

**MANAGING DISCIPLINE,
POOR PERFORMANCE
AND
GRIEVANCES IN PUBLIC SCHOOLS
AND REPRESENTING
THE DEPARTMENT OF EDUCATION
AS A RESOURCE PERSON
IN THE APPOINTMENT PROCESS**

- **CONFLICT**
 - **GRIEVANCES**
 - **DISCIPLINE**
 - **POOR PERFORMANCE**
 - **ILL HEALTH (PILIR)**
 - **INTERVIEWS**

PARTICIPANT'S MANUAL 2017

COURSE OUTLINE

1. OPENING AND WELCOME

- 1.1 Housekeeping
- 1.2 Outcomes statement
- 1.3 Participant introductions and objectives

2. INTRODUCTION

- 2.1 The purpose of the manual for managing workplace relations
- 2.2 How to use the manual
- 2.3 Individual dispute management
- 2.4 Legislative framework

3. THE SCHOOL PRINCIPAL

- 3.1 Job description of the School Principal
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- 3.3 Practical exercise

4. CONFLICT MANAGEMENT

- 4.1 The nature of conflict
- 4.2 The principles of conflict
- 4.3 A conflict model
- 4.4 Types, causes and interventions of conflict
- 4.5 Practical exercises
- 4.6 Key learning areas: Conflict Management

5. GRIEVANCE MANAGEMENT

- 5.1 The Grievance Procedure for Educators
 - 5.1.1 Flow diagram
- 5.2 Problem solving model
- 5.3 Practical exercises
- 5.4 Key learning areas: Grievance Management

6. DISCIPLINE MANAGEMENT

- 6.1 The Disciplinary Code and Procedures for Educators
- 6.2 Progressive

- 6.3 disciplinary action
 - 6.3.1 Flow diagram
 - 6.3.2 Flow diagram
- 6.4 Practical exercises
- 6.5 Case law for discipline management
- 6.6 Key learning areas: Discipline Management

7. POOR WORK PERFORMANCE

- 7.1 Educator's Incapacity Code and Procedures for Poor Work Performance
 - 7.1.1 Flow diagram
- 7.2 Poor Work Performance versus Misconduct
- 7.3 Practical exercises
- 7.4 Key learning areas: Poor Work Performance

8. ILL HEALTH OR INJURY

- 8.1 Educator's Incapacity Code and Procedures for Ill Health or Injury
 - 8.1.1 Flow diagram
- 8.2 Management of PILIR at school level
- 8.3 Practical exercises
- 8.4 Toolkit for effective management of leave
- 8.5 Case law for poor work performance and ill health or injury
- 8.6 Key learning areas: Sick leave, Incapacity Leave and Ill health retirement
- 8.7 Key learning areas: Misconduct, Poor Work Performance and Ill Health or Injury

9. APPOINTMENT AND PROMOTION

- 9.1 Provisions of the Personnel Administration Measures (PAM)
- 9.2 Elements of a fair procedure
- 9.3 Role of the observer and resource person
- 9.4 Process map: the advertising and filling of educator posts
- 9.5 Practical exercises
- 9.6 Case law for appointments
- 9.7 Key learning areas: Resource person in the Interview Committee

10. GROUP ASSIGNMENTS

11. ANNEXURES

- 11.1 Minimum requirements for appointment in education
- 11.2 ELRC Collective Agreement 4 of 2016: Transfer of serving educators in terms of operational requirements
- 11.3 ELRC Collective Agreement 3 of 2016: ELRC guidelines: promotion arbitrations

- 11.4 ELRC Resolution 5 of 1998: Advertising and filling of educator posts
- 11.5 ELRC Resolution 7 of 2001: New leave measures for educators
- 11.6 PELRC Resolution 2 of 2002: Guidelines for Interview
- 11.7 Relevant Departmental Circulars and/or Memoranda

OUTCOMES STATEMENT

- **Context:** in your role as a principal of a school you have to manage conflict, grievances and discipline
- **Skill:** be able to effectively and efficiently manage conflict, grievances and discipline at school level.
- **Assessment criteria:**
 - As a principal you should ensure that:
 - You possess the necessary interpersonal skills to manage grievances and conflict management
 - You are aware of the disciplinary code and the grievance procedure of the Department of Basic Education
 - You deal with grievances within the time frames provided
 - You apply discipline consistently, fairly and promptly
 - The procedural requirements for fair discipline are complied with time when discipline is effected;
 - The substantive requirements for fair discipline are met discipline has to be effected
 - You are aware of the educator's code and procedures for poor work performance
 - You are aware of the educator's code and procedures for ill health and injury
 - You are aware of the PILIR policy as outlined in PSCBC Resolution 7 of 2000
 - You are aware of the provisions in the PAM in relation to the advertising and filling of educator posts in public schools

PARTICIPANT OBJECTIVES

Individually, record your responses to the following question:

What would I like to get out of this course and why is this important to me?

INTRODUCTION

1. The purpose of this manual for School Principals.

At the centre of this manual lies the Constitutional right of learners to quality education.

Labour relations have become more legalistic and are governed by many different pieces of legislation. Despite this, School Principals who are at the doorway of the Education system need to manage and educators need to know their rights and their obligations to the Department.

This manual seeks to empower School Principals to understand their primary functions and responsibilities within the broader context of labour relations. In this regard it is important for School Principals to know what are the signs of amber and red lights in destabilising the workplace.

A weak and unstable labour relations environment will always affect the Constitutional right of learners negatively.

2. How to use the manual.

This manual is not a comprehensive guide on all matters pertaining to labour relations in the workplace, but should be seen as an enabler to assist School Principals in managing employment relations with the view to increase learner output.

The sections consist where relevant of:

- ✓ The applicable policy and/or procedure
- ✓ Information sheets and diagrams
- ✓ Worksheets and handouts
- ✓ Case law
- ✓ Key learning areas

3. Individual dispute management

The majority of reported disciplinary cases in the Eastern Cape Department of Education (ECDoE) relates to absenteeism. Financial mismanagement by School Principals also counts for a significant number of reported cases.

As far as reported grievances are concerned, the most cases relate to unfair conduct at the workplace.

The most disputes recorded with the Education Labour Relations Council (ELRC) relate to promotion followed by unfair labour practice disputes.

4. Legislative framework

NO	LEGISLATION / POLICY / COLLECTIVE AGREEMENTS / CIRCULARS	RELEVANCE
1	Constitution of Republic of South Africa, 1996	Bill of Rights ✓ Section 23: Labour Relations ✓ Section 28: Children ✓ Section 29: Education
2	Labour Relations Act no 66 of 1995 as amended	✓ Schedule 8: Procedural and substantive fairness in relation to misconduct, poor work performance and ill health or injury
3	Basic Conditions of Employment Act no 75 of 1997 as amended	✓ Section 49: Variation by agreement <ul style="list-style-type: none"> ○ ELRC Resolution 6 of 2002: Implementation of the BCEA in Education
4	South African Schools Act no 84 of 1996 as amended	✓ Section 16A: Functions and responsibilities of principal of public school
5	Employment of Educators Act no 76 of 1998 as amended	✓ Section 17: Acts of serious misconduct that warrant dismissal if found guilty ✓ Section 18: Acts of less serious misconduct ✓ Schedule 1: Incapacity Code for poor work performance as well as ill health or injury ✓ Schedule 2: Disciplinary Code for Educators
6	South African Council for Educators (SACE)	✓ Code of Professional Ethics ✓ Disciplinary procedures
7	Personnel Administrative Measures (PAM)	✓ Chapter A: Job description of School Principals ✓ Chapter G: Grievance Procedure for Educators ✓ Chapter H: Leave measures

NO	LEGISLATION / POLICY / COLLECTIVE AGREEMENTS / CIRCULARS	RELEVANCE
8	ELRC Collective Agreements	<ul style="list-style-type: none"> ✓ Collective Agreement 4 of 2016: Transfer of serving educators in terms of operational requirements ✓ Collective Agreement 3 of 2016: ELRC guidelines: promotion arbitrations ✓ Resolution 7 of 2001: New leave measures for Educators
9	Provincial Education Labour Relations Chamber (PELRC) Collective Agreements	✓ Resolution 2 of 2002: Guidelines for Interviews
10	Departmental circulars and/or memoranda	✓ Will be provided electronically later

THE SCHOOL PRINCIPAL

1. JOB DESCRIPTION

JOB TITLE: Educator - public school

RANK: Principal

2. THE AIM OF THE JOB

- 2.1 To ensure that the school is managed satisfactorily and in compliance with applicable legislation, regulations and personnel administration measures as prescribed.
- 2.2 To ensure that the education of the learners is promoted in a proper manner and in accordance with approved policies.

