

## CHAPTER 3

### PERSONNEL MANAGEMENT

#### 3.1 INTRODUCTION

The previous chapter dealt essentially with the formal constitution, structuring and functioning of the governing body. Mention was also made of the need for the governing body to take into account other role-players in the responsibility of providing what Paine (1992:6) called a "milieu in which quality education may thrive". Essential to this aim of the state-aided school is the provision and management of the professional teaching staff of the school. This chapter will look at the legal responsibilities of the governing body with respect to effective personnel management.

Bondesio and de Witt (1990:250) suggest a systems approach which indicates the four broad areas of personnel management with which a governing body would be concerned:

- \* Anticipatory functions: this includes the procedure to be followed in the identification of a personnel post (a vacant post).
- \* Personnel provision: this includes the traditional procedures in the recruitment, selection and appointment of staff.
- \* Personnel utilization, training and development: this includes what is sometimes called the "intermediate" activity i.e. the period between the appointment stage and the termination stage.
- \* Termination of service/reduction of posts/abolition of posts: for whatever reason, the ending of service of a staff member.

The above categories of functions will apply to a greater or lesser extent in the discussion which follows.

In dealing with people-related matters, an emphasis needs to be placed on the personnel management aspect of the governing body's responsibilities. It is also essential to establish sound interpersonal relationships. Such interpersonal relationships would, according to Van Loggerenberg (1992:20), be based on mutual trust, honesty and an openness which "negates any thoughts of secrecy or hidden agendas".

Therefore, in all matters concerning the personnel of the state-aided school, it is essential that the governing body work in consultation with the principal and executive staff of the school. These are the people "...most likely to understand exactly what the school requires..." (de Wet, 1981:168), and most able to clearly identify the governing body's rôle in a management system involving other rôle players. Worthy of note is the statement made by the Minister of Education and Culture on 12 August 1992 as quoted in circular 158 (TED, 1992) concerning the non-interference (and by implication that of the governing body) in the professional activities of the teacher.

The following are functions which are set out in the Act (70/1988) as being the powers of the governing body of the state-aided school which relate to personnel management.

### **3.2 APPOINTMENT, PROMOTION AND DISCHARGE OF PERSONS IN SUBSIDIZED POSTS.**

#### **3.2.1 Statutory provisions**

In terms of section 97(1)(b) of the Act (70/1988) "the governing body has the power to appoint, promote or discharge a person at a state-aided school". Such powers, as these concern subsidized posts, will be exercised subject to the prior approval of the Minister", or in accordance with powers prescribed

from time to time by the Minister or a person(s) delegated by him.

### **3.2.2 Appointments**

According to de Wet (1981:166) the success that a school attains in the achievement of its goals, depends to a large extent on the degree of professional competency of the personnel.

The governing body shall be responsible for the appointment of teachers (and other personnel) to vacancies at state-aided schools under conditions intended in the Regulations Relating to the Appointment and Conditions of Service of teachers (and persons other than teachers) employed at Departmental Institutions.

In order to ensure that the governing body identify the best possible staff, in the case of both teaching and non-teaching personnel, there are two important steps that have to be taken and administrative procedures to be followed:

#### **3.2.2.1 Anticipatory functions**

In the cases where schools are already established with a staff allocated according to the currently applicable staffing scales, the first step is to identify what vacant posts exist or are likely to exist at a time in the future. It is also necessary to establish what the needs of the post are in order to be able to assess applicants accordingly. This step is the function of the principal who, together with his executive staff, determine the specific requirements of a post. The principal would justify

his decision to the governing body against the background of the total staffing position.

### **3.2.2.2 Personnel provision**

#### **a) Advertising of posts**

##### **\* Subsidized posts**

All posts which are to be filled in a permanent capacity must be advertised in the education department's vacancy list or gazette, but may also be advertised in the media with the proviso that all the applicable dates coincide (Van Loggerenberg, 1992:27).

The governing body, according to Circular 53 (TED, 1992:1), is to submit a prescribed form (T.E.D. 576) to the Department with the required details of the post to be advertised in the vacancy gazette. The closing date for applications as indicated in the gazette should coincide with any dates given in press advertisements.

It is the task of the principal to complete the administrative work with the Chairman of the governing body signing the documents concerned.

##### **\* Non-subsidized posts**

The governing body is entitled to create posts in addition to the departmental staff allocation according to their requirements and financial capability as provided for in Regulation 6 (7) of the Act (70/1988).

Governing bodies may, if they wish, advertise non-subsidized posts in a departmental gazette or in the applicable media, but should be clearly indicate such posts as being "non-subsidized". Teachers appointed in non-subsidized posts are done so under a contract

between the person concerned and the governing body as set out in Regulation 6(7) (Act 70/1988). It is the governing body's responsibility to draw up such a contract. The signed contract is legally binding on both parties (Oakes (ed), 1992:169) and must make provision for the following as set out in the Manual for State-aided schools (1992:16).

