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LA PROPUESTA DE INCOACIÓN DEL EXPEDIENTE DISCIPLINARIO: CRITERIOS JURÍDICOS, EXIGENCIAS DE MOTIVACIÓN Y TÉCNICA DE REDACCIÓN

THE MOTION TO INITIATE DISCIPLINARY PROCEEDINGS: LEGAL CRITERIA, REQUIREMENTS FOR STMENT OF REASONS, AND DRAFTING TECHNIQUES

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Resumen

El presente trabajo examina la propuesta de incoación del expediente disciplinario en el ámbito de la función pública y, en particular, en el contexto de la inspección educativa. El estudio parte de una idea central: la calidad jurídica y técnica de la propuesta condiciona de manera decisiva la validez, eficacia y solidez del posterior procedimiento disciplinario. A partir del análisis de la normativa general administrativa, de la normativa básica de función pública y de la doctrina especializada, se estudian la función de las actuaciones previas, la delimitación de los hechos, la identificación de los sujetos implicados, la calificación provisional de las conductas, la exigencia de

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motivación y la documentación que debe acompañar la propuesta. Asimismo, se examinan los errores más frecuentes en la práctica administrativa y se formulan criterios de calidad para su elaboración. Se sostiene que la propuesta de incoación no puede concebirse como un mero trámite burocrático, sino como una pieza de relevancia estructural y garantista dentro del ejercicio de la potestad disciplinaria.

Palabras clave: expediente disciplinario, propuesta de incoación, función pública, inspección educativa, motivación, potestad disciplinaria.

Abstract

This paper examines the proposal to initiate disciplinary proceedings in the field of public employment and, more specifically, in the context of educational inspection. It is based on a central premise: the legal and technical quality of the proposal decisively shapes the validity, effectiveness and solidity of the subsequent disciplinary procedure. Drawing on general administrative law, the basic legal framework governing public employment, and specialised legal scholarship, the article analyses the role of preliminary actions, the delimitation of facts, the identification of the persons involved, the provisional legal classification of conduct, the duty to state reasons, and the supporting documentation that should accompany the proposal. It also addresses the most frequent shortcomings found in administrative practice and formulates quality criteria for drafting. The article argues that the proposal to initiate disciplinary proceedings cannot be regarded as a mere bureaucratic formality, but rather as a structurally and guarantee-oriented component within the exercise of disciplinary power.

Keywords: disciplinary proceedings, proposal to initiate proceedings, public employment, educational inspection, statement of reasons, disciplinary power.

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ISSN 1886-5895

INTRODUCTION

In administrative practice, the proposal to initiate proceedings operates as the point of connection between preliminary actions and the formal decision to open disciplinary proceedings. Although it is not a final decision and does not in itself exhaust the Administration's sanctioning power, its relevance is undeniable: the quality of this proposal largely determines whether the subsequent file will be conducted on a clear factual basis, legally sustainable, and respectful of the guarantees afforded to the person concerned.

The proposal should be understood as the embryo of the case file. Without a sound proposal, it is very difficult for the investigation phase to succeed. This is, in part, a matter of immediacy in relation to the facts: each actor involved (the parties, the management team, the inspector, the investigating officer, the decision-making body, and ultimately the judge) stands one step removed from the previous one. With each layer of mediation, it becomes more difficult to ascertain what actually occurred. For this reason, it is essential that the proposal clearly delineate both the relevant facts and the individuals involved, since what is not fixed at this initial stage is unlikely to be properly established later in the proceedings.

Professional experience shows that many weaknesses in disciplinary procedures do not originate in the evidentiary phase as such, but earlier: in a deficient identification of the problem, in the conflation of facts with value judgments, in the insufficient individualization of the alleged responsible party, in the premature classification of the conduct, or in the lack of adequate reasoning. When these shortcomings are carried over into the decision to initiate proceedings, they tend to negatively condition the entire subsequent investigation.

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From the perspective of the general theory of administrative sanctioning law, this is hardly surprising. Disciplinary proceedings, as an expression of the Administration's sanctioning power, are subject to the principles of legality, typicity, culpability, proportionality, the presumption of innocence, and the prohibition of arbitrariness. These principles do not operate only at the final stage of the sanctioning decision, but from the very outset of administrative action. For this reason, the proposal to initiate proceedings must be conceived as an instrument of prior legal scrutiny: a document that does not merely "set the process in motion," but rather provides a reasoned justification for the existence of sufficient grounds to do so.

This does not mean, of course, that the sanction should be prematurely anticipated or that a level of certainty —attainable only, if at all, after the investigation— should be projected onto the preliminary stage. The function of the proposal is not to declare the liability of the public employee, but to determine whether there are sufficiently defined facts, reasonable indications of an infringement, and a provisional legal framework that justifies the opening of proceedings. Its preparation therefore requires caution, analytical rigor, and particularly careful drafting.

In the field of education, the practical importance of this issue is even greater. Disciplinary proceedings involving teachers or members of management teams often arise within complex institutional contexts, where deteriorated personal relationships, organizational tensions, leadership conflicts, workplace climate issues, and, at times, concerns affecting students' rights are intertwined. In such an environment, a deficient proposal not only jeopardizes the viability of the proceedings but may also exacerbate the underlying conflict and undermine the authority of the Administration.

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

The aim of this paper is to provide a systematic analysis of the proposal to initiate disciplinary proceedings. It does not seek to offer a mere list of practical recommendations, but rather to reconstruct the legal and technical criteria that should govern its drafting. To this end, it examines, first, the problems arising from a poorly formulated proposal; second, the importance of prevention and preliminary actions; third, the applicable legal sources and interpretative tools; and finally, the internal elements of the proposal, including the classification of offences, the reasoning provided, drafting techniques, supporting documentation, common errors, and best practices.

PROBLEMS ARISING FROM A DEFICIENT PROPOSAL TO INITIATE PROCEEDINGS

A poorly constructed proposal to initiate proceedings may compromise the disciplinary process on several levels: legal, evidentiary, organizational, and institutional. The legal dimension is the most evident. If the facts are not described with sufficient precision, if the imputation is unclear, if the legal classification lacks a reasonable basis in the applicable rules, or if provisional measures are suggested without specific reasoning, the case file is weakened from the outset and becomes vulnerable to objections that may succeed both in administrative review and before the courts.