3. CORE DUTIES AND RESPONSIBILITIES OF THE JOB

The duties and responsibilities of the job are individual and varied, depending on the approaches and needs of the particular school, and include, but are not limited to, the following:

3.1 General/administrative

- 3.1.1 To be responsible for the professional management of a public school as contemplated in section 16A(3) of SASA, and to carry out duties, which include, but are not limited to –
 - 3.1.1.1 The implementation of all the educational programmes and curriculum activities;
 - 3.1.1.2 The management of all educators and support staff;
 - 3.1.1.3 The management of the use of learning support material and other equipment;
 - 3.1.1.4 The performance of functions delegated to him or her by the HoD in terms of SASA;
 - 3.1.1.5 The safekeeping of all school records; and
 - 3.1.1.6 The implementation of policy and legislation. (SASA, section 16A(2)(a)(i) – (vi))
- 3.1.2 To give proper instructions and guidelines for timetabling, admission and placement of learners.
- 3.1.3 To have various kinds of school accounts and records properly kept and to make the best use of funds for the benefit of the learners in

- consultation with the appropriate structures.
- 3.1.4 To ensure a school journal containing a record of all-important events connected with the school is kept.
- 3.1.5 To make regular inspections of the school to ensure that the school premises and equipment are being used properly and that good discipline is being maintained.
- 3.1.6 To be responsible for the hostel and all related activities including the staff and learners, if one is attached to the school.
- 3.1.7 To ensure that departmental circulars and other information received which affect members of the staff are brought to their attention as soon as possible and are stored in an accessible manner.
- 3.1.8 To handle all correspondence received at the school.

3.2 Personnel

- 3.2.1 To provide professional leadership within the school.
- 3.2.2 To guide, supervise and offer professional advice on the work and performance of all staff in the school and, where necessary, to discuss and write or countersign reports on teaching, support, non-teaching and other staff.
- 3.2.3 To ensure that workloads are equitably distributed among the staff.
- 3.2.4 To be responsible for the development of staff training programmes, both school-based, school-focused and externally directed, and to assist educators, particularly new and inexperienced educators, in developing and achieving educational objectives in accordance with the needs of the school.
- 3.2.5 To participate in agreed school/educator appraisal processes in order to regularly review their professional practice with the aim of improving teaching, learning and management.
- 3.2.6 To ensure that all evaluation/forms of assessment conducted in the school are properly and efficiently organised.
- 3.2.7 To assist the HoD in handling disciplinary matters pertaining to educators and support staff employed by the HoD. (SASA, section 16A(2)(e)).

3.3 Academic performance of the school (SASA, section 16A(1) (b)(i) – (iv))

- 3.3.1 To prepare and submit to the HoD an annual report in respect of –
 - 3.3.1.1 The academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the Minister in terms of section 6A of SASA; and
 - 3.3.1.2 The effective use of available resources.
- 3.3.2 The principal of a public school identified by the HoD in terms of section 58B of SASA must annually, at the beginning of the year, prepare a plan setting out how academic performance at the school will be improved. The academic performance improvement plan must be –
 - 3.3.2.1 Presented to the HoD on a date determined by him/her; and
 - 3.3.2.2 Tabled at an SGB meeting.
- 3.3.3 The HoD may approve the academic performance improvement plan or return it to the principal with such recommendations as may be necessary in the circumstances.
- 3.3.4 If the HoD approves the academic performance improvement plan the principal must, by 30 June, report to the HoD and the governing body on progress made in implementing the plan. The HoD may extend the date on good cause shown.

3.4 Teaching

- 3.4.1 To engage in class teaching as per the workload of the relevant post level and the needs of the school.
- 3.4.2 To be a class teacher if required.
- 3.4.3 To assess and to record the attainment of learners taught.

3.5 Extra- & co-curricular

- 3.5.1 To serve on recruitment, promotion, advisory and other committees as required.
- 3.5.2 To play an active role in promoting extra and co-curricular activities in the school and to plan major school functions and to encourage learners' voluntary participation in sports, educational and cultural activities organised by community bodies.

3.6 Interaction with stakeholders

- 3.6.1 School governing body
 - 3.6.1.1 To serve on the governing body of the school and render all necessary

assistance to the SGB in the performance of their functions in terms of SASA.

- 3.6.1.2 To represent the HoD in the governing body when acting in an official capacity. (SASA, section 16A(1)(a)).
- 3.6.1.3 The principal must – (SASA, section 16A(2)(b, c, d, f and (3))
- (a) Attend and participate in all meetings of the governing body.
 - (b) Provide the governing body with a report about the professional management relating to the public school;
 - (c) Assist the governing body in handling disciplinary matters pertaining to learners; and
 - (d) Inform the governing body about policy and legislation.
 - (e) Assist the governing body in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with –
 - (i) Instructions of the HoD;
 - (ii) Legislation or policy;
 - (iii) An obligation that he/she has towards the HoD, the MEC or the Minister; and
 - (iv) Provisions of the EEA and the PAM, determined in terms of the EEA.
- 3.6.2 To participate in community activities in connection with educational matters and community building.

3.7 Communication

- 3.7.1 To co-operate with members of the school staff and the school governing body in maintaining an efficient and smooth running school.
- 3.7.2 To liaise with the circuit/regional office, supplies section, personnel section, finance section, etc. concerning administration, staffing, accounting, purchase of equipment, research and updating of statistics in respect of educators and learners.
- 3.7.3 To liaise with relevant structures regarding school curricula and curriculum development.
- 3.7.4 To meet parents concerning learners' progress and conduct.
- 3.7.5 To co-operate with the school governing body with regard to all aspects as specified in SASA.
- 3.7.6 To liaise with other relevant government departments, e.g. Department of Health, Public Works, etc., as required.

- 3.7.7 To co-operate with universities, colleges and other agencies in relation to learners' records and performance as well as INSET and management development programmes.
- 3.7.8 To participate in departmental and professional committees, seminars and courses in order to contribute to and/or update professional views/standards.
- 3.7.9 To maintain contacts with sports, social, cultural and community organisations.

THE SCHOOL PRINCIPAL

EDUCATION LAWS AMENDMENT ACT 31 OF 2007

"FUNCTIONS AND RESPONSIBILITIES OF PRINCIPAL OF PUBLIC SCHOOL"

16A. (1) (a) The *principal* of a *public school* represents the *Head of Department* in the *governing body* when acting in an official capacity as contemplated in sections 23(1)(b) and 24(1)(j).

(b) The *principal* must prepare and submit to the *Head of Department* an annual report in respect of—

- (i) the academic performance of that school in relation to minimum outcomes and standards and procedures for assessment determined by the *Minister* in terms of section 6A; and
- (ii) the effective use of available resources.

(c) (i) The *principal* of a *public school* identified by the *Head of Department* in terms of section 58B must annually, at the beginning of the year, prepare a plan setting out how academic performance at the *school* will be improved.

(ii) The academic performance improvement plan must be—
(aa) presented to the *Head of Department* on a date determined by him or her; and

(bb) tabled at a *governing body* meeting.

(iii) The *Head of Department* may approve the academic performance improvement plan or return it to the *principal* with such recommendations as may be necessary in the circumstances.

(iv) If the *Head of Department* approves the academic performance improvement plan the *principal* must, by 30 June, report to the *Head of Department* and the *governing body* on progress made in implementing that plan.

(v) The *Head of Department* may extend the date contemplated in subparagraph (iv) on good cause shown.

(2) The *principal* must—

(a) in undertaking the professional management of a *public school* as contemplated in section 16(3), carry out duties which include, but are not limited to—

(i) the implementation of all the educational programmes and curriculum activities;

(ii) the management of all educators and support staff;

(iii) the management of the use of learning support material and other equipment;

(iv) the performance of functions delegated to him or her by the *Head of Department* in terms of this Act;

(v) the safekeeping of all school records; and

(vi) the implementation of policy and legislation;

(b) attend and participate in all meetings of the *governing body*;

- (c) provide the *governing body* with a report about the professional management relating to the *public school*;
- (d) assist the *governing body* in handling disciplinary matters pertaining to *learners*;
- (e) assist the *Head of Department* in handling disciplinary matters pertaining to *educators* and support staff employed by the *Head of Department*;
- (f) inform the *governing body* about policy and legislation; and
- (g) provide accurate data to the *Head of Department* when requested to do so.

(3) The *principal* must assist the *governing body* in the performance of its functions and responsibilities, but such assistance or participation may not be in conflict with—

- (a) instructions of the *Head of Department*;
- (b) legislation or policy;
- (c) an obligation that he or she has towards the *Head of Department*, the *Member of the Executive Council* or the *Minister*; or a provision of the Employment of Educators Act, 1998 (Act No. 76 of 1998), and the Personnel Administration Measures determined in terms thereof."

THE SCHOOL PRINCIPAL

1. Indicate whether the statements below are TRUE or FALSE and if FALSE provide the correct answer:
 - a. The School Governing Body (SGB) is responsible for the disciplining of educators in public schools.
 - b. The School Principal of a public school has the power to dismiss educators.
 - c. The School Principal is primarily responsible for the finances of a public school.
 - d. The School Principal of a private or independent school must assist the Superintendent-General of Education with the disciplining of educators.
 - e. The School Principal of a public school must first consult with political parties before implementing departmental policies.
 - f. The School Principal is responsible for the appointment of educators.
 - g. The School Principal is entitled to a danger allowance for working after hours.
 - h. The School Principal may veto any decision taken in a staff meeting.
 - i. The School Principal of a public school is expected to teach besides his/her responsibility to manage the school.
 - j. The School Principal of a public school is responsible for the safekeeping of school records.