- that any expenses associated with such non-subsidized posts, including the remuneration package, are borne by the governing body itself, and on the understanding that the total remuneration package may not be more favourable than that applicable to a similar subsidized post;
- that teachers appointed to such non-subsidized posts have to be registered with the Teachers' Federal Council;
- that according to Van Wyk (1986:41), the following matters be mutually agreed upon:
  - teacher's suitability and qualifications for the post; the teacher's duties, duty hours, extra-mural duties and hours; gross salary, salary increase arrangements, anniversary bonuses or portion thereof, statutory salary deductions (income tax, pension, unemployment insurance fund, professional association fees), other deductions such as medical subscriptions and insurance, and any other financial aspects; leave arrangements; arrangements with regard to the termination of service;
  - that matters concerning incompetence, misconduct and disciplinary matters be stipulated;
  - that any other conditions of service and service benefits pertaining to the teacher's employment are dealt with, as referred to in Regulation 6(7) (Act 70/1988).

Failure or refusal by any of the parties to honour the terms of the contract could result in a claim for damages being made against the delict party on the grounds of breach of contract (Oakes (ed), 1992:86).

Before a teacher is appointed in a non-subsidized post

the following is required as identified by Van Loggerenberg (1992:28):

- a personal information form with details of name, address, departmental reference number, TFC registration number, period of appointment, and in the cases of part-time posts the number of hours per week, must be submitted to the regional director of education, together with
- a copy of the contract between the teacher and the governing body, for service record purposes, and
- any other particular documentation required by the education department.

Circular 53 (TED, 1992:5) recommends that the appointments of teachers in non-subsidized posts should be as strictly controlled in terms of post requirements, qualifications and suitability of potential incumbents, as is the case when deciding on appointments for subsidized posts.

The governing body would also be responsible for issuing certificates of service to personnel who have applied to and received approval from the Executive Director of Education for study and/or National service debts to be recognised as service rendered in a non-subsidized post as set out in Circular 53, (TED, 1992:5).

**\* Temporary posts**

Governing bodies may decide whether or not they wish to advertise temporary posts on post level 1 (Manual for State-aided schools, 1992:16).

**b) Selection procedures**

Once applicants respond to advertised posts, whether these be promotion posts, post level 1 posts or any non-teaching post, the governing body will normally follow the following procedure: (Bondesio and de Witt, 1990:259)

- assess the applications against the criteria for

- the post,
- obtain information about the applicants if deemed necessary,
  - decide on a selection procedure which is most commonly an interview with prospective candidates, although other methods of selection can be decided upon,
  - take a decision on whom to appoint.

The Manual for State-aided Schools (1992:16) lists certain requirements for appointment of a teacher into a subsidized post and which must be checked by the governing body. The applicant should:

- be in possession of an approved qualification;
- be registered with the Teachers' Federal Council;
- be a citizen of South Africa or a TBVC state;
- be of good character;
- be of good medical health;
- be under the age of fifty five, unless already in service;
- be competent in both official languages and with the required experience if appointment in a promotion post is being considered;
- be registered as a teacher with the education department concerned.

c) **Appointment procedures - permanent appointments**

\* Post Level 1

Upon deciding on a candidate it wishes to appoint in a post, the governing body is able immediately to make an offer of appointment to the candidate concerned. The applicant however, must be given a reasonable time to respond either positively or negatively to the offer (Van Loggerenberg, 1992:27). If the offer of appointment is accepted by the successful applicant, the governing body must follow the following procedure as set out in circular 53 (TED, 1992:2) in the cases where duty is to be assumed on 1 January.

The governing body must submit the following documentation to the education department concerned:

- the application forms of the candidate for a

- teaching post (TED 487);
- a notice of appointment on which the name of the successful candidate and the date of appointment are indicated (TED 472);
- the candidate's written acceptance of the appointment (on a standard acceptance form if this is required).

If the governing body wishes to bring the date of assumption of duty of a teacher forward then Van Loggerenberg (1992:27) suggests that the following steps should be taken:

- The governing body must firstly negotiate the advanced date of the proposed assumption of duty through the regional Director of Education with the governing body of the school where the applicant is in service at the time. It is necessary that all parties including the principals of the schools concerned agree to the dates involved.
- Thereafter the governing body must submit the following documentation to the education department concerned:
  - the application forms of the candidate for a teaching post (TED 487);
  - the notice of appointment to the teaching post (TED 472);
  - the candidate's written acceptance of the appointment;
  - a letter from the governing body of the candidate's present school agreeing to the candidate's early assumption of duty;
  - a medical form in the case of a first appointment or appointment after a lapse of time out of teaching (TED 133);
  - departmental registration documents in the case of a first appointment or appointment after a lapse of time out of teaching (TED 1).

\* Post level 2 and higher (promotion posts)

The selection procedures in the case of promotion

posts are the same as those for post level 1 posts except that applicants send their application forms directly to the education department concerned. The education department is responsible for drawing up a list of approved candidates (short list) for the governing body's consideration. Criteria for drawing up a list of approved candidates is based on the history and record of the candidate in the teaching profession and upon the suitability of the candidate for a particular post and the prevailing circumstances at a school. This "short" list is forwarded to the governing body (Manual for State-aided Schools, 1992:17) and is to be seen as a recommendation to the governing body.

The governing body is entitled to interview applicants whose names do not appear on the list of approved candidates and may even decide to recommend to the Executive Director of Education that the post be re-advertised if, in its opinion none of the applicants meet the specific requirements of that state-aided school.