The evidentiary dimension is no less significant. The purpose of the investigation is not to remedy an initial lack of definition, but to verify, complete, and test a legally relevant factual hypothesis. When the proposal fails to adequately establish the facts or identify the available elements of proof, the investigating officer is forced to reconstruct the object of the proceedings from scratch, with a corresponding loss of reliability, immediacy, and coherence. In such cases, the risk increases that the proceedings will be discontinued, not

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

necessarily because the conduct lacks disciplinary relevance, but because the Administration has failed to translate it into a technically sustainable charge.

There is also an institutional consequence, particularly sensitive in the educational context. The initiation of disciplinary proceedings has a significant impact on the life of the institution: it affects professional relationships and inevitably creates expectations of an administrative response. When proceedings are initiated on fragile grounds and ultimately collapse due to insufficient definition or reasoning, the organization bears the cost of the conflict without achieving a legally valid resolution. This may result in a sense of lack of protection among those who consider themselves harmed or, conversely, in the consolidation —on the part of the person subject to proceedings— of the perception of having been subjected to a hasty or arbitrary action, which often worsens the climate of coexistence within the institution.

For these reasons, the proposal to initiate proceedings must perform a filtering function. Not every irregularity observed in the functioning of an institution necessarily requires the opening of disciplinary proceedings, nor should every relational dysfunction lead to a sanctioning response. However, where initiation is legally warranted, it must be grounded in a proposal capable of individualizing the disciplinary conflict, distinguishing it from other non-sanctioning dimensions of conflict, and constructing a sufficiently robust basis for the Administration's subsequent action.

THE IMPORTANCE OF PREVENTION AND PRELIMINARY ACTIONS

A legally sound understanding of the disciplinary regime requires emphasizing that disciplinary proceedings are not the only tool available to the Administration, nor should they ordinarily be the first resort. The principle of

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

minimal intervention, although traditionally formulated in the criminal sphere, serves as a useful criterion of rationality in administrative sanctioning law and, in particular, in disciplinary matters. The Administration must act when an infraction exists and must be prosecuted; but not every conflictive situation, every organizational deficiency, or every instance of inappropriate conduct automatically calls for a formal disciplinary response.

Hence the importance of preventive measures and preliminary actions[1]. The former are aimed at preventing the consolidation of irregular conduct through mechanisms such as supervision, guidance, warnings, formal requests, or technical support. The latter, as provided for in article 55 of the Law 39/2015, are intended to determine, as precisely as possible, whether there are facts capable of justifying the initiation of proceedings, the identity of the individuals who may be responsible, and the relevant circumstances of the case.

These two dimensions should not be conflated. Prevention belongs to the sphere of good administration and conflict management, whereas preliminary actions operate within the domain of fact-finding aimed at deciding whether or not to formally initiate sanctioning proceedings. The former may be deployed even before a well-founded suspicion of wrongdoing arises; the latter comes into play once such suspicion has emerged and requires at least a minimal degree of verification. Nevertheless, both share a common rationale: to avoid hasty responses and to promote proportionate administrative decision-making.

In the educational context, preventive measures may prove particularly effective in cases involving underperformance, issues with compliance with working hours, organizational shortcomings, emerging patterns of discourtesy, breakdowns in coordination, interpersonal conflicts, or inappropriate professional conduct that has not yet reached a clearly disciplinary threshold.

[1] For information on confidential information and preliminary proceedings, see Campal Martínez (2025) and Estévez Benito (2025).

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

Instruments such as formal notices, documented monitoring, classroom observation, technical advice, or explicit warnings can play a significant corrective role, provided they are applied with proportionality, clarity, and traceability.

The use of mediation techniques and alternative dispute resolution mechanisms may also help to redirect some of these situations, even though Education Inspectorates do not yet have a fully developed regulatory framework to carry out such functions (Amengual Buñola, 2025).

Attention must also be paid to cases in which the apparently infringing conduct is linked to health-related factors, psychological imbalances, or personal circumstances requiring a different or complementary administrative response. This does not imply automatically excluding disciplinary action where serious conduct or risks to third parties are present; rather, it requires an assessment of the appropriateness of the response mechanism. Disciplinary proceedings cannot become a substitute for occupational risk prevention policies or for the health management of staff. Accordingly, referral to the appropriate services, and even the initiation of non-voluntary health monitoring procedures where the health of the individual or others in the workplace may be at risk, may constitute effective preventive mechanisms that should be considered.

The conduct in question must also meet a sufficient threshold of seriousness. Since the entry into force of the Law 40/2015 of 1 October on the Legal Regime of the Public Sector, the regime of strict (objective) disciplinary liability, along with sanctioning liability more generally, has been abandoned, as responsibility now requires intent or negligence (article 28). This is reflected in article 94.2 of the Royal Legislative Decree 5/2015 approving the revised text of the Basic Statute of Public Employees. Consequently, the mere "failure to

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

observe" obligations, as previously provided for in article 130.1 of the now repealed the Law 30/1992, is no longer sufficient to give rise to disciplinary liability.

Criminal law doctrine refers to the principles of minimum intervention and insignificance to express, on the one hand, that criminal law should address only the most serious conduct affecting the legal order, and on the other, that cases lacking sufficient substantive relevance fall outside the scope of sanctionable conduct due to a lack of typicity. These principles are equally applicable to disciplinary and administrative sanctioning law. The criterion of relevance —or, conversely, insignificance— is therefore key. The so-called *principle of insignificance* (*de minimis non curat praetor*) applies to so-called "trivial wrongs," meaning that actions which may formally fit within a legal definition, but whose degree of wrongfulness is minimal or negligible should not be considered disciplinary (or criminal) offences[2].