2. Which of the following Acts fit the descriptions below the best:
 - Constitution of Republic of South Africa, 1996
 - Labour Relations Act no 66 of 1995 as amended
 - Basic Conditions of Employment Act no 75 of 1997 as amended
 - South African Schools Act no 84 of 1996 as amended
 - National Education Policy Act no 27 of 1996
 - Employment of Educators Act no 76 of 1998 as amended

- South African Council for Educators Act no 31 of 2000

DESCRIPTIONS

- a. This Act contains the disciplinary code for educators.
- b. This Act sets out professional ethics for educators.
- c. This Act regulates the minimum conditions of service of employees
- d. This Act determines the functions of School Governing Bodies
- e. This Act deals with the procedural and substantive fairness of dismissals of employees
- f. This Act sets standards for the management of education on South Africa
- g. This Act deals with the termination of educators due to misconduct.
- h. This Act deals with the poor performance of educators other than incapacity

THE SCHOOL PRINCIPAL

1. Indicate whether the statements below are TRUE or FALSE and if FALSE provide the correct answer:
 - a. The School Governing Body (SGB) is responsible for the disciplining of educators in public schools. **FALSE. The School Principal is responsible for the disciplining of educators**
 - b. The School Principal of a public school has the power to dismiss educators. **FALSE. Only the Superintendent-General has the power to dismiss educators**
 - c. The School Principal is primarily responsible for the finances of a public school. **FALSE. The School Principal is primarily responsible for the academic performance of his/her school.**
 - d. The School Principal of a private or independent school must assist the Superintendent-General of Education with the disciplining of educators. **FALSE. It is the responsibility of the School Principal of a public school.**
 - e. The School Principal of a public school must first consult with political parties before implementing departmental policies. **FALSE. Political parties have no say in the management of a school.**
 - f. The School Principal is responsible for the appointment of educators. **FALSE. The Superintendent-General is responsible for the appointment of educators; alternatively the District Director if delegated that function.**
 - g. The School Principal is entitled to a danger allowance for working after hours. **FALSE. No provision is made in legislation for a School Principal to receive a danger allowance.**
 - h. The School Principal may veto any decision taken in a staff meeting. **FALSE. The School Principal must abide by the decision(s) of the majority.**
 - i. The School Principal of a public school is expected to teach besides his/her responsibility to manage the school. **TRUE**
 - j. The School Principal of a public school is responsible for the safekeeping of school records. **TRUE**
2. Which of the following Acts fit the descriptions below the best?
 - Constitution of Republic of South Africa, 1996

- Labour Relations Act no 66 of 1995 as amended
- Basic Conditions of Employment Act no 75 of 1997 as amended
- South African Schools Act no 84 of 1996
- National Education Policy Act no 27 of 1996
- Employment of Educators Act no 76 of 1998 as amended
- South African Council for Educators Act no 31 of 2000

DESCRIPTIONS

- a. This Act contains the disciplinary code for educators. **Employment of Educators Act no 76 of 1998 as amended**
- b. This Act sets out professional ethics for educators. **South African Council for Educators Act no 31 of 2000**
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- d. This Act determines the functions of School Governing Bodies. **South African Schools Act no 84 of 1996**
- e. This Act deals with the procedural and substantive fairness of dismissals of employees. **Labour Relations Act no 66 of 1995 as amended**
- f. This Act sets standards for the management of education on South Africa. **National Education Policy Act no 27 of 1996**
- g. This Act deals with the termination of educators due to misconduct. **Employment of Educators Act no 76 of 1998 as amended**
- h. This Act deals with the poor performance of educators other than incapacity **Employment of Educators Act no 76 of 1998 as amended**

CONFLICT MANAGEMENT

1. Introduction

Conflict is a given in all human relationships. The most common response of people to conflict is to try and avoid or work around it. Although there may be times when avoidance is an appropriate approach it only has a place in limited situations. Unfortunately people do not always distinguish these situations all that well.

2. The triggers of conflict and grievances

The triggers of conflict and grievances in the workplace are born out of complaints, unhappiness, perceptions, problems etc. If these issues are not addressed timeously it may escalate and negatively affect the performance of the entire school – and worst of all it may also affect the performance of the learners.

On the other hand the trigger for misconduct is found in transgressions by employees and could well be transgressions that are found in the issues referred to above, e.g. a teacher has complaint to his principal that he was harassed by his HOD. The principal ignored the complaint. A week later the teacher assaulted the HOD in front of learners and is now facing charges of serious assault.

From the aforementioned example it is clear that if the principal had followed up on the complaint by the teacher through oral communication such a situation could have been avoided.

3. The nature of conflict

It is common cause that people remain in relationships even though their needs are different, or when the values, needs or interests differ or are perceived to differ. This is true to relationships at work.

Effective conflict management has to do with the overall relationship rather than specific incident management. The more successful the foundation – the more open the relationship – the more likely when conflict occurs they are effectively resolved.

This maturity in the relationship therefore becomes the cornerstone of successful grievance management.

4. The principles of conflict:

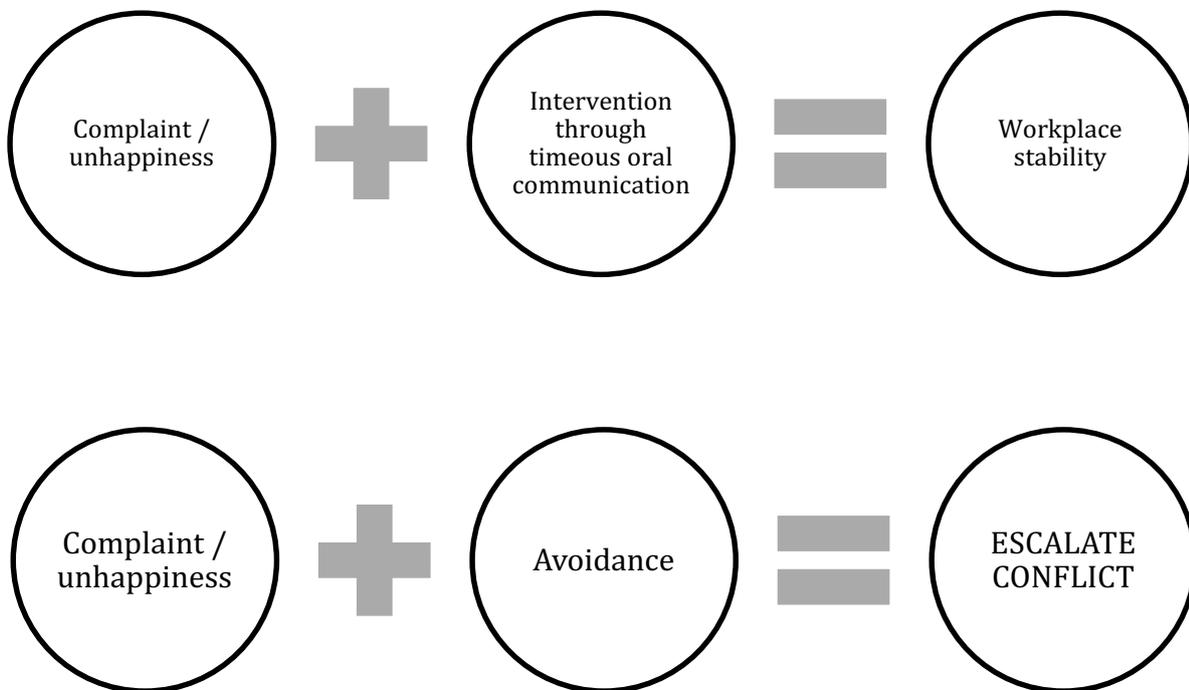
- (1) Conflict is inevitable in relationships;
- (2) Conflicts are often not clearly or openly stated at the outset;
- (3) Conflict can be managed;

- (4) Conflict cannot be removed;
- (5) Power will often determine whether or how conflict is expressed.