If an applicant whose name does not appear on the list of approved candidates is recommended after the selection procedure has been followed, the approval of the Executive Director of Education must be obtained before such an applicant may be appointed (Manual for State-aided Schools, 1992:17). The governing body must also provide a full motivation, setting out the reasons for its decision as indicated in Circular 53 (TED, 1992:3).

Upon deciding on a candidate it wishes to appoint in a promotion post, or after having received approval in cases requiring such, the governing body is able to make an offer of appointment to the candidate concerned. The applicant must, within a reasonable period, inform the governing body in writing whether or not he accepts the offer (Manual for State-aided Schools, 1992:17). The governing body may according to Circular 53 (TED, 1992:3), if it so wishes, negotiate the date of commencement of duty by the

successful candidate, but only after the appointment has been announced.

If the offer of appointment is accepted by the successful candidate, the appointment procedures with regard to the necessary documentation being submitted to the education department will commence in the same way as is applied to appointments in post level 1 posts.

**d) Appointment procedures - temporary appointments**

Governing bodies are responsible for filling subsidized posts which are temporarily vacant for whatever reason. Such appointments are, according to Van Loggerenberg (1992:28) subject to existing conditions pertaining to the appointment of persons in a temporary capacity, such as:

- persons must not be over 65 years of age;
- persons must be professionally qualified;
- persons must not be pensioners especially if a person took voluntary early retirement from an education department.

If governing bodies wish to appoint a person who, for one or other reason does not qualify for temporary appointment, the education department concerned should first be consulted.

Procedures to be followed in appointing teachers in a temporary capacity are:

- governing bodies must assess the person's suitability for temporary appointment in terms of the requirements of the post and in response to a gazette or press advertisement or as a result of personal contact and negotiation;
- an application form to have a post temporarily filled must be submitted (TED 88) together with supporting documents explaining the cause of the

vacancy, such as approved leave application (TED 168), resignation from service (TED 84) or copies of the letter of appointment to another post or school, to the regional education office (Van Loggerenberg, 1992:28).

Governing bodies must also familiarize themselves with any special provisions that may exist with regard to the required ratio between men and women in subsidized posts; the percentage of temporary posts required out of the total number of subsidized posts; and what co-operative measures are required from governing bodies to ensure steady employment opportunities for newly qualified teachers and teachers with bursary commitments (Van Loggerenberg, 1992:29).

**e) Secondment**

It does occur that requests are received for teachers in a permanent capacity, to be seconded to another school where no other suitable teacher is available. In such cases, governing bodies must deal through the regional Director of Education and through the circuit superintendent of education.

According to Van Loggerenberg (1992:29) the following procedures apply:

- the requesting school, through the governing body asks the circuit superintendent of education, in writing, to arrange for the filling of a vacancy by seconding a teacher from the supplying school provided that no other suitable teacher is available;
- the regional Director of Education will arrange the secondment with the approval of the teacher concerned and the governing body of that teacher's school;
- the required documentation, as applied to the appointment of temporary teachers is dealt with in the prescribed way.

Governing bodies must be aware of the fact that approval of a secondment normally applies until the end of the particular school year and thereafter the teacher concerned would be expected to resume his permanent post, at his original school.

**f) Notification of appointment**

Appointments in all posts are officially made known by means of a letter of appointment sent by the education department to the governing body concerned, once the department has processed all the relevant documentation and dealt with the administrative aspects. The letter of appointment is for the signature of the chairman of the governing body (Manual for State-aided Schools, 1992:16) who then hands the letter of appointment to the candidate concerned.

**g) Failure to fill subsidized posts**

Section 97(3) of the Act (70/1988) states that should a governing body fail to suitably fill a vacancy in a subsidized post at a state-aided school "within a period deemed reasonable by the Minister" and should the Minister regard such a failure as being to the disadvantage of the state-aided school, the Minister may appoint a person to the post concerned, and such appointment shall be "deemed to have been made under subsection (1)(b)". Subsection (1)(b) of section 97 of the Act (70/1988) deals with the provision for the Minister to approve the appointment of a person to a state-aided school. Such an appointment would be deemed to have been made by the governing body.

**3.3 DISCHARGE**

**3.3.1 Statutory provisions**

Section 71(1) of the Act (70/1988) states that "a person who is employed in a permanent capacity at a departmental institution, may be discharged from his service by the Minister...". This section should be read together with section 97(1)(b) of the Act (70/1988) which states that the power to discharge any person in a subsidized post at a state-aided school is vested in the governing body, subject to the prior

approval of the Minister. Section 97(2)(a) of the Act (70/1988) serves to remind governing bodies of state-aided schools, that it is the Minister who determines the salaries, salary scales, allowances, leave benefits and other conditions of service of persons appointed in subsidized posts.

The intention of the Act is that the governing body may initiate a discharge action against a person at a state-aided school but may not finalise the discharge or request a teacher to resign before the approval of the Minister has been obtained, as further set out in Section 98(5)(c) of the Act (70/1988).