It should be emphasized, however, that prevention is not synonymous with tolerance, nor can preliminary actions become a space for indefinite delay. Where the facts display sufficient disciplinary relevance, where prior requirements have proven ineffective, where the conduct is flagrant, or where

[2] For example, it prevents the issuance of a citation against a vehicle that exceeded the speed limit by 1 km/h (Supreme Court of Justice of Castile and León, February 18, 2011, Case No. 2571/2004). However, from the perspective of fundamental rights, this principle cannot be applied, as these are elements of the legal system that enjoy the highest level of protection (STC 163/1986, STC 26/1981).
Supreme Court Ruling 634/2019, dated December 19, 2019, defines this principle: It refers to the minimal harmfulness of the conduct to consider the conduct atypical. The principle of insignificance, understood as the absence of material unlawfulness of the act, has been applied by this Chamber in certain crimes such as drug trafficking, when the substance being trafficked was incapable of affecting public health (SSTS 1023/2002, of January 19, and 1982/2002, of January 28, among many others), or in the crime of money laundering, when the material object of the crime was of an insignificant amount and had no impact whatsoever on the socioeconomic order (Supreme Court Ruling 642/2018, of December 13).
See Cierco Seira (2024) on this subject, especially pp. 53–55. See also González-Varas Ibáñez (2023).

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

there is a significant impact on the rights of others, the Administration is not only entitled to initiate proceedings but is under a duty to do so. The notion of *ultima ratio* does not justify inaction or hesitation but rather calls for the rational selection of the appropriate instrument in each case.

LEGAL SOURCES AND FRAMEWORK

4.1. General administrative framework: Laws 39/2015 and 40/2015

The general legal framework governing disciplinary proceedings is primarily set out in the Law 39/2015 on the Common Administrative Procedure of Public Administrations and the Law 40/2015 on the Legal Regime of the Public Sector. The latter establishes, in articles 25 to 31, the substantive principles governing the exercise of sanctioning powers: legality, non-retroactivity, typicity, responsibility, proportionality, limitation periods, and the prohibition of *non bis in idem*. Article 25(3) expressly extends these principles to the exercise of disciplinary powers in relation to public sector employees.

The Law 39/2015, for its part, provides the procedural framework. Particularly relevant for present purposes are articles 53, 55, 56, 63, and 64. Article 53 sets out the rights of interested parties in administrative proceedings; article 55 regulates preliminary actions; article 56 governs provisional measures; article 63 establishes the ex officio nature of the initiation of sanctioning procedures; and article 64 defines the minimum content of the decision to initiate proceedings.

A joint reading of articles 55 and 64 is especially useful for reconstructing the content that the proposal to initiate proceedings should reasonably anticipate. On the one hand, preliminary actions must aim to determine, as precisely as possible, the facts, the identity of potential responsible parties, and the relevant circumstances. On the other, the decision to initiate proceedings

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

must include, at a minimum, the identification of the allegedly responsible individuals, the facts giving rise to the proceedings, their possible legal classification, the potential sanctions, the competent decision-making body, and, where appropriate, any provisional measures.

The proposal to initiate proceedings is not identical to the formal decision to open them, but its substantive logic derives from this legal framework. If the initiation decision must contain these elements, the report or proposal preceding it must provide the competent authority with a sufficiently robust basis to incorporate them with proper reasoning. Accordingly, the inspector's report must combine its standard structure with the relevant legal requirements in order to supply the information that the decision-making body is legally required to include.

With regard to provisional measures, article 56 of the Law 39/2015 imposes important requirements: such measures must be aimed at ensuring the effectiveness of the final decision, must be supported by sufficient grounds, and must comply with the principles of proportionality, effectiveness, and least onerous means. It is therefore not sufficient to assert their convenience in general terms; it is necessary to justify why they are required in the specific case and why no less burdensome measure would be equally suitable.

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4.2. Public service rules and disciplinary regime

Alongside the general administrative framework, the basic regulation of the disciplinary regime for public employees is set out in the Royal Legislative Decree 5/2015, approving the revised text of the Basic Statute of Public Employees (EBEP). This provision plays a central role, as it establishes the basic framework for disciplinary liability, the principles governing its exercise, the

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

classification of very serious offences, the catalogue of sanctions, limitation periods, and the essential rules on procedure and provisional measures.

However, the EBEP does not exhaust the entire legal framework in this field. Its provisions are complemented by regional public service regulations, sector-specific rules applicable to certain groups, and, within the General State Administration, the Royal Decree 33/1986, approving the Disciplinary Regulations for Civil Servants of the State Administration, insofar as it remains applicable and compatible with the subsequent legal framework.

From the perspective of the proposal to initiate proceedings, the EBEP provides several particularly relevant points of reference. First, article 94 recalls that the exercise of disciplinary powers must comply with the principles of legality and typicity, the non-retroactivity of unfavorable sanctioning provisions, proportionality, culpability, and the presumption of innocence. Second, article 95 requires that action be based on legally defined types of offences, without prejudice to the regulatory development by the autonomous communities and specific legislation. Finally, article 98 governs provisional suspension and confirms the need to provide reasoning for its adoption.

It should also be noted that Chapter VI of Title III of the EBEP, concerning the duties of public employees and the code of conduct, has significant interpretative value. Articles 52 to 54 do not, in themselves, generally and independently define disciplinary offences; however, they play an important hermeneutic role, as they inform the interpretation and application of the disciplinary regime, as expressly provided in article 52.2.

4.3. Case law and search tools

Drafting a legally sound proposal to initiate proceedings requires working not only with statutory law, but also with case law and legal doctrine. This is particularly important in disciplinary matters, as many types of offences involve

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

a significant degree of conceptual openness, and administrative case law has progressively clarified essential issues such as the sufficiency of reasoning, the presumption of innocence, the evidentiary value of proof, proportionality, and the requirement of a hearing and adversarial procedure.

In professional practice, the use of specialized databases and legal repositories is almost indispensable. In this regard, particular mention should be made of the case law search engine of the General Council of the Judiciary (CENDOJ)[3], which allows users to search for court decisions by free-text search, case number, ECLI, or any other identifying information related to the decision[4].

[3] CENDOJ can be accessed at https://www.poderjudicial.es/search/indexAN.jsp.