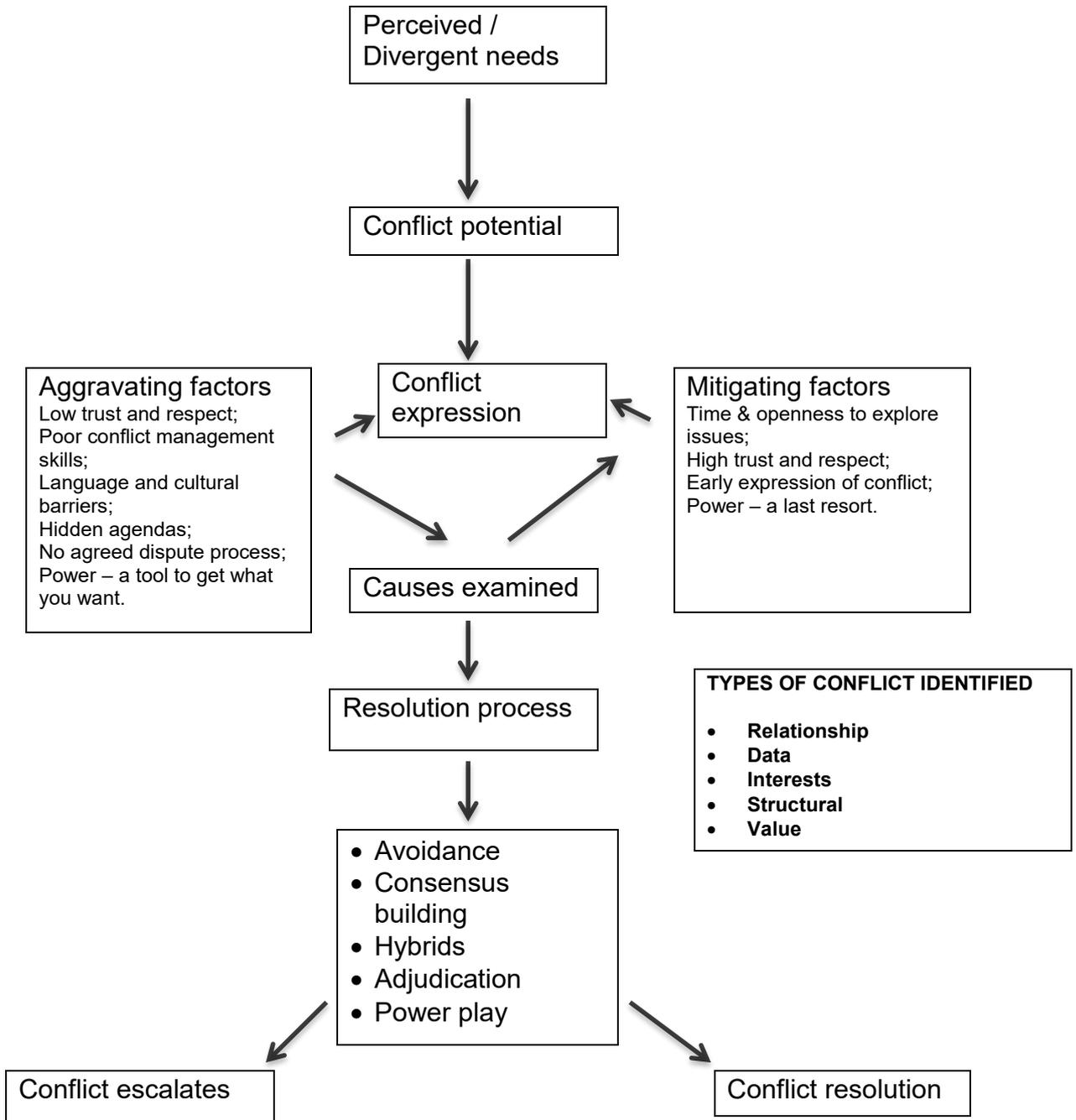
5. Improving communications

- Establish a listening environment
- Improve the communication climate
- Improve listening skills
- Improve skills in message transmission
- Increase levels of self-awareness
- Understand communication networks

6. Results of effective and ineffective communication



CONFLICT MANAGEMENT



CONFLICT MANAGEMENT

Type	Causes	Interventions
Relationship conflicts	<ul style="list-style-type: none"> • Strong emotions • Misconceptions or stereotypes • Poor communication or miscommunication • Repetitive negative behaviour 	<ul style="list-style-type: none"> • Control expression of emotions through procedure, ground rules, caucuses etc. • Promote expression of emotions by legitimizing feelings and providing a process • Clarify perceptions and build positive perceptions • Improve quality and quantity of communications • Block negative repetitive behaviour by changing structure • Encourage positive problem-solving attitudes
Data conflicts	<ul style="list-style-type: none"> • Lack of information • Misinformation • Different views on what is relevant • Different interpretations on data • Different assessment procedures 	<ul style="list-style-type: none"> • Reach agreement on what data are important • Agree on process to collect data • Develop common criteria to assess data • Use third party experts to gain outside opinion or break deadlocks
Interests conflicts	<ul style="list-style-type: none"> • Perceived or actual competitive: <ul style="list-style-type: none"> ○ Substantive interests ○ Procedural interests ○ Psychological interests 	<ul style="list-style-type: none"> • Focus on interests, not positions • Look for objective criteria • Develop integrative solutions that address needs of all parties • Search for ways to expand options of different strengths • Develop trade-offs to satisfy interests of different strengths
Structural conflicts	<ul style="list-style-type: none"> • Destructive patterns of behaviour of interaction • Unequal control, ownership or distribution of resources • Unequal power and authority 	<ul style="list-style-type: none"> • Clearly define and change roles • Replace define and change roles • Reallocate ownership or control of resources • Establish a fair and mutually acceptable decision-making process • Change negotiation process from positional to interest-based bargaining • Modify means of influence of parties (less coercion, more persuasion) • Change physical and environmental relationship of parties (closeness and distance) • Modify external pressures on parties • Change time constraints (more or less time)
Value conflicts	<ul style="list-style-type: none"> • Different criteria for evaluating ideas or behaviour • Exclusive intrinsically valuable goals • Different ways of life, ideology and religion 	<ul style="list-style-type: none"> • Avoid defining problem in terms of value • Allow parties to agree and disagree • Create spheres of influence in which one set of values dominates • Search for super-ordinate goal that all parties share.
* Source: Christopher W Moore in "The Mediation Process"		

CONFLICT MANAGEMENT

Individually read the scenarios below and decide which option is the best to apply and explain why you have not considered the other two options.

1. A small section of your staff is unhappy with your decision that all teachers must remain behind for an hour after the school is out in order to prepare for the matric farewell in two months' time:
 - (a) You ignore their unhappiness because they are a minority group.
 - (b) You asked your deputy to discuss your decision with them.
 - (c) You call them to your office and allow them to address you on their particular concerns with the view to find an amicable solutions

2. One of your teachers come to you in confidence and tell you about her financial problems that have affected her work:
 - (a) After she has left you called your secretary and told her about the financial difficulties of the teacher concerned.
 - (b) You promise her that you will assist her in writing a letter of reference to the bank in order for the bank to consolidate her debt.
 - (c) You tell her not to bring her personal problems to work.

3. One of the Grade 12 classes reports to you that the Maths teacher seems to be under the influence of liquor on a daily basis for the past two weeks and as a result their performance has dropped.
 - (a) You without consulting with the teacher phone the District Office to charge the educator with misconduct.
 - (b) You promise the learners to look into the matter, but did nothing because the teacher is your close friend
 - (c) You call in the teacher with the view to hear his side of the story and to work on possible remedies.

4. One of your teachers have developed a tendency of late coming on Monday mornings:
 - (a) You lock him out of the gate with the learners who are also late.
 - (b) You phone the District Office to charge the teacher.
 - (c) You call him to your office to listen to the reasons why he has developed the tendency for late coming on Mondays and what possible remedies to consider.

5. The political divisions in the community have spilled over to the school with devastating consequences on the learners. The school has become a war zone:
 - (a) You call in the riot police to restore law and order.

- (b) You call on the District Office to send a mediator to the school to diffuse the situation.
 - (c) You join one of the factions because you are the local secretary of political party ABC.
6. There are rumours that one of your best performing teachers has impregnated a Grade 11 learner of the school.
- (a) You confront the teacher and before he could respond to chase him out of the gate with a threat never to come back
 - (b) You call a parents meeting where you ask the teacher to explain himself.
 - (c) You call the teacher to your office where you ask him about the rumours with the view to determine the way forward.
7. Two teachers on your staff that have been divorced for ten years can't work together and their infighting is also affecting their colleagues. They are both teaching Accountancy. The former wife is the HOD. You found this to be the case since your appointment as principal one year ago.
- (a) You decide not to intervene and allow the situation to cool down for a while whilst considering outside assistance from the church
 - (b) You convene a staff meeting to address the situation
 - (c) You ask the District Office to transfer one of them to another school.
8. On your return from temporary incapacity leave after a car accident you find that your deputy principal has drastically changed the operations of the schools and as a result the staff has lost confidence in you.
- (a) You call the District Office to charge the deputy principal for undermining your authority.
 - (b) You embrace the changes where there is improvement in the running of the school and you call of staff meeting where you personally congratulate her with the new changes
 - (c) You confront the deputy principal head-on where after she was booked off with severe stress and anxiety.
9. You red-handed caught one of young male teachers kissing a grade 8 learner. The learner was also half naked.
- (a) You call the educators to your office and ask him to explain his behaviour with the view to find an amicable solution.
 - (b) You immediately call the District Office to place the educator on precautionary suspension and to prefer charges against him because you don't have the authority to suspend an educator.
 - (c) You attack him and chase him out of the gate with a bleeding nose

CONFLICT MANAGEMENT

Individually read the scenarios below and decide which option is the best to apply and explain why you have not considered the other two options.

1. A small section of your staff is unhappy with your decision that all teachers must remain behind for an hour after the school is out in order to prepare for the matric farewell in two months time:
 - (a) You ignore their unhappiness because they are a minority group.
 - (b) You asked your deputy to discuss your decision with them.
 - (c) **You call them to your office and allow them to address you on their particular concerns with the view to find an amicable solutions**

2. One of your teachers come to you in confidence and tell you about her financial problems that have affected her work:
 - (a) After she has left you called your secretary and told her about the financial difficulties of the teacher concerned.
 - (b) **You promise her that you will assist her in writing a letter of reference to the bank in order for the bank to consolidate her debt.**
 - (c) You tell her not to bring her personal problems to work.