The governing body in the management of its power to discharge a person at a state-aided school must be aware of the statutory provisions set out in the Regulations relating to the Appointment and Conditions of Service of Teachers (and of Persons other than Teachers) at Departmental Institutions made in terms of the Act (70/1988). The governing body must also be aware of the fact, as stated by Prinsloo and Beckmann (1988:203), that "although the teacher's (person's) status as employee is determined by statute, his rights are co-protected by common law".

Of concern to the governing body in the cases of its power of discharge are the grounds for discharging a person as set out in section 71(1) of the Act (70/1988). A person employed in a permanent capacity at a state-aided school may be discharged on the following grounds:

- on account of continuous ill-health;
- on account of the abolition of a post because of a reduction in, reorganisation or readjustment of the staff;
- on account of the promotion of efficiency or economy;
- on account of incompetence or inability of the person to perform duties in an efficient manner, subject to the Act (70/1988);
- on account of misconduct, subject to the Act

- (70/1988);
- on account of misrepresentations made by the person, in relation to conditions for permanent appointment (misconduct); or
  - on account of the person's name appearing on the list relating to the "Internal Security Act, 1982 (Act 74 of 1982)".

### 3.3.2 Discharge on account of inefficiency or misconduct

Sections 74 to 94 of the Act (70/1988), relating to the inefficiency and misconduct of staff at departmental institutions, are mutatis mutandis (with the necessary changes) applicable as follows to persons in subsidized posts at state-aided schools, as set out in section 98 of Act (70/1988):

- (1) sections 74 to 76: subsidized teaching post or subsidized administrative post.
- (2) sections 77 to 83: subsidized administrative post.
- (3) sections 84 to 94: subsidized teaching post.

In interpreting the application of the above sections of the Act the following, as set out in section 98(4) of the Act (70/1988) should be noted:

- reference to the Minister is interpreted as reference to the governing body concerned.
- reference to the Head of Education is interpreted as reference to the chairman of the governing body concerned
- reference in section 76(1) to the State, a State department or the Department is interpreted as reference to the state-aided school concerned.

#### 3.3.2.1 Discharge on account of inefficiency of persons in subsidized teaching posts

##### \* Investigation into inefficiency

The New Century Dictionary (1952:821) defines "inefficiency" as being "not efficient, without ability to effect or accomplish; not capable; incompetent". Applying this definition it could be

said that an inefficient teacher is a person who is not capable of performing his task with any degree of effectiveness and who is unable to accomplish the desired results or to fulfil the duties attached to his post.

In practical terms Oosthuizen et.al. (1993:121) describe "inefficiency", as it is defined in the United States of America, as being:

- an inability to maintain sound discipline;
- a lack of professional growth;
- a failure to lead pupils towards satisfactory subject and school achievements.

Section 74(1) of the Act (70/1988) states that the chairman of the governing body may appoint a person to institute an investigation into an allegation of inefficiency against a teacher employed in a permanent capacity at a state-aided school. Such a person must be appointed in writing.

As provided for in section 74 (2 to 5) of the Act (70/1988) the following procedures apply:

- the investigating officer must be able to produce proof of his appointment to the person concerned;
- the investigation must be instituted in the prescribed manner;
- the investigating officer shall hand any documents relating to this investigation, as well as a report on his investigation, to the chairman of the governing body;
- if, after considering the report of the investigating officer, the chairman of the governing body is of the opinion that there is no truth in the allegations made against the person concerned, he shall in writing notify the person accordingly;
- if however, the chairman of the governing body is of the opinion that there is truth in the allegations made, he may, in the prescribed manner, serve a notice, together with a copy of the report on the teacher concerned, in which the teacher:

- \* is notified that further action in terms of the Act (70/1988) is being considered,
  - \* is provided the opportunity to comment in writing on the report and to submit his response to the chairman of the governing body within 21 days of receipt of the notice;
  - if the above comment is received the chairman of the governing body may refer it to the investigating officer who shall submit any remarks he may have to the chairman of the governing body;
  - the chairman of the governing body, after considering the report, comments and remarks, may send notice to the teacher concerned informing him of the following:
    - \* that he, in the opinion of the chairman of the governing body is incompetent or unable to perform the duties attached to his post in an efficient manner or,
    - \* that a further investigation will be instituted at any time during a period from three months after the date of the notice until one year after the date. The person, if he so desires may indicate in writing, within 30 days of the date of the notice whether he wishes the further investigation to be instituted by an investigating officer other than the one who instituted the original investigation;
  - the chairman of the governing body may in writing, appoint another investigating officer to institute the further investigation, after which the aforementioned procedures will apply.
- \* **Action against inefficient persons**
- Section 75(1) of the Act (70/1988) sets out the course of action the chairman of the governing body may take should he still be of the opinion that the person concerned is incompetent or unable to perform the duties attached to his post in an efficient manner.

However, the course of action and recommendation of the chairman of the governing body is subject to the provisions in section 98(5)C of the Act (70/1988) which states that "for the purposes of section 75 and 83 the governing body shall not discharge a person or request him to resign from his service without the prior permission of the Minister".