[4] ROJ is the acronym for the *Repertorio Oficial de Jurisprudencia* (Official Case Law Reporter), a system used to identify any judgment or order issued by Spanish courts and tribunals. Every decision delivered by a Spanish judicial body follows the same format and structure and is identified in a uniform manner, as in the following example: Roj: STSJ AR 1054/2025 – ECLI:ES:TSJAR:2025:1054.
All decisions systematized by CENDOJ are headed by their ROJ and ECLI identifiers (which share the same sequential number), followed by a series of additional details: "Id Cendoj" (CENDOJ index). In addition, other internal identifying elements are included, necessarily derived from the content of the judicial decision. These are known as inherent data: court (Supreme Court, High Court of Justice, National Court, Provincial Court, Administrative Court, etc.), location (implicit when the court has Madrid as its sole location, such as the Supreme Court or the National Court), division, date, appeal number, decision number, proceeding, presiding judge, and type of decision. This data is highlighted and listed in the order just mentioned within an informational table that precedes the text of the decisions published by CENDOJ.
The first four items are always present in each method of identifying the decision, whether ROJ or ECLI:
ROJ: STSJ AR 1054/2025
ECLI:ES: TSJAR:2025:1054
In both cases, the type of decision (S), court (TSJ), territorial jurisdiction (AR), date (year: 2025), and serial number (1054/2025) are indicated. Further information is provided in extended form: judicial body, chamber and section (where applicable), date, case number, decision number (i.e., judgment or order number), type of proceedings, reporting judge (the judge responsible for drafting the decision in a collegiate court), and type of decision. References to the decisions appealed at the different instances are also usually included.
Further down, information appears on the presiding judge of the court or tribunal and on the judges or magistrates composing it. All these elements make it possible to locate a specific decision when some identifying information is available. Otherwise, when conducting more general searches, the simplest approach is to search by keywords using logical operators and, where necessary, to refine the results.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

In our field, it will also be useful to consult what is known as constitutional case law, that is, the rulings issued by the Constitutional Court, which can also be found using its search engine[5]

Regardless of the specific tool used, what truly matters is adhering to a methodological requirement: the motion to initiate proceedings cannot merely invoke the statute in the abstract when the definition or scope of the offense raises significant interpretive questions. In difficult, open-ended, or borderline cases, consulting case law is not a scholarly luxury, but a technical necessity.

ELEMENTS OF THE PROPOSAL

The proposal to initiate proceedings must integrate, in an orderly and coherent manner, two distinct yet inseparable aspects. On the one hand, the substantive requirements established by law to justify the opening of proceedings; on the other, the structure of the administrative report that conveys that justification. In the field of educational inspection, practice shows that it is advisable to structure the proposal according to an outline that includes background and facts, actions taken, applicable regulations, legal grounds, conclusions, and the proposed decision. What matters is not the label of each section, but that the document allows one to easily identify what has been established, how it was established, its legal significance, and what decision is proposed.

5.1. Identification of the alleged perpetrator

The individualization of the alleged responsible party constitutes an essential element. The person to whom the facts are provisionally attributed

[5] The TC (Constitutional Court) does not, strictly speaking, form part of the Judicial Branch, and therefore its decisions are not included in CENDOJ. Its case law can be consulted through its own search engine athttps://hj.tribunalconstitucional.es/ (Constitutional Case Law Search Engine).

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

must be identified with precision, as well as, where relevant, their functional status, the position they hold, and their specific connection to the facts under investigation. A proposal that omits or blurs this individualization does not allow for the proper construction of the charge.

However, proper subjective delimitation is not exhausted by the nominal identification of the potential responsible party. It also requires attention to the form of participation. Article 93 of the EBEP provides for the disciplinary liability of the principal offender, as well as that of the instigator and the accessory after the fact where the relevant conditions are met. This requires, in certain cases, an assessment of whether the conduct was carried out directly by a public employee or whether other individuals played a relevant role in the commission or concealment of the infringement.

Alongside the alleged responsible party, the proposal must identify other individuals involved whose presence may be significant for the subsequent investigation: injured parties, complainants, direct witnesses, indirect witnesses, members of the management team, administrative staff, or other participants. This identification is not a merely ancillary matter: it facilitates the orderly taking of evidence and prevents subsequent confusion.

At this point, an important caution must be introduced. During preliminary actions, the public employee fully retains their rights, including those related to the presumption of innocence and the privilege against self-incrimination. The search for useful information must not lead to the trivialization of these guarantees. The proposal may rely on interviews, reports, records, logs, and other available elements, but it must avoid treating a possible lack of cooperation by the individual concerned as a substitute for incriminating evidence where this would unduly undermine their rights.

5.2. Facts

Recepción: 13/01/2026 Aceptación: 28/03/2026

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ISSN 1886-5895

The delimitation of the facts constitutes the core of the proposal. Its clarity determines not only the understanding of the case by the authority called upon to decide on the initiation, but also the viability of the subsequent investigation and the real possibility of defense for the person concerned.

The facts must be set out clearly, in an ordered, chronological, and objective manner. It is advisable to number them where the complexity of the case so requires and, in any event, to keep them separate from legal assessments. A careful distinction must be made between the account of what occurred, the sources of knowledge of that account, and the inferences or evaluations drawn from it. The indiscriminate mixing of these levels generates confusion, weakens the reasoning, and makes subsequent defense of the proposal significantly more difficult.

A sound technique consists in describing each relevant fact by indicating, as far as possible, who was involved, what happened, when, where, how, and on the basis of what documentary or indicative support the Administration relies. This basic guideline of completeness should not be confused with rigid formalism: the aim is not to mechanize the narrative, but to ensure that no relevant dimension of the facts remains indeterminate.

It is also important to qualify an idea that is often stated too categorically in administrative practice. The proposal should aim at a comprehensive delimitation of the subject matter of the proceedings, and it is technically advisable to include from the outset all known relevant facts. However, this does not mean that the investigation is rigidly fixed by the initial description. The subsequent inquiry may clarify, complete, or refine certain aspects, provided that the right of defense is not infringed and that no substantial alteration of the charge is introduced without the appropriate guarantees. The proper requirement is not absolute immutability, but consistency and respect

Recepción: 13/01/2026 Aceptación: 28/03/2026

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for adversarial proceedings, subject to the clear limit that new facts must not be introduced into the file (although clarifications or refinements that do not alter its essence are admissible), as this would entail nullity.

