

**DELEGATION OF AUTHORITY****Delegated authority to the principal to address less serious misconduct of departmental educators**

The formal discipline of educators by school principals, in the event of alleged misconduct, is increasingly a sensitive and complex matter. It is important that principals and SAOU members take note of the relevant directives as contemplated in the Employment of Educators Act (EEA), the PAM and relevant departmental circulars.

**May principals subject educators to a formal disciplinary process?**

Yes, school principals may do this, provided that the provincial head of the education department formally delegated this power to school principals. This competence is contained in Schedule 2 item 4(1)(a) of the EEA which states as follows, "*The employer must delegate the function to deal with misconduct referred to in subitems (2) to (6), to the head of the institution or office where the educator is employed.*"

**Which provinces have delegated this power?**

It is important to note that only two provinces have formally delegated this power. These delegations are in terms of -

- GDE Circular 1 of 2016; and
- WCED Circular 11 of 2019.

**What is the position in the provinces where the power has not been delegated?**

In the other seven provinces, principals do not have the power to hold formal disciplinary hearings. If principals do this, they are exceeding their authority.

**When may principals subject educators to a disciplinary process?**

Only principals in Gauteng and the Western Cape have the delegated power to deal with less serious forms of misconduct by way of an informal disciplinary meeting, which is also known as a progressive disciplinary process in terms of Schedule 2, item 4(6)(a) of the EEA.

**DELEGASIE VAN GESAG****Gedelegeerde bevoegdheid aan die skoolhoof om minder ernstige wangedrag van departementele opvoeders aan te spreek**

Die formele dissiplinering van opvoeders deur skoolhoofde in die geval van beweerde wangedrag is toenemend 'n sensitiewe en komplekse aangeleentheid. Dit is belangrik dat skoolhoofde en SAOU-lede kennis neem van die toepaslike voorskrifte soos vervat in die Wet op die Indiensneming van Opvoeders (WIO), die PAM en toepaslike departementele omsendkrywes.

**Mag skoolhoofde opvoeders aan 'n formele dissiplinêre proses onderwerp?**

Ja, skoolhoofde mag dit doen met dien verstande dat die provinsiale hoof van die onderwysdepartement hierdie bevoegdheid formeel aan skoolhoofde gedelegeer het. Dié bevoegdheid word vervat in Skedule 2 item 4(1)(a) van die WIO wat soos volg bepaal, "*Die werkgewer moet die werksaamheid om wangedrag ingevolge die prosedures soos bedoel in sub-items (2) tot (6) te hanteer, deleger aan die hoof van die inrigting of kantoor waar die opvoeder in diens is.*"

**Watter provinsies het hierdie bevoegdheid gedelegeer?**

Dit is belangrik om kennis te neem dat slegs twee provinsies hierdie bevoegdheid formeel gedelegeer het. Hierdie delegasies is vervat in -

- GDO Omsendkrywe 1 van 2016; en
- WKOD Omsendbrief 11 van 2019.

**Wat is die posisie in die provinsies waar die bevoegdheid nie gedelegeer is nie?**

In die ander sewe provinsies beskik skoolhoofde nie oor die bevoegdheid om formele dissiplinêre verhore te hou nie. Indien skoolhoofde dit wel doen, oorskry hulle hulle bevoegdheid.

**Wanneer mag skoolhoofde opvoeders aan 'n dissiplinêre proses onderwerp?**

Skoolhoofde in Gauteng en die Wes-Kaap beskik slegs oor die gedelegeerde bevoegdheid om minder ernstige vorme van wangedrag te hanteer by wyse

### What requirements must the disciplinary process meet and what are the rights of the alleged offender?

The *audi alteram partem* rule (hear the other side) must be applied objectively by the principal with the following guidelines as prescribed in South African labour legislation as well as Schedule 2, section 4 of the EEA:

1. A properly drafted notice of a disciplinary process that clearly sets out the alleged misconduct .
2. Provide sufficient time for preparation. Five (5) working days is considered a reasonable notice period.
3. The employee must understand his/her rights:
  - a. The right to be present during the disciplinary process;
  - b. The right to union representation or the assistance of a colleague;
  - c. The right to provide and explain a defence;
  - d. The right to provide mitigating circumstances;
  - e. Right to receive the outcome of the disciplinary process in writing;
  - f. The right to object (in writing) to the finding and/or sanction, including an appeal.
4. The disciplinary proceedings must be recorded by means of written notes or a minute in the case of an informal disciplinary process and/or by means of an electronic recording system.

### What offenses are involved?

The EEA makes a distinction between serious forms of misconduct and less serious forms of misconduct.

Misconduct as listed in section 17 of the EEA is considered serious in nature:

1. Exam cheating;
2. Sexual relationship with a learner;
3. Assault of a serious nature;
4. Illegal possession of drugs; and
5. To cause a learner to commit the above-mentioned acts.