Subject to the provision above, the chairman may recommend to the Minister:

- that no further action be taken as provided for in section 75(1)(a)(i) of the Act (70/1988) or
- that he be discharged from his service with effect from a date determined by the Minister as provided for in section 75(1)(1)(v) of the Act (70/1988) or
- that it is his opinion that since the start of the investigation concerned, an improvement has taken place in respect of competence and efficiency. However that in his opinion the teacher concerned has not yet reached the required standard of competence and efficiency. The matter therefore would be referred to the Minister to deal with the teacher concerned according to the recommendation of the chairman of the governing body or according to any other recommendation which could have been made under subsection (1)(a) of section 75 of the Act (70/1988).

It must be noted that in terms of Section 98(5)(1) of the Act (70/1988) the chairman of the governing body may not recommend that a teacher be transferred to another post as set out in section 75(1)(ii) of the Act (70/1988). Nor may the chairman recommend to the governing body that the teacher's salary and/or rank be reduced as noted in section 75(1)(iii) of the Act (70/1988). The intention is that such actions are for the decision of the Minister.

In cases of alleged inefficiency against a person,

whether in a subsidized teaching or administrative post at a state-aided school, the chairman of the governing body must exercise care when appointing a person to institute an investigation. From Van Buuren (1992:1) it could be implied that persons appointed to an investigation into an alleged inefficiency of a teacher should have a qualification or an expertise suitable to the nature of the case.

"Inefficiency", defined as "without ability to effect or accomplish; incapable; incompetent" (NCD, 1952:821) implies that there is a specific lack in a person's ability to perform a specialist academic, supervisory or administrative task for which purpose that person was appointed. Therefore the need must be established for the chairman of the governing body to consult with the authorities in order to ensure that suitably knowledgeable persons be appointed to institute investigations into inefficiency.

Archer (1992:40) states, for example, that where a governing body suspects a teacher of incompetence, the Executive Director of Education could be requested to approve that the academic superintendent of education testifies to the committee of investigation. The academic superintendent of education could conduct a professional assessment of the teacher concerned. Should the report on the work of the teacher be unfavourable, the teacher could be allowed to see the report, sign it and make any comment if he so wishes. The academic superintendent of education could, as a result of the report, be requested to testify to an investigating officer and to be cross-examined.

Reports submitted by the principal and the academic superintendent of education would form the basis of evidence should a teacher petition the supreme court for a revision of the decision to discharge such a teacher (Archer, 1992:41).

### 3.3.2.2 Discharge on account of misconduct of a person in a subsidized teaching post

Misconduct is defined fully, and in detail in section 76(1) of the Act (70/1988). Section 76(2) of the Act (70/1988) states that the acquittal or conviction of a teacher on a charge of misconduct by a court of law does not prohibit action being taken against such a teacher in terms of the Education Affairs Act (House of Assembly) No 70 of 1988. A proven charge of misconduct will be regarded as an offence.

Oosthuizen et.al. (1993:120) emphasise the need for a teacher as a leader of his pupils, to conduct himself in a professionally acceptable manner, and to serve as an example to such pupils. Professional conduct is prescribed in the Education Affairs Act (House of Assembly) no. 70 of 1988. Such conduct is also monitored by the Teachers' Federal Council (Oosthuizen et.al. 1993:128) on the basis of the teachers' adherence to the Professional Code of Conduct (Oosthuizen et.a. 1993:131).

#### \* Action in a case of misconduct by a teacher

Section 84(1) of the Act (70/1988) states that when a person employed in a teaching post is accused of misconduct the chairman of the governing body may take the following action:

- he may in writing charge the person concerned of misconduct or
- he may appoint a committee consisting of one or more employees of the department concerned. This committee would institute an investigation into the allegation.

Van Buuren (1992:1) clarifies the matter by stating that, legal interpretation of section 84(b) (Act 70/1988) allows the chairman of the governing body to appoint superintendents of education (circuit and academic) and regional directors of education to "serve as members of provisional committees, investigating complaints of misconduct".

Chairmen of governing bodies, when appointing committees of preliminary investigation into misconduct by teachers, are therefore advised by Van Buuren (1992:1) to take the following steps:

It should be emphasised that these steps are merely guidelines and are not prescribed by the Act (70/1988).

- to firstly consult with the regional director of education and the circuit superintendent of education in order to determine who the members of the committee should be;
- to request the regional director of education and the circuit superintendent of education to serve on the committee if, after consultation with them, the nature of the investigation deems it necessary;
- to request the Executive Director of education to appoint an alternate should the regional director of education and/or the circuit superintendent of education have been involved in a prior inquiry of misconduct against the same person; and thereafter;
- to ensure that in terms of subsection (2) of section 84 of the Act (70/1988) that the accused person is notified in writing of the nature of the accusation or allegation being investigated against him and to allow him the opportunity to respond to the charge;
- to ensure that before the preliminary investigation is started that, in terms of subsection (3) of section 84 of the Act (70/1988) the person's teachers' association of which he is a member is notified of the proposed preliminary investigation;
- to ensure that, as applies in section 74(1) of the Act (70/1988) an investigating officer is appointed, in writing, to institute an investigation into the allegation;
- and as requested by Van Buuren (1992:1) although not prescribed by the Act (70/1988), to notify,

in writing, the education department of the names of the members of the committee together with the particulars of the teacher against whom the inquiry is being conducted as well as particulars of the alleged offence.

