages or causes loss to the property of the State, a school or an adult learning centre;
 - (e) in the course of duty endangers the lives of himself or herself or others by disregarding set safety rules or regulations;
 - (f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Basic Education, an office of the State or a school or adult learning centre;
 - (g) misuses his or her position in the Department of Basic Education or a school or adult learning centre to promote or to prejudice the interests of any person;
 - (h) accepts any compensation in cash or otherwise from a member of the public or another employee for performing his or her duties without written approval from the employer;
 - (i) fails to carry out a lawful order or routine instruction without just or reasonable cause;
 - (j) absents himself or herself from work without a valid reason or permission;
 - (k) unfairly discriminates against other persons on the basis of race, gender, disability, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
 - (l) performs poorly or inadequately for reasons other than incapacity;

- (m) without the written approval of the employer, performs work for compensation for another person or organisation either during or outside working hours;
- (n) without prior permission of the employer accepts or demands in respect of the carrying out of or the failure to carry out the educator's duties, any commission, fee, pecuniary or other reward to which the educator is not entitled by virtue of the educator's office, or fails to report to the employer the offer of any such commission, fee or reward;
- (o) without authorisation, sleeps on duty;
- (p) while on duty, is under the influence of an intoxicating, illegal, unauthorised or stupefying substance, including alcohol;
- (q) while on duty, conducts himself or herself in an improper, disgraceful or unacceptable manner;
- (r) assaults, or attempts to or threatens to assault, another employee or another person;
- (s) incites other personnel to [engage in] unprocedural and unlawful conduct;
- (t) displays disrespect towards others in the work-place or demonstrates abusive or insolent behaviour;
- (u) intimidates or victimises fellow employees, learners or students;
- (v) prevents other employees from exercising their rights to freely associate with trade unions in terms of any labour legislation;
- (w) operates any money-lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution or office where he or she is employed;
- (x) carries or keeps firearms or other dangerous weapons on State premises, without the written authorisation of the employer;
- (y) refuses to obey security regulations;
- (z) gives false statements or evidence in the execution of his or her duties;
- (aa) falsifies records or any other documentation;
- (ab) participates in unprocedural, unprotected or unlawful industrial action;
- (ac) fails or refuses to—
 - (i) follow a formal programme of counselling as contemplated in item 2 (4) of Schedule 1;
 - (ii) subject himself or herself to a medical examination as contemplated in item 3 (3) of Schedule 1 and in accordance with section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998); or
 - (iii) attend rehabilitation or follow a formal rehabilitation programme as contemplated in item 3 (8) of Schedule 1;
- (ad) commits a common law or statutory offence;
- (ae) commits an act of dishonesty; or
- (af) victimises an employee for, amongst others, his or her association with a trade union.

- (2) If it is alleged that an educator committed misconduct as contemplated in subsection (1), the employer must institute disciplinary proceedings in accordance with the disciplinary code and procedures contained in Schedule 2.
- (3) If, after having followed the procedures contemplated in subsection (2), a finding is made that the educator committed misconduct as contemplated in subsection (1), the employer may, in accordance with the disciplinary code and procedures contained in Schedule 2, impose a sanction of—
- (a) counselling;
 - (b) a verbal warning;
 - (c) a written warning;
 - (d) a final written warning;
 - (e) a fine not exceeding one month's salary;
 - (f) suspension without pay for a period not exceeding three months;
 - (g) demotion;
 - (h) a combination of the sanctions referred to in paragraphs (a) to (f); or
 - (i) dismissal, if the nature or extent of the misconduct warrants dismissal.
- (4) Any sanction contemplated in subsection (3) (e), (f) or (g) may be suspended for a specified period on conditions determined by the employer.
- (5) An educator may be dismissed if he or she is found guilty of—
- (a) dishonesty, as contemplated in subsection (1) (ee);
 - (b) victimising an employee for, amongst others, his or her association with a trade union, as contemplated in subsection (1) (ff);
 - (c) unfair discrimination, as contemplated in subsection (1) (k);
 - (d) rape, as contemplated in subsection (1) (dd);
 - (e) murder, as contemplated in subsection (1) (dd);
 - (f) contravening section 10 of the South African Schools Act, 1996 (Act No. 84 of 1996), as contemplated in subsection (1) (dd).

