

Education Teaching Service Regulation 2001

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New South Wales

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The provisions displayed in this version of the legislation have all commenced.

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Education Teaching Service Regulation 2001



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Teaching Services Act 1980*.

JOHN AQUILINA, M.P., Minister for Education and Training

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Education Teaching Service Regulation 2001*.

2 Commencement

This Regulation commences on 1 September 2001.

Note—

This Regulation replaces the *Teaching Services (Education Teaching Service) Regulation 1994* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Department means the Department of Education and Training.

Director-General means the Director-General of the Department.

disciplinary authority means the Director-General or a person who is the holder of, or is acting in, any position referred to in clause 13.

member of staff means an officer or temporary employee of the Education Teaching Service, whether a member of the teaching staff, administrative staff or any other staff of the Service.

school means a government school established under the *Education Act 1990*, and includes any school department, school faculty or school counselling team.

statutory conditions of service means such of the provisions of:

- (a) the Act, or
 - (b) this Regulation, or
 - (c) any determination under section 25 of the Act,
- as impose duties on members of staff.

the Act means the *Teaching Services Act 1980*.

- (2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

4 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Teaching Services (Education Teaching Service) Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

Part 2 Duties of members of staff

5 Compliance with statutory conditions of service

- (1) All members of staff must acquaint themselves with the statutory conditions of service.
- (2) The Director-General is to make available to all members of staff copies of the following documents in a reasonably accessible form:
 - (a) the Act,
 - (b) this Regulation,
 - (c) all determinations under section 25 of the Act in relation to members of staff.
- (3) The person in charge of a school or establishment must report to the Director-General any breach of the statutory conditions of service that comes to the person's knowledge.

6 Compliance with directions

- (1) A member of staff must immediately comply with any lawful direction given by a person who has authority under the Act or this Regulation to give the direction.
- (2) A request for the review of a direction may be made by or on behalf of one or more members of staff by means of a notice in writing given to the person who gave the direction.
- (3) The person with whom the request is lodged must immediately send it to the Director-General or to an officer authorised by the Director-General in writing for the purposes

of this clause.

- (4) The making of a request for the review of a direction does not relieve a member of staff of his or her obligation to comply with the direction as far as is reasonably practicable.

7 Scope of duties

In addition to performing the specific duties attached to the position to which the member is appointed, a member of staff:

- (a) must participate actively in all of the corporate interests of the Department and of the school or establishment in which the member is employed, and
- (b) must undertake such other duties as may be assigned to the member by the person in charge of that school or establishment or by any other person having the authority to assign duties.

8 Disclosure of information

- (1) A member of staff must not, except in the discharge of official duties, use any information gained by or conveyed to the member in the course of those duties.
- (2) A member of staff must not, without the express direction or permission of the Minister or the Director-General, disclose (whether directly or indirectly) any such information.

9 Holding of local government office

A member of staff may accept and hold the office of mayor of a local government area or chairperson of a county council, but must resign that office if, in the opinion of the Director-General, the holding of that office is incompatible with the proper discharge of his or her duties as a member of staff.

10 Management of schools

- (1) A member of staff who is in charge of a school or establishment must manage the school or establishment concerned in a proper, efficient, economic and equitable manner.
- (2) The obligations imposed by subclause (1) include the following:
 - (a) having well-stated policies and plans of action, clearly defined goals, a balanced, sequential and appropriate curriculum and suitable mechanisms for supervision, evaluation and documentation that ensure co-ordination of all school activities, continuity of policy and good communication,
 - (b) encouraging and assisting the professional development of members of staff without discrimination, as required by the [Anti-Discrimination Act 1977](#),

- (c) making effective and economic use of resources,
- (d) ensuring staff and student discipline,
- (e) encouraging members of staff to submit suggestions for increasing the efficiency of staff,
- (f) training members of staff and providing opportunities and facilities for them to improve themselves in matters connected with their official duties:
 - (i) by attendance at courses organised by or for the school, and
 - (ii) at tertiary institutions.