5.3. Relevant circumstances

The article 55 of the LPACAP requires that account be taken not only of the facts and the potential responsible parties, but also of the relevant circumstances involved. This category encompasses a wide range of aspects: the context in which the facts occur, the functional relationships among those involved, the repetition of prior conduct, the existence of previous formal requests, any potential harm to the public service, personal circumstances with legal relevance, or any other element capable of influencing the disciplinary significance of the conduct.

Proper consideration of these circumstances serves a dual function. On the one hand, it allows for an accurate understanding of the case and helps to avoid simplistic or decontextualized classifications. On the other, it facilitates the subsequent assessment of proportionality, as well as the identification of possible grounds for exclusion or mitigation of liability. The proposal should not make these circumstances the central focus of the narrative, but neither should it relegate them to a mere marginal note.

5.4. Structure of the report and alignment with legal requirements

From a formal standpoint, the proposal should present a coherent internal structure. Experience shows that the most effective documents are those in which each section fulfils a specific function: the background provides context; the section on facts establishes the factual basis; the actions taken explain the origin and quality of the available information; the applicable legal framework defines the legal context; the legal reasoning develops the provisional subsumption; the conclusions synthesize the reasoning; and the final proposal

Recepción: 13/01/2026 Aceptación: 28/03/2026

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clearly and consistently sets out the decision submitted to the competent authority.

Aligning this structure with the requirements of articles 55 and 64 of the LPACAP does not pose particular difficulties if one starts from a simple premise: the formal structure of the report serves the material content required by law. The aim is not to accumulate headings, but to ensure that the document allows for a logical progression from the establishment of facts to the decision to initiate, or not initiate, proceedings.

CLASSIFICATION OF OFFENCES

The provisional legal classification of the facts constitutes one of the most delicate operations in any proposal to initiate proceedings. It is not sufficient to identify conduct that is irregular or socially reproachable; it is necessary to determine whether that conduct can be reasonably subsumed within an existing and applicable disciplinary offence.

From a doctrinal perspective, a disciplinary offence may be understood as conduct attributable to a public employee that is typical, unlawful, culpable, and punishable [6]. This formulation, drawn from the general theory of administrative wrongdoing (which, in turn, derives from criminal law), is useful because it requires a systematic examination of several distinct aspects. First, legal classification: the conduct must be capable of being subsumed under a valid statutory or regulatory provision. Second, unlawfulness: there must be no justifying cause. Third, subjective imputability: the conduct must be attributable to the individual with intent or negligence under the terms required by law.

[6] The definitive guide to disciplinary proceedings, *The Investigation of Disciplinary Cases: Guidelines and Case Law,* is available for consultation (García et al. 2023).

Recepción: 13/01/2026 Aceptación: 28/03/2026

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Finally, there must be a legal basis for sanction, without the statute of limitations or any other impediment applying.

Disciplinary practice shows, however, that the main source of error is usually found in the legal classification. It is relatively common for certain behaviors to be intuitively perceived as improper, disloyal, or seriously inappropriate and, based on that intuition, to be forced into open categories without sufficient verification of their elements. This line of reasoning is incompatible with the principle of legality in disciplinary sanctions. The fact that a conduct merits moral or professional censure does not, in and of itself, mean that it constitutes a disciplinary offense.

Classification therefore requires a precise analytical exercise. The objective elements of the offense, the subjective elements, and the protected legal right or administrative interest must be identified[7] and the relevant legal doctrine or case law regarding its interpretation. Only then can it be reasonably argued that the conduct constitutes a specific offense.

The provisional nature of this classification does not eliminate the requirement for rigor. It is true that the investigating judge may review, refine, or even modify the initial classification in light of the evidence gathered[8]. But precisely for that reason, the proposal must aim to be technically accurate: an inaccurate initial assessment can derail the investigation, undermine the motivation behind the initial agreement, and increase the risk of inconsistencies later on.

[7] In the context of disciplinary law, the primary concerns are typically the proper functioning and good reputation of the Administration, as well as the proper functioning of the public service, as noted by the most authoritative and widely accepted legal doctrine (Gallardo Castillo, González-Varas, Marina Jalvo, among many others).

[8] The charge may be changed to one of equivalent severity or to a lesser charge, but never to a more serious one, as this would violate the right to a defense and leave the defendant defenseless. Such a change, like the introduction of new facts, would require the case file to be closed and a new case to be opened to address the new developments.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

These aspects must therefore be considered:

Imputability

Once the alleged perpetrator has been identified, and although it is not strictly the proposer's role to assess whether the alleged perpetrator is criminally liable, it is advisable to do so in order for the disciplinary body to evaluate the appropriateness or advisability of initiating disciplinary proceedings.

The grounds for exemption from disciplinary liability are those provided for in the Penal Code[9], in articles 19 and 20 (exculpatory grounds) and the provisions amending articles 21 (mitigating circumstances) and 22 (aggravating circumstances). Under civil service regulations, disciplinary liability ceases upon the loss of civil servant status, which precludes the initiation of disciplinary proceedings against the alleged perpetrator[10].

Once the alleged perpetrator has been identified, an assessment will be made as to whether they have the necessary capacity to understand the wrongfulness of the acts, provided that no grounds for lack of criminal responsibility apply. Such grounds are:

a) A permanent or temporary mental disorder or impairment that prevents the person from understanding the wrongfulness of the act or from acting in accordance with that understanding.

b) Perceptual disturbances present since birth or childhood that seriously impair the person's awareness of reality.

[9] The principles of criminal law are applicable, with certain nuances, to the system of sanctions and disciplinary measures, as manifestations of the State's *ius puniendi* in its administrative capacity. See the famous Constitutional Court ruling 18/1981 on this matter. What these "nuances" are and how they should be applied is a separate and contentious issue that undermines legal certainty and the right to a defense.

[10] Pursuant to article 11 of Royal Decree 33/1986:

1. No disciplinary action may be taken for acts committed after the loss of civil servant status.
2. The loss of civil servant status does not exempt a person from civil or criminal liability for offenses committed while holding that status.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

c) Intoxication by alcohol or drugs, although in the disciplinary context this constitutes a classified offense.

d) Self-defense or a state of necessity[11].