ANNEXURE 2

DEFINITIONS

1. In this Code, unless the context indicates otherwise any word or phrase defined in the South African Council for Educators Act, 2000 has that meaning and:
 1. '**Code**' means the Code of Professional Ethics of the South African Council for Educators;
 2. '**Council**' means the South African Council for Educators;
 3. '**educator**' means any educator registered or provisionally registered with the Council;
 4. '**learner**' means a pupil or a student at any school, further education and training institution or adult learning centre;
 5. '**parent**' means:
 1. any natural parent or guardian of a learner;
 2. any person legally entitled to custody of a learner; and
 3. Any person who undertakes to fulfil the obligations of a person referred to in paragraphs (a) or (b) towards the learner's education at school.

GENERAL

1. The educators who are registered or provisionally registered with the South African Council for Educators:
 - 1.1 acknowledge the noble calling of their profession to educate and train the learners of our country;
 - 1.2 acknowledge that the attitude, dedication, self-discipline, ideals, training and conduct of the teaching profession determine the quality of education in this country;
 - 1.3 acknowledge, uphold and promote basic human rights, as embodied in the Constitution of South Africa;
 - 1.4 commit themselves therefore to do all within their power, in the exercising of their professional duties, to act in accordance with the ideals of their profession, as expressed in this Code; and
 - 1.5 act in a proper and becoming way such that their behaviour does not bring the teaching profession into disrepute.

CONDUCT: THE EDUCATOR AND THE LEARNER

2. An educator:
 - 1.1 respects the dignity, beliefs and constitutional rights of learners and in particular children, which includes the right to privacy and confidentiality;
 - 1.2 acknowledges the uniqueness, individuality, and specific needs of each learner, guiding and encouraging each to realise his or her potentialities;
 - 1.3 strives to enable learners to develop a set of values consistent with the fundamental rights contained in the Constitution of South Africa;

- 1.4 exercises authority with compassion;
- 1.5 avoids any form of humiliation, and refrains from any form of abuse, physical or psychological;
- 1.6 refrains from improper physical contact with learners;
- 1.7 promotes gender equality;
- 1.8 refrains from any form of sexual harassment (physical or otherwise) of learners;
- 1.9 refrains from any form of sexual relationship with learners at a school;
- 1.10 uses appropriate language and behaviour in his or her interaction with learners, and acts in such a way as to elicit respect from the learners;
- 1.11 takes reasonable steps to ensure the safety of the learner;
- 1.12 does not abuse the position he or she holds for financial, political or personal gain;
- 1.13 is not negligent or indolent in the performance of his or her professional duties;
- 1.14 recognises, where appropriate, learners as partners in education.

CONDUCT: THE EDUCATOR AND THE PARENT

3. An educator, where appropriate:

- 1.1 recognises the parents as partners in education, and promotes a harmonious relationship with them;
- 1.2 does what is practically possible to keep parents adequately and timeously informed about the well-being and progress of the learner.

CONDUCT: THE EDUCATOR AND THE COMMUNITY

- ##### **4. An educator recognises that an educational institution serves the community, and therefore acknowledges that there will be differing customs, codes and beliefs in the community.**

CONDUCT: THE EDUCATOR AND HIS OR HER COLLEAGUES

5. An educator:

- 1.1 refrains from undermining the status and authority of his or her colleagues;
- 1.2 respects the various responsibilities assigned to colleagues and the authority that arises therefrom, to ensure the smooth running of the educational institution;
- 1.3 uses proper procedures to address issues of professional incompetence or misbehaviour;
- 1.4 promotes gender equality and refrains from sexual harassment (physical or otherwise) of his or her colleagues;
- 1.5 uses appropriate language and behaviour in his or her interactions with colleagues;
- 1.6 avoids any form of humiliation, and refrains from any form of abuse (physical or otherwise) towards colleagues.