3. One of the Grade 12 classes reports to you that the Maths teacher seems to be under the influence of liquor on a daily basis for the past two weeks and as a result their performance has dropped.
 - (a) You without consulting with the teacher phone the District Office to charge the educator with misconduct.
 - (b) You promise the learners to look into the matter, but did nothing because the teacher is your close friend
 - (c) **You call in the teacher with the view to hear his side of the story and to work on possible remedies.**

4. One of your teachers have developed a tendency of late coming on Monday mornings:
 - (a) You lock him out of the gate with the learners who are also late.
 - (b) You phone the District Office to charge the teacher.
 - (c) **You call him to your office to listen to the reasons why he has developed the tendency for late coming on Mondays and what possible remedies to consider.**

5. The political divisions in the community have spilled over to the school with devastating consequences on the learners. The school has become a war zone:
 - (a) You call in the riot police to restore law and order.
 - (b) You call on the District Office to send a mediator to the school to diffuse the situation.**
 - (c) You join one of the factions because you are the local secretary of political party ABC.

6. There are rumours that one of your best performing teachers has impregnated a Grade 11 learner of the school.
 - (a) You confront the teacher and before he could respond to chase him out of the gate with a threat never to come back
 - (b) You call a parents meeting where you ask the teacher to explain himself.
 - (c) You call the teacher to your office where you ask him about the rumours with the view to determine the way forward.**

7. Two teachers on your staff that have been divorced for ten years can't work together and their infighting is also affecting their colleagues. They are both teaching Accountancy. The former wife is the HOD. You found this to be the case since your appointment as principal one year ago.
 - (a) You decide not to intervene and allow the situation to cool down for a while whilst considering outside assistance from the church**
 - (b) You convene a staff meeting to address the situation
 - (c) You ask the District Office to transfer one of them to another school.

8. On your return from temporary incapacity leave after a car accident you find that your deputy principal has drastically changed the operations of the schools and as a result the staff has lost confidence in you.
 - (a) You call the District Office to charge the deputy principal for undermining your authority.
 - (b) You embrace the changes where there is improvement in the running of the school and you call of staff meeting where you personally congratulate her with the new changes**
 - (c) You confront the deputy principal head-on where after she was booked off with severe stress and anxiety.

9. You caught one of young male teachers red-handed kissing a grade 8 learner. The learner was also half naked.
 - (c) You call the educators to your office and ask him to explain his behaviour with the view to find an amicable solution.

- (d) **You immediately call the District Office to place the educator on precautionary suspension and to prefer charges against him because you don't have the authority to suspend an educator.**
- (e) You attack him and chase him out of the gate with a bleeding nose.

CONFLICT MANAGEMENT

1. Describe in your own words what you think are the characteristics of a good conflict manager?
2. In groups discussed the most common type of conflict in your workplace and how you deal with it.
3. Do you think there is a relationship between conflict management and grievance resolution, if yes, why, if not, why not?
4. What are the issues to consider in improving communication in the workplace?
5. Describe the nature of conflict.

CONFLICT MANAGEMENT

1. Describe in your own words what you think are the characteristics of a good conflict manager?

Good listening skills;
Effective communication skills;
Patience;
Developing options;
Sharing ideas;
Showing empathy and sympathy

2. In groups discussed the most common type of conflict in your workplace and how you deal with it.

Most probably relationship conflicts among educators.

3. Do you think there is a relationship between conflict management and grievance resolution, if yes, why, if not, why not?

Yes there is a relationship between conflict management and grievance resolution. They are the two sides of the same coin. A manager that is good at conflict management will have fewer grievances and disciplinary cases to attend to.

4. What are the issues to consider in improving communication in the workplace?

- **Establish a listening environment**
- **Improve the communication climate**
- **Improve listening skills**
- **Improve skills in message transmission**
- **Increase levels of self-awareness**
- **Understand communication networks**

5. Describe the nature of conflict

It is common cause that people remain in relationships even though their needs are different, or when the values, needs or interests differ or are perceived to differ. This is true to relationships at work. Effective conflict management has to do with the overall relationship rather than specific incident management. The more successful the foundation – the more open the relationship – the more likely when conflict occurs they are effectively resolved. This maturity in the relationship therefore becomes the cornerstone of successful grievance management.

KEY LEARNING AREAS: CONFLICT MANAGEMENT

- ✓ **Be calm.** Conflict usually engenders strong emotions and even anger but, in such a state, you are unlikely to be particularly rational or in the mood for compromise.
- ✓ **Always show respect.** However much you disagree with someone, attack the argument, not the person. To use a sporting metaphor: play the ball, not the man. As Nelson Mandela explained in his autobiography "Long Walk To Freedom": *"I defeated my opponents without dishonouring them"*.
- ✓ **Be considerate.** In truth, most conflict is over matters of little substance and often it is mostly pride or status that is at stake. Consider conceding the point to your opponent. This will save you time and energy and you can concentrate on the important issues of difference rather than the smaller ones. Also, if your concession is done with good grace and even some humour, it will disarm your opponent and make him/her look small-minded by comparison.
- ✓ **Discuss or debate.** So often, conflict is created and/or maintained because there is no real discussion or debate. We make assumptions about the other person's point of view and willingness to compromise, which might be quite wrong. We avoid discussion or debate either because we fear conflict (the situation will rarely be as bad as you fear) or we worry about 'losing' (in which case, you've already 'lost').
- ✓ **Apply rationality.** Much conflict is not about substance but perception. Try to clear through the perception to discover and agree on how things really are. You won't manage this without discussion and you may need to research the facts and seek evidence. What is really worrying the other person? Has another person had a similar experience, which might prove revealing and helpful?
- ✓ **Acknowledge emotions.** Facts alone - however rational - cannot resolve much conflict because how people perceive those facts is coloured by their emotions. It's no good denying those emotions, so make an effort to see the situation the way the other person does and to acknowledge their emotions before endeavouring to move beyond them. One way of doing this is to use phrases such as *"Let me try to explain how I see things"* or *"Please allow me to explain why this is so important to me"*. Then reverse these points: *"I would like to understand better how you see this situation"* and *"Please explain to me what is important to you in this problem"*.
- ✓ **Change the wording.** It's amazing how often we disagree about words and how a change of words can change how people view a situation. Instead of criticising a work colleague for "a mistake", perhaps you could invite him to discuss "a learning opportunity". If two parties to a dispute don't like their eventual agreement to be called an agreement, try calling it a settlement or a resolution or a concordat.

- ✓ **Consider staging.** Much conflict is about change. Introducing change in stages often makes it more palatable to the person uncomfortable about it (and can make it more manageable for the person promoting it).
- ✓ **Consider sequencing.** Much conflict is created and/or aggravated by lack of trust. Building trust takes time and proof of goodwill. So consider introducing an agreement in stages whereby each action is dependent on another action.
- ✓ **Accept the situation.** Conflict is not like mathematics. There is not always a solution waiting to be found and, if there is a solution, it is unlikely to be the only one. The Swiss psychologist Carl Jung once wrote that *"The greatest and most important problems of life are all fundamentally insoluble. They can never be solved but only outgrown."*
- ✓ Finally, although this advice is about resolving conflict, be aware that **conflict cannot always be avoided** (especially when fundamental differences, as opposed to perceived differences, are involved) and **not all conflict is negative** (sometimes it 'clears the air'). The important thing is to keep wasteful and damaging conflict to a minimum and, when it does occur, use the relevant techniques to resolve or at least ease it.

SOURCE: ROGER DARLINGTON

GRIEVANCE MANAGEMENT

CHAPTER G OF PERSONNEL ADMINISTRATIVE MEASURES (PAM)

G.1 DEFINITIONS

In this procedure, unless the context indicates otherwise-

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

“educator” means any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at any public school, departmental office or adult basic education centre and who is appointed in a post on any educator establishment under the EEA, 1998.

“employer”, in relation to any provision of Chapter 4, 5 or 7 of the EEA, 1998 which applies to, or is connected with –

(a) an educator in the service of the department of basic education, means the Director-General;

(b) an educator in the service of a provincial department of education, means the HoD.

“days” refers to working days.

“EEA” means Employment of Educators Act, 1998 (Act No 76 of 1998).

"grievance" means a complaint by an employee or employees affecting the employment relationship of the person or persons concerned, or where there is an alleged misinterpretation, or violation of his or her, or their rights.

“head of department” means the incumbent of a post mentioned in Schedules 1, 2 and 3 of the Public Service Act, 1994, or the person acting in such post.

“Public Service Act” means the Public Service Act, 1994 (Proclamation No 103 of 1994).

“Member of the Executive Council” means the Member of the Executive Council of a province responsible for the education portfolio of that province.

“Minister” means the Minister of Basic Education.

"recognised trade union" means all the trade unions admitted to the ELRC as well as any other trade union that enjoys the relevant organisational rights.

“resolve” means to settle a grievance to the satisfaction of the aggrieved educator.