\* **Preliminary Investigation by a committee into misconduct by a teacher.**

According to section 85 of the Act (70/1988) the provision applying in section 79 of the Act (70/1988) regarding the powers of the investigating officer in respect of an inquiry, as well as the procedures at the inquiry, as set out in section 80 of the Act (70/1988), "shall mutatis mutandis (with the necessary changes) apply to a preliminary investigation" by a committee into the alleged misconduct of a teacher.

Section 80 of the Act (70/1988) makes provision for the following procedures:

- \* the chairman of the governing body may authorize a person to attend the inquiry to give evidence and arguments "in support of the charge" and, as set out in section 80(1) of the Act to cross-examine a person who gave evidence "in rebuttal of the charge";
- \* the teacher charged shall have the right to be present at the inquiry and to be assisted or represented by another person as provided for in section 80(2) of the Act (70/1988). The teacher has the right to be heard; to call witnesses; to cross-examine a person called as a witness in support of the charge; and to inspect documents submitted in evidence.

Should the person charged fail to attend the inquiry, the proceedings of the inquiry shall not, in terms of section 80(3) be invalidated.

Section 80(4) of the Act (70/1988) stipulates that a record of the proceedings and of the evidence given shall be kept by the investigating committee.

\* **Recommendation of the committee of preliminary investigation into misconduct by a teacher**

Section 86 of the Act (70/1988) requires that the chairman of the governing body shall receive a complete report from the preliminary investigating committee. The chairman of the governing body will also receive the committee's recommendations on the question whether there is any truth in the accusations made against the teacher concerned.

Should the chairman of the governing body, after consideration of the committee's report, be of the opinion that there is no truth in the accusation of misconduct made against the teacher concerned, he shall, according to section 87 of the Act (70/1988) "consider the matter closed and inform the teacher and the teachers' association ... accordingly".

\* **Charge of misconduct against teachers**

In the event of the chairman of the governing body, after considering the report of the committee of preliminary investigation and its recommendations, being of the opinion that there is truth in the accusation made against the teacher concerned, he may, according to section 88(1) of the Act, in writing, charge that teacher with misconduct.

The charge of misconduct shall be served on the teacher concerned in the prescribed manner, accompanied by a request that the teacher charged submit to the chairman of the governing body a written admission or denial of the charge within 21 days after the charge has been served, as provided for in section 88(2) of the Act (70/1988). Should the teacher so desire he may submit a written explanation in connection with the charge. Section 88(3) of the Act (70/1988) makes provision for the chairman of the governing body to withdraw the charge of misconduct at any time.

Section 88(5) of the Act (70/1988) states that should the teacher charged admit to the charge of misconduct, that teacher "shall for the purposes of section 83 of the Act be deemed to have been found guilty" of the charge of misconduct. This finding would apply from the date on which the chairman of the governing body received the teacher's admission.

The chairman of the governing body shall in terms of section 88(4) of the Act (70/1988) inform the teachers' association to which the teacher belongs that the person has been charged with misconduct. He shall describe the nature of the charge.

**\* Board of inquiry into a charge of misconduct which has been denied or ignored by a teacher**

Should a teacher deny a charge of misconduct or fail to comply with the request to respond within 21 days of the date of the charge, the chairman of the governing body shall, in terms of section 89 (1) of the Act (70/1988), appoint a board of inquiry to inquire into the charge. The board of inquiry shall consist of a chairman, ideally a magistrate from the Department of Justice, and two other persons, one of whom shall be nominated by the teachers' association of which the teacher is a member.

The chairman of the board of inquiry and the chairman of the governing body shall fix a date, time and venue of the inquiry. The chairman of the governing body shall, in writing, give the teacher charged 14 days notice of the time and place so fixed as provided for in section 89(2) of the Act (70/1988). The same procedures as apply to the preliminary investigation into a charge of misconduct shall apply to the board of inquiry into a denied or ignored charge.

**\* Findings of the board of inquiry into a charge of misconduct which has been denied or ignored by a teacher**

Section 90(1) of the Act (70/1988) states that after

the conclusion of the inquiry into the alleged misconduct of a teacher the "board of inquiry shall by majority decision find the person charged guilty or not guilty of the misconduct with which he was charged". The chairman of the board of inquiry must within 30 days thereafter notify the teacher charged of the finding of the board of inquiry. He must also report the outcome of the inquiry to the chairman of the governing body.

In accordance with section 90(2) of the Act (70/1988), if the teacher charged is found guilty of the misconduct with which he was charged, the chairman of the board of inquiry shall submit to the chairman of the governing body the following:

- all documents admitted at the inquiry, the record of the proceedings; and all evidence given;
- a written report on the finding of the board of inquiry and the reasons for the finding;
- any comments the board of inquiry wishes to make in connection with the inquiry; and
- the recommendations of the board of inquiry in relation to the punishment which should be imposed as set out in section 93 of the Act(70/1988).

**\* Appeal by the teacher charged with misconduct**

A teacher found guilty of misconduct may, in terms of section 91(1) of the Act (70/1988), appeal against the finding to the governing body.