6.1. Typicality

The second fundamental element is the analysis of the typicality of the infringing act. The principles of legality and typicality require that a prior rule establish a certain conduct as an offense, whose type (characteristics) is determined by a series of constitutive elements. If all and each of the elements of the type are not present, no sanction can be imposed. The Constitutional Court ruling STC 75/1984, of 27 June, establishes that:

> The imposed sanction can only be tied to conduct that meets all the elements of the described offense and is objectively prosecutable. Consequently, the investigator must demonstrate that the accused's conduct exhibits both the objective and subjective elements of the alleged offense, meaning that such conduct can be subsumed under that offense. This requires a study and analysis by the investigator of the elements of the offense or offenses that have been charged.

[11] Article 20.4 of the Criminal Code: Any person acting in defense of themselves or their own or another's rights, provided that the following requirements are met:
First. Unlawful aggression. In the case of defense of property, an attack on such property that constitutes a crime and places it in grave danger of imminent damage or loss shall be deemed unlawful aggression. In the case of defense of a dwelling or its outbuildings, unlawful entry into the dwelling or outbuildings shall be deemed unlawful aggression.
Second. The means employed to prevent or repel the attack must be reasonably necessary.
Third. There must be no sufficient provocation on the part of the defender.
5. Any person who, in a state of necessity, to avoid harm to themselves or another, infringes upon another person's legal right or violates a duty, provided that the following requirements are met:
First. The harm caused must not be greater than the harm sought to be avoided.
Second. That the situation of necessity was not intentionally provoked by the individual.
Third. That the person in need is not, by virtue of their profession or position, under an obligation to sacrifice themselves.
6. A person who acts driven by insurmountable fear.
7. A person who acts in the performance of a duty or in the legitimate exercise of a right, profession, or position.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

For example, in the case of serious failure to perform that does not constitute a disqualifying offense (i.e., one that is not a very serious offense), the following elements are required:

Objetives:

a) Noncompliance or poor performance of assigned duties (article 91 LOE).

b) Performance below the service average or below the standard expected.

c) Notable, clear, or evident lack of performance.

d) When the lack of performance affects the service (Supreme Court ruling of February 22, 1995).

Subjetive:

a) Intentionality or inhibition, without willingness or possibility of change.

b) The civil servant must have been warned and offered assistance.

6.2. Unlawfulness

Not all inappropriate conduct constitutes a disciplinary offense, since it may lack sufficient significance (for example, failing to respect personal space or speaking in a raised tone may be unpleasant, but alone hardly constitute acts of disregard) or typicity, or there may exist exculpatory excuses such as error (factual or legal, avoidable or unavoidable).

A factual error implies ignorance of the elements of the offense or not knowing what one is doing. A legal error implies unawareness of the unlawfulness of the act, even if the person knows what they are doing, because they believe their conduct complies with the law. Nevertheless, case law is restrictive when considering error as an exclusionary cause of liability.

6.3. Culpability

A mere violation of a rule is not sufficient grounds for disciplinary action. Therefore, in order to impose disciplinary liability and satisfy the principle of

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

liability (art. 28 LRJSP) or the principle of culpability (art. 94.1.a) EBEP), it must be established that the individual acted with intent, negligence, or gross negligence; "mere non-compliance" is not sufficient"[12]. It is not enough that the result occurs or that the act is carried out; what is required is either the intent to commit the infraction or negligence, that is, a failure to exercise due diligence. Therefore, diligent conduct, even if the act falls within the typical offense, excludes liability. Thus, intent or gross negligence is required. Intent involves both will (conscious decision to commit the unlawful act) and knowledge (awareness that one is acting against the law, yet choosing to do so, being conscious of the possible consequences).

Negligence involves a failure to exercise the required diligence, or carelessness, i.e., omitting the due care in assessing the consequences. Intent is present in the majority of disciplinary offenses; therefore, it cannot be considered an aggravating factor for sanctions in these cases..

6.4. Punishability

Once the previous elements are established, the punishability of the action must be analyzed; that is, the alleged offense must not be time-barred according to article 97 EBEP[13].

6.5. Elements of the main types of disciplinary offenses

[12] This was stated in the former Law 30/1992 of November 26, on the Legal Regime of Public Administrations and Common Administrative Procedure, in article 130.1: "Only natural and legal persons who are responsible for acts constituting an administrative offense may be sanctioned for such acts, even in cases of mere non-compliance." Fortunately, with the entry into force of the LRJSP, this provision has been repealed, along with objective disciplinary liability (based on the mere act), and has been replaced by a regime based on the principle of liability, similar to criminal law (art. 5 of the Criminal Code: "There is no penalty without intent or negligence").

[13] *1. The statute of limitations for very serious offenses is three years, for serious offenses two years, and for minor offenses six months; the statute of limitations for penalties imposed for very serious offenses is three years, for serious offenses two years, and for minor offenses one year.*
2. The statute of limitations for offenses shall begin to run from the date they were committed, and from the date they ceased to be committed in the case of continuing offenses.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

The EBEP only defines very serious offenses, leaving the regulation of serious and minor offenses, as well as additional very serious offenses deemed appropriate, to the public service laws of each autonomous community. The objective and subjective elements of each offense must be analyzed and compared with the alleged facts or known information.

MOTIVATION

Motivation is a structural requirement of administrative action and takes on particular importance in disciplinary matters. The Constitution, by proclaiming the full subordination of the Administration to the law and to legal norms (art. 103.1 CE) and prohibiting arbitrariness by public authorities (art. 9 CE), requires that administrative decisions be legally founded. In this context, motivation is the channel through which the rationality of a decision is made explicit.

To motivate does not mean merely reproducing legal provisions or embellishing the decision with stereotyped formulas. Motivation means explaining, in a clear and sufficient manner, which facts are considered relevant, why they are provisionally deemed to be established, which legal norm is applicable, and why those facts justify the initiation of the procedure or, where appropriate, the adoption of provisional measures. In short, motivation consists of "reasoning, explanation, or a rational expression of judgment, following the establishment of the relevant facts and their inclusion within a legal norm" (Supreme Court ruling of January 30, 2001, Third Chamber). Motivation thus connects facts, norms, and decision.