11 Medical examination

- (1) For the purpose of ascertaining the fitness of a member of staff to perform his or her duties or to participate in any disciplinary proceedings relating to the member, the Director-General may direct the member to submit to a medical examination by a qualified medical practitioner selected by the Director-General.
- (2) The member of staff must comply with the direction.

Part 3 Breaches of discipline by members of staff

12 Part subject to Part 3A of the [Ombudsman Act 1974](#)

The provisions of this Part are subject to Part 3A of the [Ombudsman Act 1974](#).

13 Officers who may deal with breaches of discipline

In accordance with paragraph (a) of the definition of **prescribed officer** in section 82 of the Act, the positions within the Department that contain the following titles are prescribed as positions for the purposes of Division 6 of Part 4 of the Act in its application to the Education Teaching Service:

- Deputy Director-General
- Assistant Director-General
- Director
- General Manager
- Executive Director
- District Superintendent
- Disciplinary Inquiry Officer
- Senior Manager

14 Procedures for dealing with breaches of discipline

- (1) If it appears to a disciplinary authority that a member of staff may have committed a breach of discipline, the disciplinary authority may, after conducting a preliminary investigation into the matters relating to the alleged breach of discipline:
 - (a) charge the member with the alleged breach in accordance with clause 15, or
 - (b) deal with the alleged breach in accordance with subclause (2).
- (2) If the disciplinary authority decides not to charge the member of staff with the breach of discipline, the disciplinary authority may, in accordance with such procedures as may be approved by the Director-General:
 - (a) make a record in relation to the alleged breach of discipline (including details of the preliminary investigation referred to in subclause (1)), and
 - (b) advise the member of staff that the kind of conduct to which the allegation relates is unacceptable and that the member must not engage in that conduct, and
 - (c) monitor the conduct of the member of staff for such period as the disciplinary authority thinks appropriate.
- (3) Any such record must:
 - (a) be kept separate from the personal record of the member of staff, and
 - (b) be kept under strictly limited access as approved by the Director-General, and
 - (c) must include a statement that the alleged breach of discipline did not, at the time the record was made, result in any charge being brought against the member of staff.
- (4) If the disciplinary authority is satisfied that the member of staff has, during the period of monitoring, continued to engage in conduct of a kind that was the subject of the alleged breach of discipline, the authority may, in accordance with clause 15, charge the member with a breach of discipline in respect of that conduct.
- (5) This clause does not apply in relation to an alleged breach of discipline by a staff member if the member of staff has, before the commencement of this Regulation, already been charged with the alleged breach of discipline.

15 Laying of charges

- (1) A charge may be laid by a disciplinary authority against a member of staff for an alleged breach of discipline orally or in writing. If the charge is laid orally, the member of staff must be furnished with a written copy of the charge within a reasonable time.
- (2) At the time the member of staff is charged by a disciplinary authority in writing or

furnished with a written copy of the charge, the member must be directed to send a written reply to the authority within 14 days (or such other period of time as is specified in the direction).

- (3) The reply:
 - (a) must admit or deny the truth of the charge, and
 - (b) may give any explanation that the member of staff wishes to make in regard to the charge.
- (4) If a reply is not received by the disciplinary authority within the time specified in the direction, the member of staff is to be taken to have denied the truth of the charge.