\* **Board of appeal in connection with a charge of misconduct against a teacher**

The governing body shall in terms of section 92(1) of the Act (70/1988) within 30 days of an appeal being lodged by the teacher concerned, appoint a board of appeal to hear the appeal. Section 92(2) of the Act provides for the board of appeal to be constituted as follows:

- \* one member appointed by the governing body who shall act as chairman;
- \* one member appointed by the chairman of the governing body;
- \* one member nominated by the Teacher's Federal Council, provided that if the Teacher's Federal Council fails to nominate such a member within a reasonable time, the chairman of the governing body shall appoint the member.

No person on the board of appeal shall be a member of the board of inquiry which found the teacher guilty on a charge of misconduct.

The chairman of the governing body shall submit all documents relating to the appeal to the board of appeal.

Section 92(4) of the Act (70/1988) states that the powers of the board of appeal, procedures at the hearing of the appeal and the recording of the proceedings shall be the same as those of the board of inquiry. Once the board of appeal has considered all the documentation it may, according to section 92(5) of the Act (70/1988), by majority decision make a recommendation to the governing body. The governing body may finally uphold or dismiss the appeal.

\* **Action against a teacher found guilty of misconduct**

Section 93 of the Act (70/1988) states that the actions set out in section 83 of the Act (70/1988) shall mutatis mutandis (with the necessary changes) apply to a person in a teaching post who has been found guilty of misconduct. In the event of a teacher being found guilty of misconduct, section 83 of the Act (70/1988) makes provision for the chairman of the governing body to make the following recommendations to his governing body:

- \* that the teacher be warned or reprimanded;
- \* that a fine not exceeding R2 000 be imposed on the teacher concerned;
- \* that the person's salary or rank or both, be reduced to the extent recommended;
- \* that he be discharged, or called upon to resign with effect from a date determined by the Minister, bearing in mind that section 98(5)(C) prohibits the governing body from discharging a person or requesting him to resign without the prior permission of the Minister.

Section 98(5)(b) stipulates that the chairman of the governing body does not have the power to recommend to this governing body that a teacher found guilty of misconduct be transferred to another post as envisaged in section 83(1)(c) of the Act.

Section 83(2) of the act (70/1988) makes provision for the following:

- the chairman of the governing body, except on recommending a person's discharge or resignation to the Minister, may make a recommendation under more than one of the above-mentioned paragraphs,
- the chairman of the governing body may postpone making a recommendation for a period not exceeding 12 months after the date of the finding.

The chairman of the governing body shall submit all

the documents relating to the inquiry and any appeal by the person, together with his recommendations to his governing body. The governing body may act, according to section 83(3) of the Act (70/1988), upon the recommendations of the chairman of the governing body or according to any other recommendation which may be made under section 83(1) of the Act (70/1988). This section should be read together with section 98(5) of the Act (70/1988).

**\* Submission of records of inquiries to Teacher's Federal Council**

In each case where a punishment other than a warning or a reprimand was imposed on a teacher, the chairman of the governing body shall in terms of section 94 of the Act (70/1988) submit the record of the inquiry, including all documents and evidence relating to the inquiry, to the Teacher's Federal Council referred to in section 92(2)(c) of the Act (70/1988).

**3.3.3 Performance of other work by persons employed at state-aided schools**

**3.3.3.1 Accepting outside work**

Section 100(1)(a) of the Act (70/1988) states that persons employed under the Act (70/1988) (being persons employed in subsidized teaching and non-teaching posts) shall make their time available to the state-aided school where they are employed. Should a teacher or a person in a subsidized administrative post wish to perform and commit himself to remunerative work outside his employment at the state-aided school, he shall in terms of section 100(1)(b) of the Act (70/1988) not do so without the "consent of the ... governing body". Nor may a teacher or a person employed in a subsidized non-teaching post at a state-aided school in terms of section 100(1)(c) of the Act (70/1988) make any legal claim on additional remuneration "in respect of any official duty or work which he has been ordered by a competent authority to perform".

### 3.3.3.2 Performance of other official duties

The governing body or the principal of a state-aided school has, in terms of section 100(2) of the Act (70/1988), the power to order any teacher employed in a subsidized teaching post at a state-aided school to "temporarily perform duties other than those ordinarily assigned to that person or which are appropriate to the grade, designation or classification of his post".

### 3.3.4 Regulations made in terms of the Education Affairs Act (House of Assembly) 70 of 1988 and relating to the conditions of service of teachers at state-aided schools

Regulations relating to conditions of Service of Teachers at State-aided Schools, (Education Affairs Act (House of Assembly) 70 of 1988) apply to the section that follows.

#### 3.3.4.1 Unauthorized remuneration

Regulation 5(1-2) of the above-mentioned Regulations makes provision for the following:

##### - Repayment:

The governing body may recover from a teacher any unauthorized remuneration, allowance or other reward received in connection with the performance of his work at the state-aided school which may be contrary to the provisions of the Act or contrary to the provisions of section 100(1)(b) of the Act (70/1988). The teacher concerned shall repay to the state-aided school the amount of the unauthorized remuneration, allowance or reward or the value determined by the governing body. Should the teacher fail to repay the amount determined to the governing body, that amount may be recovered from him by the governing body by way of "the deduction from his salary or the instalments as determined by the governing body or by way of legal proceedings".