Its function is twofold. First, it fulfills a guarantee function: it allows the interested party to understand the reasons behind the administrative action and, therefore, to effectively challenge it. Second, it serves a control function: it obliges the Administration itself to reason, organize its arguments, and

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

internally verify that its decision rests on a sufficient basis. Consequently, lack of motivation, or motivation that is merely formal, is not a trivial defect.

The Law 39/2015 establishes the need to express the reasons or grounds on which a decision is based and specifies (art. 35.1 LPACAP) that a number of administrative acts must be motivated "with a succinct reference to facts and legal grounds" (including acts that limit subjective rights, deviate from criteria applied in previous actions, reject evidence proposed by interested parties, proposals for resolutions of disciplinary proceedings, etc.). Motivation, therefore, serves to prevent arbitrariness[14].

Since the acceptance of reports will serve as motivation for the resolution when incorporated into its text (art. 88 LPACAP), it is clear that our report must be properly motivated, including a presentation of the facts, their verification (evidence), legal classification, and the culpability of the alleged responsible party, as well as the need, or lack thereof, for provisional measures.

The content or elements of motivation are well known:

a) Facts verified in relation to the applicable norm (comparison between facts and regulations).
b) Legal (and, in some cases, factual) reasons supporting the conclusions and proposed action.
c) Motivation must be sufficient, understandable (allowing the reasoning to be clearly grasped), and consistent (with the facts, the law, and the proposed decision).

[14] The difference between arbitrariness and discretion is clear: while arbitrariness, which is prohibited by law, involves making a decision without any justification, rationality, or consistency with the specific case, discretion involves the ability to choose among various equally valid, legitimate, and fair options permitted by law. The choice of one or the other is what must be justified in order to avoid falling into arbitrariness.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

In summary, the minimum content of motivation for administrative acts depends on the "sufficiency judgment" required by the specific case. This means that any motivation, however brief, that makes explicit the factual and legal elements forming the premises of the act is sufficient, so that the act appears as a reasoned and reasonable conclusion of those premises (Supreme Court, Third Chamber, March 5, 2012, Rec. 6515/2010).

In the proposal for initiating disciplinary proceedings, motivation should address at least four levels. First, the selection and delineation of facts. Second, the connection between those facts and the sources of information or available indicia. Third, the provisional legal classification. Finally, if provisional measures are proposed, a specific explanation of their necessity, appropriateness, and proportionality.

Special attention must be paid to this last point. Practice reveals a tendency to justify precautionary measures with generic statements regarding service convenience or the abstract seriousness of the facts. Such reasoning does not meet legal requirements. Provisional suspension or other restrictive measures may only be proposed when there is a concrete justification linked to the protection of the public interest, ensuring the effectiveness of the final resolution, or preventing serious harm, and always with explicit consideration of their necessity and the least possible burden.

WRITING TECHNIQUES

The legal quality of a proposal also depends, in no secondary way, on its textual quality. The proposal report is a professional document intended to be read by decision-making bodies, investigators, legal services, potential defense counsel, and, where applicable, judicial authorities. This imposes requirements of appropriateness, coherence, cohesion, and grammatical correctness.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

The first requirement is clarity: the report must be understandable without sacrificing precision. The second is conciseness, understood not as a lack of argumentation, but as the avoidance of redundancy, unnecessary digressions, and disorganized accumulation of information. The third is objectivity: the text must avoid rhetorical judgments, personal disparagement, unnecessary metaphors, or emotionally charged expressions. Finally, the fourth is terminological precision: each legal category must be used with full awareness of its meaning and effects.

From a microtextual perspective, each paragraph should develop a clearly identifiable idea, and sentences should not accumulate excessive subordinate clauses that hinder readability. Where possible, a sober syntax is preferable, with medium-length sentences, precise verbs, and a logical order of exposition. Legal writing does not gain authority by obscuring meaning; it loses it.

It must also be remembered that the report has specific recipients. It is not written for someone who knows the case firsthand, but for those who must understand and evaluate it based on the document. Therefore, extreme assumptions not explicitly stated should be avoided. The proposal should be constructed as a self-contained text: the reader must be able to clearly understand what occurred, what evidence exists, which norm is considered applicable, and what is being proposed.

The classical textual properties —appropriateness, coherence, cohesion, and correctness— provide a useful operational criterion. Appropriateness requires that the register match the professional genre and the seriousness of the matter. Coherence demands internal order and absence of contradictions. Cohesion requires the correct use of connectors, internal references, and mechanisms for discursive continuity. Correctness includes both grammar and

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

punctuation, as well as review of typographical errors, numbering, and normative or documentary references.

DOCUMENTATION ACCOMPANYING THE PROPOSAL

The documentation attached to the proposal is not an ornamental complement nor a simple repository of papers. It has an essential evidentiary and explanatory function, as it supports the account of facts and demonstrates the objective basis on which the proposed decision rests.

The first requirement for this documentation is relevance. Only documents that have a useful connection to the facts or to the legal motivation of the proposal should be included: minutes, reports, incident records, emails, prior requests, screenshots, medical or technical reports, documented statements, time logs, recordings, or any other admissible medium that provides relevant information.

The second requirement is sufficiency. The attached documentation must be adequate to support the relevant facts described in the proposal. It may not always be possible to have all desired evidence from the outset, but all reasonably obtainable material from prior proceedings should be provided, noting any significant gaps.

The third requirement is order. Documents should be numbered or identified using a clear, stable, and easily traceable system. Each documentary reference included in the proposal must allow the reader to locate the cited document without difficulty. Disorganization of annexed documentation undermines the report's intelligibility and hinders its use by the investigator.

Finally, the documentation must be consistent with the report. Nothing weakens a proposal more than contradictions between the text and annexes or

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

the inclusion of irrelevant, duplicated, or confusing materials. The volume of documentation does not substitute for quality; often, overloading with unnecessary annexes produces the opposite effect and obscures what is truly important.

ERRORS TO BE AVOIDED

The errors that most frequently compromise the quality of initiation proposals can be grouped into four main categories: errors in the determination of facts, errors in legal classification, errors in attributing responsibility, and errors in writing or documentation.