“representative” means a fellow educator, a representative or official of a recognised trade union.

G.2 OBJECTIVE

G.2.1 Purpose and application

The purpose of this grievance procedure is to address grievances in public education by fulfilling the primary objectives of this procedure which is to promote –

G.2.1.1 Speedy, impartial and equitable handling of grievances.

G.2.1.2 Sound labour relations.

G.2.1.3 Resolution of individual grievances at the lowest possible level in a department.

G.3 ADHERENCE TO TIME LIMITS

G.3.1 In determining adherence to time limits, this should be calculated by excluding the first day and including the last day.

G.3.2 A formal written grievance must be lodged with the employer within 90 days from the date on which the educator became aware of the act or omission which adversely affects him/her.

G.4 DEALING WITH GRIEVANCES

G.4.1 Oral interview

G.4.1.1. A sincere attempt should be made to resolve any grievance by oral interview between a grievant(s) and the head of a school (herein after referred to as “the head”), and in the case of an educational institution outside a school or the head of a school, the supervisor (hereinafter referred to as “the supervisor”), before differences become formalised grievances.

G.4.1.2. During this process no records will be kept of proceedings, which will be without prejudice to either of the parties.

G.4.2 Formal written grievance: institutional level, (school) and departmental level

G.4.2.1. A grievant(s) may lodge a grievance or grievances with the head or the supervisor in writing within a reasonable period of time, but in any event not later than 90 calendar days following on the time and date on which the alleged grievance or grievances occurred. Full details of the nature of the grievance or grievances must be relayed to the head or the supervisor, as the case may be. The grievant(s) must use the attached Form (Annexure G.1) to formally lodge the grievance. The grievance or grievances must bear the signature or

signatures of the grievant(s) and a copy thereof shall be filed with the relevant office of the provincial department of education by the head or supervisor, as the case may be, which office shall be identified by the relevant head of a provincial department in each province.

G.4.2.2 The head or the supervisor, as the case may be, shall confer with the grievant(s), and others involved, within three (3) working days of receipt of the formal written grievance in order to resolve the grievance. At this meeting the facts shall be presented and considered and an effort shall be made to resolve the matter to the satisfaction of all parties.

G.4.2.3 The head or the supervisor, as the case may be, shall communicate the outcome to the relevant office of the provincial department of education within five (5) working days of the resolution or non-resolution of a grievance.

G.4.2.4. If an action or lack of an action, or a decision or lack of a decision, concerns the head or the supervisor, the grievant(s) may refer the matter directly to the regional/district level in respect of a school and departmental level in respect of an institution outside a school, provided that a sincere attempt has been made to resolve the grievance or grievances in terms of the provisions of paragraph G.4.1 above.

G.4.3. Regional/district level in respect of a school and departmental level in respect of an institution outside a school

G.4.3.1. If the grievant(s) is/are not satisfied with the outcome referred to in paragraph G.4.2 above, the grievant(s) may refer the matter in writing, by hand or registered mail, together with the decision of the head or the supervisor, as the case may be, to the regional/district head of education in the case of an educator at a school and in the case of an educator outside a school to the office referred to in paragraph G.4.2.4 within five (5) working days of the parties failing to resolve the grievance or grievances. A copy of the referral must be presented to the head or supervisor, as the case may be, and where applicable, to the grievant(s)' trade union.

G.4.3.2. The head or the supervisor shall forward his or her comments together with all relevant information on the grievance or grievances to the regional/district head or the office referred to in paragraph G.4.2.4, as the case may be, within five (5) working days after receiving the referral mentioned in paragraph G.4.3 above.

G.4.3.3. The head of the region/district or the head of the relevant provincial education department, or his/her delegate in respect of an educator outside an educational institution, shall within five (5) working days from the date of receipt of all the parties' referrals, attempt to resolve the grievance or grievances and communicate his or her decision in writing to all parties.

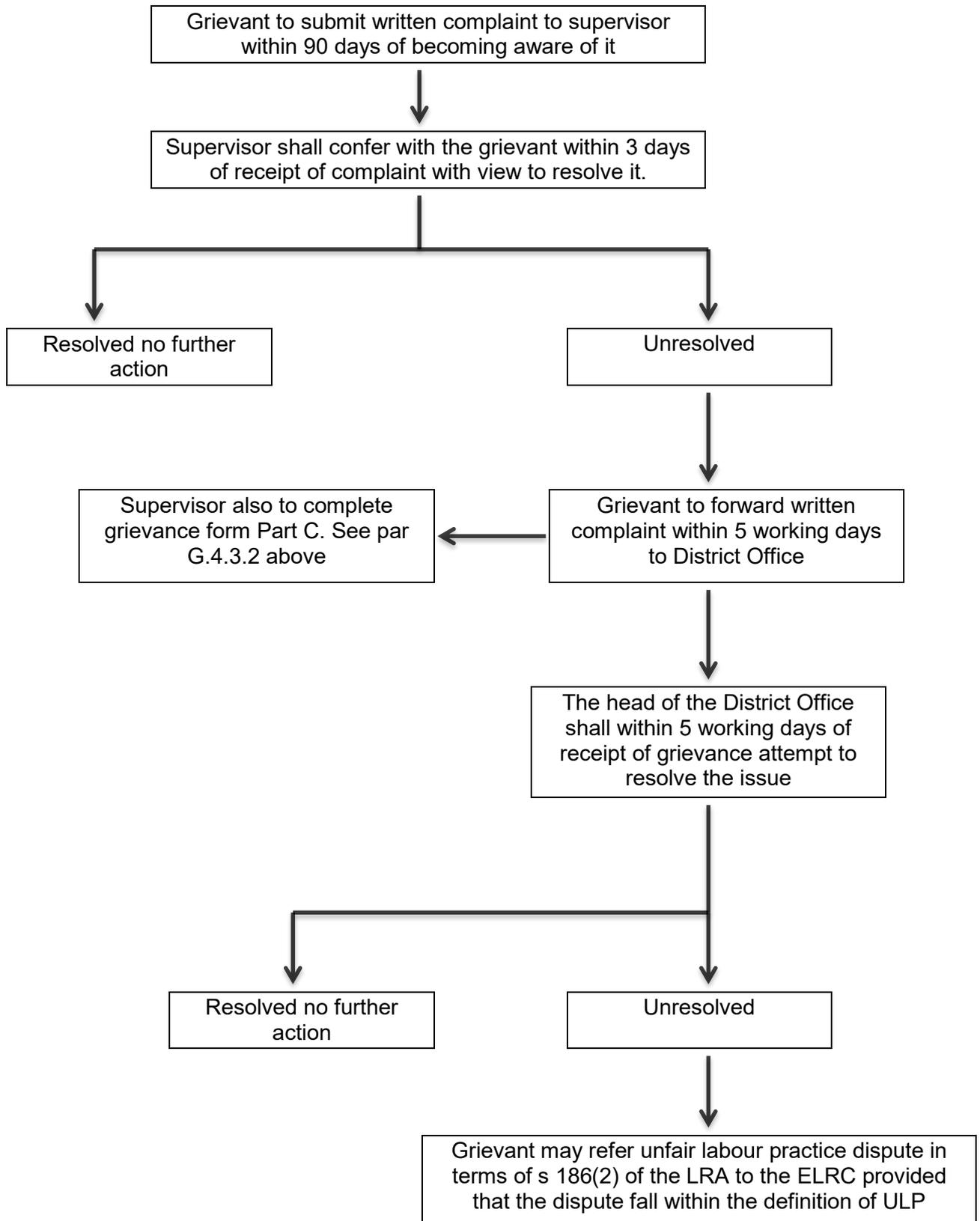
G.4.3.4. Should the grievant(s) not be satisfied with the outcome, he or she may register a formal dispute with the GS of the ELRC in terms of the provisions of the ELRC's Constitution.

G.4.4 A trade union registered with the ELRC may register a grievance with the head or

supervisor or the head of a relevant department of education, as the case may be, on behalf of its members individually or collectively and represent such member or members during any stage of this grievance procedure. A non-member(s) may be represented by another employee.

G.4.5 The parties to a grievance or grievances may by agreement extend the periods referred to in paragraphs G.4.3.1.and G.4.3.2.and G.4.3.3.above.

GRIEVANCE MANAGEMENT



GRIEVANCE FORM

PLEASE READ THE FOLLOWING INSTRUCTIONS BEFORE COMPLETING THE FORM

1. This form must be used to lodge a formal grievance (excluding an alleged unfair dismissal) when you are dissatisfied with an act or omission and you have been unable to resolve the problem by using informal discussion.
2. You have to lodge your grievance within 90 days from the date on which you became aware of the act or omission, which adversely affects you.
3. You may be assisted or represented by a fellow educator or a representative or official from a recognised trade union.
4. It is important to complete all information accurately. When the form is completed, it must be given to the person designated to facilitate grievances at your institution. The department will attach this form to the grievance documentation and it will be used through all stages of the grievance procedures.
5. At each stage where a person within the relevant structure of authority attempts to resolve the grievance, each party will complete the appropriate part of the form. You will be given an opportunity to respond to each and every comment.
6. At the conclusion of each stage of the grievance procedure, the head or supervisor will provide you with a copy of the completed form.
7. Once the grievance has been resolved, you do not need to complete the rest of the form.
8. You are required to complete Parts A and B of this form and to then hand it to the head or the supervisor, as the case may be, at your institution/office. The head or the supervisor, as the case may be, will affix his/her signature in the block below Part B of the form to indicate that the grievance has been received. Ensure that you receive a copy of the form where receipt of your grievance has been acknowledged.
9. Part C of the grievance form will be completed by the head or the supervisor, as the case may be, and grievant(s) will be provided with copy during the various stages where attempts will be made to resolve the grievance.