CONDUCT: THE EDUCATOR AND THE PROFESSION

6. An educator:

- 1.1 acknowledges that the exercising of his or her professional duties occurs within a context requiring co-operation with and support of colleagues;
- 1.2 behaves in a way that enhances the dignity and status of the teaching profession and that does not bring the profession into disrepute;
- 1.3 keeps abreast of educational trends and developments;
- 1.4 promotes the ongoing development of teaching as a profession;
- 1.5 accepts that he or she has a professional obligation towards the education and induction into the profession of new members of the teaching profession.

CONDUCT: THE EDUCATOR AND HIS OR HER EMPLOYER

7. An educator:

- 1.1 recognises the employer as a partner in education;
- 1.2 acknowledges that certain responsibilities and authorities are vested in the employer through legislation, and serves his or her employer to the best of his or her ability;
- 1.3 refrains from discussing confidential and official matters with unauthorised persons.

CONDUCT: THE EDUCATOR AND THE COUNCIL

8. An educator:

- 1.1 complies with the provisions of this Code;
- 1.2 discloses all relevant information to the Council;
- 1.3 co-operates with the Council to the best of his or her ability;

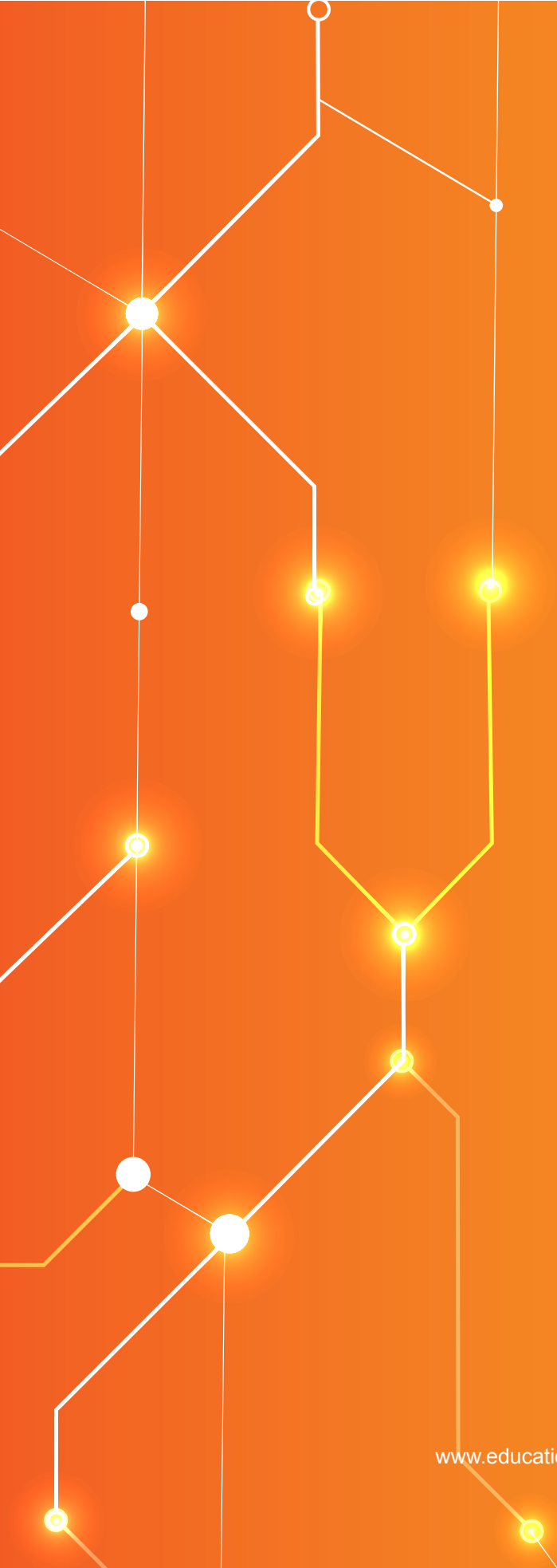
Accepts and complies with the procedures and requirements of the Council, including but not limited to the Registration Procedures, the Disciplinary Procedures of the Council and the payment of compulsory fees.

Additional information regarding the codes of conduct can be sourced from the SACE website at: http://www.sace.org.za/Legal_Affairs_and_Ethics/jit_default_22.Legal_and_Ethics-FAQ.html and the DBE website at: <https://www.education.gov.za/Resources/Legislation/Acts.aspx>

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Notes

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