However, school principals must note that some types of misconduct as reflected under section 18 of the EEA are also considered to be serious in nature despite the fact that they are not listed as serious.

This will be misconduct such as theft, gross insubordination, frequent absence without permission, sleeping on duty, assault, fraud, discrimination, under the influence of alcohol or an illegal and/or unauthorized drug as well as any action that endangers the lives of staff and/or learners. endanger.

van 'n informele dissiplinêre vergadering wat ook bekend staan as 'n progressiewe dissiplinêre proses in terme van Skedule 2, item 4(6)(a) van die WIO.

### Aan welke vereistes moet die dissiplinêre proses voldoen en wat is die regte van die beweerde oortreder?

Die *audi alteram partem* reël (hoor die ander kant) moet objektief toegepas word deur die skoolhoof met die volgende riglyne soos voorgeskryf in Suid-Afrikaanse arbeidswetgewing asook Skedule 2, artikel 4 van die WIO:

1. 'n Behoorlik opgestelde kennisgewing van 'n dissiplinêre proses en beskrywing van die beweerde wangedrag.
2. Genoegsame tyd vir voorbereiding. Vyf (5) werksdae word as 'n redelike kennisgewingstydperk geag.
3. Die werknemer moet sy/haar regte verstaan:
  - a. Reg om teenwoordig te wees tydens die dissiplinêre proses;
  - b. Reg op unievertegenwoordiging of die bystand van 'n kollega;
  - c. Reg op 'n verweer;
  - d. Reg om versagterende omstandighede te vermeld;
  - e. Reg om die uitkoms van die dissiplinêre proses skriftelik te ontvang;
  - f. Reg om beswaar te maak (skriftelik) teen die bevinding en/of sanksie met insluiting van 'n appél.
4. Die dissiplinêre verrigtinge moet gerekordeer word by wyse van skriftelike aantekeninge of 'n notule in die geval van 'n informele dissiplinêre proses en/of by wyse van 'n elektroniese rekorderingsstelsel.

### Watter oortredings is ter sprake?

Die WIO tref 'n onderskeid tussen ernstige vorme van wangedrag en minder ernstige vorme van wangedrag.

Wangedrag soos gelys in artikel 17 van die WIO word as ernstig van aard beskou:

1. Eksamenbedrog;
2. Seksuele verhouding met 'n leerder;
3. Aanranding van 'n ernstige aard;
4. Onwettige besit van dwelmmiddels; en
5. 'n Leerder bovermelde handeling te laat pleeg.

Skoolhoofde moet egter daarop let dat sommige tipes wangedrag soos reflekteer onder artikel 18 van die WIO ook geag word as ernstig van aard ten spyte van die feit dat dit nie in die artikel as ernstig benoem word nie.

Dit sal wangedrag wees soos diefstal, growwe insubordinasie, gereelde afwesigheid sonder toestemming, slaap aan diens, aanranding, bedrog,

This type of serious misconduct may not be dealt with by the principal. The only obligation required from the principal is to report the alleged incident.

#### May the school governing body subject departmental educators to a disciplinary process?

No. Staff in the employment of a provincial education department fall under the legal competence of the Department. A school governing body only has the power to discipline staff in the employment of the school as employer.

#### Further recommendations for principals

Principals are encouraged to keep the content of a disciplinary process confidential and not deal with any media inquiries. That competence rests with the employer.

Deviation from the reporting duty or exceeding powers can have serious consequences.

#### Advice to other members

Do not hesitate to contact your provincial SAOU office if you are not comfortable with the principal's or school's approach to disciplinary matters.

diskriminasie, onder die invloed van drank of 'n onwettige en/of ongemagtigde dwelmiddel asook enige optrede wat personeel en/of leerders se lewens in gevaar stel.

Hierdie tipe ernstige wangedrag mag nie deur die skoolhoof hanteer word nie. Daar word slegs van die skoolhoof verwag om die beweerde insident te rapporteer.

#### Mag die skoolbeheerliggaam departementele opvoeders aan 'n dissiplinêre proses onderwerp?

Nee. Personeel in diens van 'n provinsiale onderwysdepartement val onder die bevoegheid van die Departement van Onderwys en 'n skoolbeheerliggaam het slegs die bevoegdheid om personeel in die diens van die skool te dissiplineer.

#### Verdere aanbevelings vir skoolhoofde

Skoolhoofde word aangemoedig om die inhoud van 'n dissiplinêre proses vertroulik te hou en nie enige medianavrae te hanteer nie. Daardie bevoegdheid berus by die werkgever.

Afwyking van die rapporteringsplig of oorskryding van magte kan ernstige gevolge inhou.

#### Advies aan ander lede

Moenie huiwer om u provinsiale SAOU-kantoor te kontak indien u nie gemaklik is met die hantering van dissiplinêre sake deur die skoolhoof of skool nie.