PART C: GRIEVANCE RESOLUTION LEVELS			
NOTES:			
<p><i>This part of the form makes provision for levels of authority to attempt to resolve the grievance depending on the circumstances, one or more pages below need to be completed.</i></p> <p><i>The grievance must be dealt with by the applicable levels within the periods referred to in the procedure, unless extended by agreement with the aggrieved educator.</i></p> <p><i>Should the grievance not be attended to within the periods referred to in the procedure or extended period agreed to with the aggrieved educator(s), in the case of an alleged unfair labour practice, the aggrieved educator(s) has/have the right to refer a dispute to the Education Labour Relations Council to deal with in terms of the dispute resolution procedures</i></p>			
<i>To be completed on behalf of the Head of Department</i>			
NAME OF OFFICIAL			
DESIGNATION			
RELATIONSHIP WITH AGGRIEVED EDUCATOR	SUPERVISOR / HEAD	COMPONENT HEAD	DISTRICT HEAD/DIRECTOR
TEL:	CELL:	FAX:	
Was the grievance resolved	YES		NO
Comments by the aggrieved educator(s) if necessary			

SIGNATURE: _____		DATE: _____	
On behalf of Employer			
NAME: _____		RANK: _____	
Was the grievance resolved	Yes		No
Comments by the aggrieved educator(s) if necessary			

SIGNATURE: _____		DATE: _____	
EDUCATOR			

PART D: REGION / DISTRICT OR DEPARTMENTAL LEVEL			
<i>To be completed on behalf of the Head of Department</i>			
NAME OF OFFICIAL			
DESIGNATION			
RELATIONSHIP WITH AGGRIEVED EDUCATOR	DISTRICT / REGIONAL HEAD	COMPONENT HEAD	DIRECTORATE
TEL:	CELL:	FAX:	
Decision in respect of the grievance and reasons for the decision <i>(If space below is not enough, please attach additional page(s)):</i>			
SIGNATURE: _____		DATE: _____	
On behalf of Employer			
NAME: _____		RANK: _____	
Was the grievance resolved	Yes		No
If no, the aggrieved educator(s) must explain why she/he or they are still dissatisfied			
SIGNATURE: _____		DATE: _____	
EDUCATOR			

GRIEVANCE MANAGEMENT

1. What is a grievance in simplistic terms?
2. Give five (5) reasons why an educator may lodge a grievance.
3. Mr Khumalo complains that his supervisor, Mrs White makes statements about him in the presence of other educators that he believes are racist. He feels this has affected his dignity. He lodges a grievance with you. What will you do about his complaint?
4. Scenario A: You are the School Principal of a no fee school. One of your teachers complains that it is difficult to teach due to the broken windows caused by the regular gang related violence in the area.

Scenario B: You are the School Principal of a Section 21 school in one of the wealthy suburbs in Port Elizabeth. During a hailstorm 10 windows are broken in five classrooms. The affected teachers lodged grievances.

How would you attempt to resolve the grievances reflected in scenario A and B above?

5. Please read the scenario below and answer the questions that follow:

Ms Khumalo an educator in your school, files a grievance on 1 February 2016, complaining that the Head of Department (HoD) does not like her. Ms Ralo is unhappy about the decision of the Head of Department to always ignore her when an acting HoD position arises. It is common knowledge that there have been five acting positions that arose in the previous year and at all times Ms Ralo was not allowed when every other educator had been given an opportunity to act.

Use the problem-solving model in the next page to identify:

- a. The problem;
- b. The underlying cause;
- c. The possible solution; and
- d. The best possible solution.

GRIEVANCE MANAGEMENT

1. What is a grievance in simplistic terms?

It's a **complaint** by an **employee** about something **at work** that s/he is **unhappy** with.

2. Give five (5) reasons why an educator may lodge a grievance and give possible examples.

i. **Incompatibility between employees**

Two employees work on the same project, i.e. matric farewell. Employee A is always late which causes the project to fall behind schedule. Despite discussing same with him, A refuses to do anything to improve his habits.

ii. **Unsatisfactory working conditions**

An educator complains about a leaking roof in her classroom and nothing has been done for the last three months.

iii. **Unfair implementation or non-implementation of departmental policies or procedures by management**

It is procedure for an educator to submit a medical certificate after three days of being absent. But one supervisor lets employee A do this. But at the same time, he does not request same from employee B who has also been absent for more than three days.

iv. **Unfair treatment by a supervisor or fellow colleague**

The Life Science HoD reprimands educator Y for late submission of marks; but fail to do so when educator Z submits his marks even later than educator Y.

v. **Harassment, such as racial or sexual harassment**

A male educator refuses to assist his female colleague with invigilation duties unless she performs a sexual favour.

vi. **The attitudes, values or prejudices of supervisors or colleagues**

A colleague makes an anti-Semitic joke among a group of employees. One of them is Jewish, the other are not.

vii. **Rumours about topics that affect employees**

The gossip in the staff room is that educator B has an affair with a married colleague who is also at the same school.

viii. **Failure to acknowledge proposals or initiatives the educator makes**

During several staff meetings the School Principal simply ignores valuable suggestions by educator M. The reason being that they belong to competing political parties.

3. Mr Khumalo complains that his supervisor, Mrs White makes statements about him in the presence of other educators that he believes are racist. He feels this has affected his dignity. He lodges a grievance with you. What will you do about his complaint?

You need to take the complaint seriously and investigate if what Mr Khumalo is saying is true. If it is, you need to take action against Mrs White taking into consideration that Mrs White is also entitled to fair treatment in the process.

To deal with this type of situation you need to know the difference between a grievance process and a disciplinary process.

4. Scenario A: You are the School Principal of a no fee school. One of your teachers complains that it is difficult to teach due to the broken windows caused by the regular gang related violence in the area.

Scenario B: You are the School Principal of a Section 21 school in one of the wealthy suburbs in Port Elizabeth. During a hailstorm 10 windows are broken in five classrooms. The affected teachers lodged grievances.

How would you attempt to resolve the grievances reflected in scenario A and B above?

In scenario A you will be solely dependent on the District or Provincial Office to assist with the replacement of the broken windows and you will have to liaise with the South African Police Services and/or community forum to assist with the gang related violence.

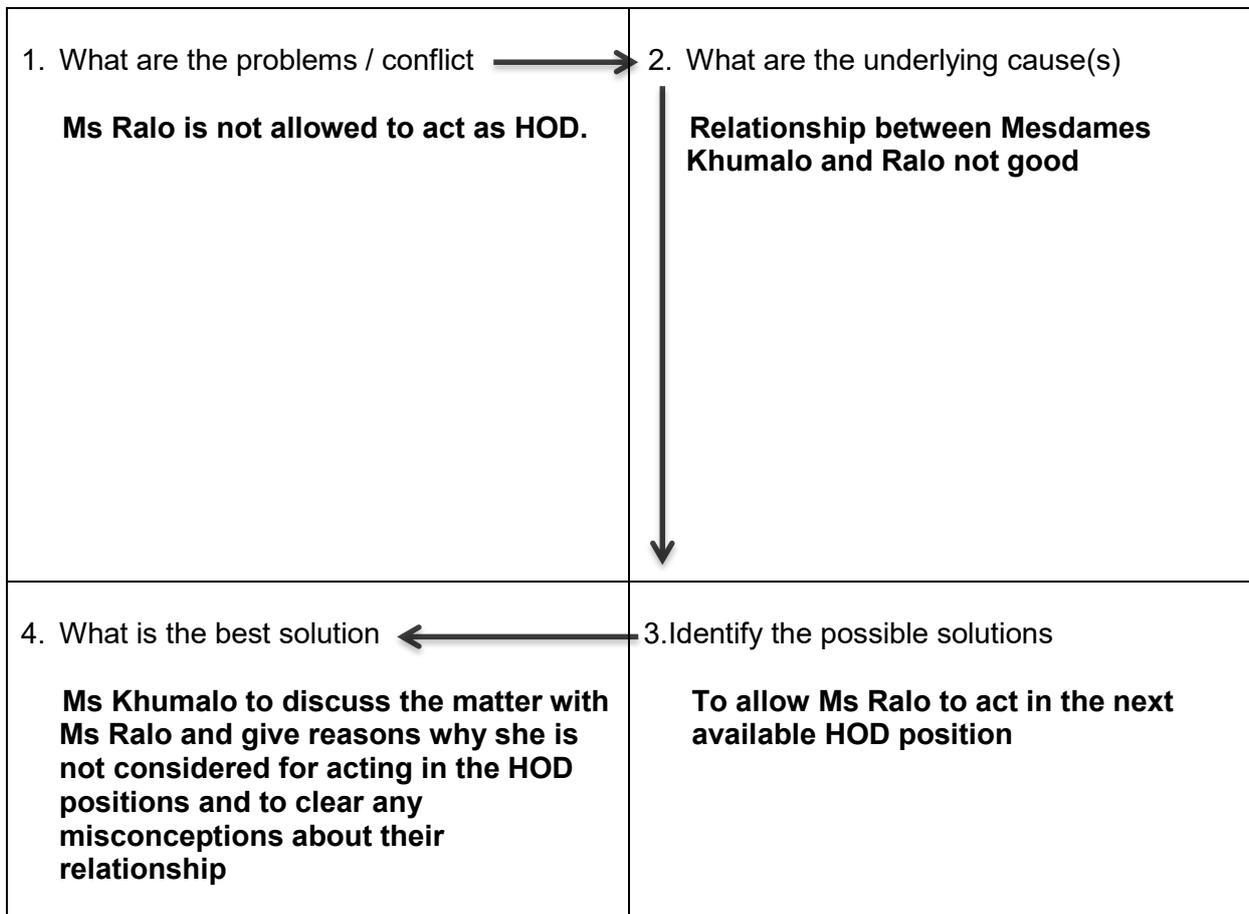
In scenario B you most probably may replace the windows within a day or two without consulting the District or Provincial Office, because the school may have its own emergency fund from the school fees collected.