16 Dealing with charges

- (1) If a member of staff denies the truth of a charge, it is to be dealt with in accordance with this clause.
- (2) A disciplinary authority (other than the disciplinary authority that laid the charge) is to deal with the charge:
 - (a) by directing the member of staff to furnish an explanation in writing within 14 days (or such other period of time as is specified in the direction), or
 - (b) by conducting an inquiry.
- (3) If a disciplinary authority takes action under subclause (2) (a):
 - (a) the authority may make a finding after considering any reports relating to the breach of discipline and any replies or explanations of the member of staff, or
 - (b) the authority may decide to deal with the charge by conducting an inquiry under subclause (2) (b).
- (4) If a disciplinary authority takes action under subclause (2) (a), the authority:
 - (a) may consider the matter without regard to legal formality, and
 - (b) is not bound by any law or practice as to evidence, and
 - (c) may seek advice from suitably qualified officers of the Department on any legal, technical or procedural matter that may arise.
- (5) If 2 or more charges are laid against a member of staff at the one time and the member admits to the truth of one or more but not all of the charges, all of the charges may be dealt with in the manner prescribed by subclause (2).

17 Conduct of inquiries

- (1) If it is decided to conduct an inquiry, the disciplinary authority must give written notice to the member of staff charged of the time, date and place at which the inquiry is to be conducted.
- (2) If the member of staff does not, without reasonable cause, appear at the time, date and place notified, the charge may be inquired into and dealt with in the member's absence.
- (3) For the purposes of an inquiry, a disciplinary authority may:
 - (a) call on any person to appear and to give such evidence, and produce such documents, as appear to the authority to be relevant to the inquiry, and
 - (b) seek advice from suitably qualified officers of the Department on any legal, technical or procedural matter that may arise during the inquiry.
- (4) A member of staff must not, without reasonable cause:
 - (a) fail to appear, give evidence or produce documents at an inquiry when called on to do so, or
 - (b) knowingly give false or misleading evidence at an inquiry.
- (5) A member of staff may be represented at an inquiry by a barrister, solicitor or agent employed at the member's expense.
- (6) A disciplinary authority may conduct an inquiry without regard to legal formality, and is not bound by any law or practice as to evidence, but may inform himself or herself of any matter in such manner as he or she thinks fit.
- (7) However, a disciplinary authority must not inform himself or herself of, or take into consideration, any matter that has not been disclosed in evidence at a sitting of the inquiry if the matter is one that ought, in the interests of justice, to be available for challenge or testing by the persons entitled to be present at the inquiry.
- (8) Nothing in subclause (7) prevents a disciplinary authority:
 - (a) from informing himself or herself of, or taking into consideration, any matter of which a court would be entitled to take judicial notice, or
 - (b) when deciding whether or how to punish a member of staff found to have committed a breach of discipline, from taking into consideration any previous breach of discipline:
 - (i) that has been found by a disciplinary authority to have been committed by the member, or

(ii) that was dealt with in accordance with clause 14 (2).

18 Witnesses' expenses

If a witness is summoned to attend and give evidence at an inquiry conducted by a disciplinary authority, the disciplinary authority may grant reasonable expenses for the attendance to the witness.

19 Charge not proved

- (1) If a charge of breach of discipline against a member of staff is found not to be proved, any suspension of the member must immediately be removed.
- (2) If a charge of breach of discipline against a member of staff is found not to be proved, the charge must not be recorded in (or, if already recorded, must be removed from) the member's personal record.
- (3) If a charge of breach of discipline is a charge that the member of staff has engaged in conduct:
 - (a) of a sexual nature involving a child or student, or
 - (b) that, in the opinion of the Director-General, has resulted in (or may result in) a child or student suffering physical, emotional or psychological harm of any kind,the charge must be recorded separately from the member's personal record and kept under strictly limited access as approved by the Director-General.
- (4) If a charge referred to in subclause (3) is found not to be proved, that fact must also be noted on the record referred to in that subclause.

20 Director-General to be notified of serious offences committed by members of staff

- (1) A member of staff who is charged with, or who is found guilty of, an offence referred to in section 86 of the Act must immediately report that fact to the Director-General.
- (2) On becoming aware of the fact that a member of staff has been charged with, or has been found guilty of, an offence referred to in section 86 of the Act, the person in charge of the school in which the member is employed must also immediately report that fact to the Director-General.