Regarding facts, the most common errors are, first, the disciplinary irrelevance of the described conduct; second, confusion between facts and evaluations; third, insufficient or fragmented accounts; and fourth, lack of connection between the asserted facts and the evidence provided. The Administration cannot base initiation on vague, moralizing, or merely intuitive narratives.

In terms of legal classification, the most common error is forcing the subsumption of conduct into an offense type solely because the behavior is deemed blameworthy. Frequently, this is compounded by omission of the analysis of the subjective elements of the offense or by underestimating relevant doctrine and jurisprudence for interpreting open concepts.

When determining responsibility, automatism must be avoided. It is not enough for a person to be institutionally linked to the facts to attribute disciplinary liability. The proposal must reason personal imputation and consider, where applicable, possible exclusionary causes, mitigation, or extinction of responsibility, including the statute of limitations for the offense.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

Finally, regarding writing and documentation, the most damaging errors are ambiguity, lack of structure, normative typos, inconsistency between sections, defective document numbering, and the inclusion of irrelevant or contradictory annexes. In disciplinary matters, form is not an ornament: it is a dimension of the guarantee.

BEST PRACTICES

In light of the foregoing, several best practices can be proposed to improve the quality of the initiation proposal.

The first is to reasonably exhaust, when the case allows, the avenues of prevention, warning, request, monitoring, and advice before activating a disciplinary response. This is not out of leniency toward the infraction, but out of respect for a rational and proportionate conception of the sanctioning and disciplinary authority, consistent with the ultima ratio nature of the sanctioning system.

The second is to prepare the proposal with an eye toward future investigation and, if applicable, potential judicial review. The drafter should constantly ask whether the investigator will be able to work clearly from the document and whether a judge would understand the logic of the proposed decision.

The third best practice is to record the facts with the highest possible degree of precision and supported by identifiable evidence. A solid proposal does not rely on general impressions, but on concrete, documented facts.

The fourth is to exercise extreme care in legal classification. It must be verified that the facts are typified, that they have sufficient significance, that

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

there is subjective imputation, and that no causes exist that would prevent or mitigate liability.

Providing sufficient and specific motivation is another key point. Motivation cannot be assumed or delegated to generic formulas. It must be original, understandable, and consistent with the case. The same applies to provisional measures, which require a specific, individualized justification.

Finally, the sixth best practice is to conceive the report as a professional text of high standards. Clarity, precision, order, expressive sobriety, and formal correctness are not accessory virtues, but requirements of good administration. In many cases, the strength of a disciplinary file depends as much on the solidity of its reasoning as on the clarity and quality of its writing.

CONCLUSION

The analysis carried out allows us to affirm, with justification, that the proposal to initiate a disciplinary proceeding constitutes a structural element of the administrative sanctioning procedure, whose legal and technical quality decisively conditions the validity, effectiveness, and robustness of all subsequent actions. Far from being conceived as a mere preparatory formality, the proposal functions as a genuine instrument of initial legal refinement, in which the essential elements —both factual and normative— are established and upon which the disciplinary file will be built.

First, it has been shown that many of the dysfunctions that lead to the failure of disciplinary files do not originate in the evidentiary phase, but rather in a poorly constructed proposal. Insufficient delineation of the facts, confusion between facts and evaluations, inadequate identification of the alleged responsible party, or the lack of a minimally grounded legal classification generate structural weaknesses that are difficult to remedy in later stages.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

From this follows a relevant consequence: the investigation cannot compensate for an inadequately configured initial object of the procedure without compromising fundamental guarantees.

Second, the analysis confirms the need to integrate the initiation proposal into a broader and more rational conception of the exercise of disciplinary authority. Sanctioning intervention must operate according to criteria of necessity, proportionality, and minimal intervention, which requires an adequate articulation between prevention, preliminary actions, and formal initiation. The proposal here fulfills a legal filtering function: it allows one to distinguish between organizational conflicts, relational dysfunctions, and true disciplinary infractions, thereby avoiding both overreaction in sanctioning and unjustified inaction.

From a normative perspective, it is observed that, although the initiation proposal is not expressly regulated as such, its content and requirements derive directly from articles 55 and 64 of the Law 39/2015, as well as the substantive principles enshrined in the Law 40/2015 and the Basic Statute of Public Employees. The proposal must therefore reasonably anticipate the elements that will allow the competent body to adopt a lawful initiation decision, implying a requirement for genuine motivation, not merely formal.

Similarly, the analysis of the internal elements of the proposal highlights the centrality of three technical requirements: (i) the correct delineation and objectification of the facts, (ii) the precise identification of the alleged responsible party and relevant circumstances, and (iii) a provisional legal classification based on a rigorous examination of typicity, unlawfulness, culpability, and punishability. The provisional nature of this classification does not excuse rigor; rather, it reinforces the necessity of avoiding forced or intuitive constructions incompatible with the principle of legality in sanctioning.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

Particular emphasis is placed, in this context, on motivation. It is not enough to invoke norms or reproduce stereotyped formulas: the proposal must express a comprehensible legal reasoning connecting the verified facts with the decision to initiate the proceeding. This requirement responds not only to the prohibition of arbitrariness but also constitutes an effective guarantee of the right of defense and a key element for the sustainability of the file in both administrative and judicial settings.

Finally, in the specific context of educational inspection, the initiation proposal acquires an additional dimension. Its quality affects not only the legal validity of the procedure but also the management of institutional conflict within educational centers. A deficient proposal can exacerbate tensions, generate frustrated expectations, and erode the credibility of the Administration; conversely, a technically sound proposal helps channel the conflict in legally appropriate terms and strengthens the guarantee function of disciplinary authority.

In short, the initiation proposal should be understood as a key instrument of good administration, in which legal rigor, administrative technique, and institutional responsibility converge. Its correct drafting is not a merely formal matter, but a necessary condition for the legitimate, effective, and guarantee-based exercise of disciplinary authority.

Recepción: 13/01/2026 Aceptación: 28/03/2026

https://doi.org/10.52149/Sp21
ISSN 1886-5895

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Recepción: 13/01/2026 Aceptación: 28/03/2026