- Appeal:

The teacher concerned may appeal to the Minister against any such determination by the governing body. The Minister will decide to "make such order as he may think fit".

- Retention:

The governing body may decide that the teacher concerned may retain the whole or portion of the remuneration, allowance or reward.

- Recovery:

The governing body may, in writing, order the teacher concerned or other person or financial institution not to dispose of any remuneration, allowance or other reward or money if the governing body is of the opinion that such remuneration, allowance, reward or money is still in his possession or under his control or under control on his behalf. Such an order will be subject to the outcome of any legal steps the governing body may take to recover the unauthorized remuneration.

- Delict:

A person or financial institution who fails to comply with the requirements of the governing body in terms of the regulations "shall be guilty of an offence and liable on conviction to a fine...or to imprisonment...".

- Medical Association

The governing body is, according to Regulation 9(5)(a), also empowered to recover from a teacher, any moneys owing by that teacher to his medical association. Such money recovered will be paid to the medical association concerned.

#### 3.3.4.2 Cession of emoluments

The governing body, in terms of Regulation 7 shall first give written approval to a teacher who wishes to cede the right to the whole or part of any salary or allowance due to him.

**3.3.4.3 Unfavourable remarks about teachers**

Regulation 8 makes provision for the principal of the state-aided school, to bring, in writing, to the attention of a teacher, any unfavourable remark concerning that teacher which is contained in a written communication. Such a teacher shall sign the written communication concerned and together with any written comments he wished to make, return these to the principal. The governing body may however approve that such disclosures be withheld from the teacher concerned if it judges that such a disclosure is not in the interests of the governing body, the state-aided school or the teacher concerned.

For example: an allegation contained in the written minutes of a meeting of the parents association to the effect that the poor marks in a particular subject were attributable to the incompetence of the Head of Department for that subject, could be regarded as an unfavourable remark. The principal would then submit a copy of the minutes to the Head of Department concerned for his comment. The governing body could however decide that parents association meetings are not an authorised forum to discuss such issues and therefore decide not to divulge any information to the teacher until such time as the correct communication channels were used for such complaints.

**3.3.4.4 Leave**

The governing body shall in terms of Regulation 11, give written notice to the Executive Director of Education concerned, of any leave granted to a teacher. Study leave may only be granted to a teacher in a subsidized post after the governing body has consulted with the education department concerned (Manual for State-aided Schools, 1992:18).

**3.3.4.5 Payment of travelling and subsistence allowance and transport costs**

According to a statement made by the Minister (Marais, 1992) as quoted in circular 158 (TED, 1992:3) the provisions allowed for in Regulation 12, the payment of travelling, subsistence and transport costs should

be interpreted as follows:

\* the governing body shall be responsible for the payment of:

- the travelling and subsistence allowance of a teacher in respect of a journey or absence from his school connected with his activities in the service of the state-aided school concerned. This is interpreted as involving duties that are undertaken at the request of or on behalf of the state-aided school (and by implication the governing body) itself;
- the transport costs of a teacher on his first appointment or transfer to a post at the state-aided school concerned;
- on account of the abolition of his post or an alteration to the staff of the state-aided school for whatever reason;
- on account of the discharge based on the governing body's promotion of efficiency or economy at the state-aided school concerned; or
- the costs of a teacher's household and personal belongings should the teacher have been discharged on account of his inefficiency; and
- the costs of the household, the personal transport and the transport of personal belongings of a teacher who dies while he is in service.

\* The education department concerned shall pay allowances and costs as determined by the Minister according to section 32 of the Act (70/1988) and as set out in Regulation 12 and as interpreted in circular 158 (TED, 1992:3). These costs would include:

- resettlement expenditure with regard to the promotion of a teacher in a subsidized post; to the retirement of a teacher; the costs incurred by a person's family in the event of his/her death while in service;
- transport costs with regard to a person's household and belongings on his first appointment in education;
- costs involved in the discharge of a person as in regulation 12;

- the travelling and subsistence allowances of a person who is designated by the education department concerned to undertake any official duties as decided by that education department.

### 3.3.5

#### **SUMMARY**

This chapter has dealt with the need for the governing body to understand the legal provisions that apply with regard to its responsibility of providing and managing the teaching staff of the state-aided school.

With regard to the provision of staff, it is necessary for the governing body to follow the correct and recommended procedures when it comes to the appointment of staff. It is also essential for correct procedures to be followed in cases where a staff member may be charged with inefficiency or misconduct. It is important for the governing body to treat staffing matters with sensitivity and with due regard to the rights of the teacher.

The appointment of staff into non-subsidized posts by the governing body must also be done in accordance with to legal stipulations.

The conditions of service of teachers have to be clearly understood and adhered to, as prescribed by law. It should be borne in mind that the provisions relating to the professional teaching staff of the school will also apply to a greater extent to matters relating to non-teaching or administrative personnel. Such staff would include the secretarial, supervisory and general assistant staff, including persons appointed by the governing body in non-subsidized administrative posts.

As much as it is necessary for the governing body to manage the teaching and administrative personnel effectively, so it must be responsible for adhering to legal provisions pertaining to the pupils of the state-aided school. The following chapter will address matters relating to the pupils.