5. Please read the scenario below and answer the questions that follow:

Ms Khumalo an educator in your school, files a grievance on 1 February 2016, complaining that the Head of Department does not like her. Ms Ralo is unhappy about the decision of the Head of Department (HoD) to always ignore her when an acting HoD position arises. It is common knowledge that there have been five acting positions that arose in the previous year and at all times Ms Ralo was not allowed when every other educator had been given an opportunity to act.

Use the problem-solving model in the next page to identify:

- a. The problem;
- b. The underlying cause;
- c. The possible solution; and
- d. The best possible solution



GRIEVANCE MANAGEMENT

Mr Ralo files a grievance against his Head of Department (HoD), wherein he alleges that the HoD is harassing him. Mr Green's grievance is based on the fact that the HoD is giving him more work than the other educators. He has taken the matter to his lawyers but his lawyers have requested that he first deals with it internally. In the same grievance form, Mr Ralo alleges that he has addressed the issue with the HoD, and the HoD confirmed that he is being given more work.

Please answer the following questions:

1. What are the time frames within which you as the principal must deal with the grievance?
2. Write down a detailed step-by-step process of how you would deal with the grievance?
3. If the process is not resolved at the school, what are your obligations as the School Principal in ensuring that the grievance is resolved?

4. Using the problem solving model, identify:

- The problem;

- The underlying cause;

- The possible solutions; and

- The best possible solution.

GRIEVANCE MANAGEMENT

Mr Ralo files a grievance against his HoD, wherein he alleges that the HoD is harassing him. Mr Green's grievance is based on the fact that the HoD is giving him more work than the other educators. He has taken the matter to his lawyers but his lawyers have requested that he first deals with it internally. In the same grievance form, Mr Ralo alleges that he has addressed the issue with the HoD, and the HoD confirmed that he is being given more work.

Please answer the following questions:

1. What are the time frames within which you as the principal must deal with the grievance?

The head or the supervisor, as the case may be, shall confer with the grievant(s), and others involved, within three (3) working days of receipt of the formal written grievance in order to resolve the grievance. At this meeting the facts shall be presented and considered and an effort shall be made to resolve the matter to the satisfaction of all parties.

The head or the supervisor, as the case may be, shall communicate the outcome to the relevant office of the provincial department of education within five (5) working days of the resolution or non-resolution of a grievance

2. Write down a detailed step-by-step process of how you would deal with the grievance?

Step 1: Oral interview between the grievant(s) and principal with the view to find a solution before entering into the formalised grievance resolution procedure

Step 2: If the oral interview fails to address the source of unhappiness, then the grievant(s) must submit formal grievance form

Step 3: Convene a meeting with the grievant(s) and union representative(s) / fellow employee(s) where through joint participation try to find resolutions to the grievance

3. If the process is not resolved at the school, what are your obligations as the Principal in ensuring that the grievance is resolved?

If the grievant(s) is/are not satisfied with the outcome, the grievant(s) may refer the matter in writing, by hand or registered mail, together with the decision of the head or the supervisor, as the case may be, to the regional/district head of education in the case of an educator at a school and in the case of an educator outside a school to the office within five (5) working days of the parties failing to

resolve the grievance or grievances. A copy of the referral must be presented to the head or supervisor, as the case may be, and where applicable, to the grievant(s)' trade union.

The head or the supervisor shall forward his or her comments together with all relevant information on the grievance or grievances to the regional/district head or the office, as the case may be, within five (5) working days after receiving the referral.

4. Using the problem solving model, identify:

➤ The problem;

Unequal work distribution

➤ The underlying cause;

Lack of effective communication

➤ The possible solutions; and

Explaining the reasons for the unequal work distribution

➤ The best possible solution

Equal distribution of work among all affected colleagues

KEY LEARNING AREAS: GRIEVANCE MANAGEMENT

1. You should not be mechanical when dealing with grievances. You should consider a wide range of factors when dealing with grievances, such as financial status of your school, whether it's a rural or urban school, the racial complement of your staff, whether it's a farm, small or large school, etc.
2. Make sure all grievances are attended to speedily, impartially and fairly.
3. Try at all times to keep to the time frames as provided for in the Grievance Procedure.
4. Keep lines on communication with the aggrieved open.
5. Respond to correspondence.
6. Do not allow personalities to determine outcomes.
7. Assure educators that their grievances will be handled with discretion and privacy and that they will not be victimised for raising grievances.
8. Grievances should preferably in writing to avoid unnecessary misunderstandings.
9. You might at times not have to put the grievance procedure on hold to take disciplinary action. In some cases the grievant might be happy with the fact that you are taking disciplinary action – this might even resolve the grievance.
10. A well-managed grievance resolution process always results in good interpersonal relations; which benefit the learner at the end of the day.

DISCIPLINE MANAGEMENT

DISCIPLINARY CODE AND PROCEDURES FOR EDUCATORS

1. **Purpose and scope.**—The purpose and scope of this Code and Procedures is to —
 - (a) support constructive labour relations in education;
 - (b) promote mutual respect among educators and between educators and the employer;
 - (c) ensure that employers and educators share a common understanding of misconduct and discipline;
 - (d) promote acceptable conduct;
 - (e) provide educators and the employer with a quick and easy reference for the application of disciplinary measures;
 - (f) avert and correct unacceptable conduct; and
 - (g) prevent arbitrary or discriminatory actions by employers towards educators.

2. **Principles.**—The principles underlying the Code and Procedures and any decision to discipline an educator are that—
 - (a) discipline is a corrective and not a punitive measure;
 - (b) discipline must be applied in a prompt, fair, consistent and just manner;
 - (c) discipline is the responsibility of an employer;
 - (d) a disciplinary code is necessary for the efficient delivery of service and the fair treatment of educators, and ensures that educators —
 - (i) have a fair hearing in a formal or informal setting;
 - (ii) are timeously informed of allegations of misconduct made against them
 - (iii) receive written reasons for any decision taken; and
 - (iv) have the right of appeal against a finding or sanction contemplated in section 25(2);
 - (e) as far as possible, disciplinary procedures are held at the place of work and are understand-able to all educators;
 - (f) if an educator commits misconduct that is also a criminal offence, the criminal procedure and the disciplinary procedure will continue as separate and different proceedings; and
 - (g) disciplinary proceedings must be concluded in the shortest possible time frame.

3. **Code of Good Practice.**—
 - (1) The Code of Good Practice contained in Schedule 8 of the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to discipline, constitutes part of this Code and Procedure.
 - (2)
 - (a) The conduct of an educator that may warrant a disciplinary action is listed in sections 17 and 18.
 - (b) After consultation with the trade unions, the Minister may prescribe other conduct, which constitutes misconduct.

- (3) In dealing with misconduct contemplated in section 18, the employer must assess the seriousness of the alleged misconduct by considering—
 - (a) the extent to which the misconduct impacts on the work of the Department of Basic Education or provincial Department of Basic Education, or the public school, public further education and training institution or public adult learning center;
 - (b) the nature of the educator's work and responsibilities; and
 - (c) the circumstances in which the alleged misconduct took place.
- (4) The form of disciplinary procedure to be followed in any case must be determined by the employer.

4. Sanctions and disciplinary procedures pertaining to less serious misconduct cases.—

- (1)
 - (a) The employer must delegate the function to deal with misconduct referred to in sub items (2) to (6), to—
 - (i) the head of the institution or office where the educator is employed; or
 - (ii) the immediate superior of the educator where the educator concerned is the head of the institution or office;
 - (b) The employer must determine in writing the specific acts of misconduct to be dealt with under the delegation referred to in paragraph (a).
- (2) In cases where the seriousness of the misconduct warrants counseling, the employer of the educator must—
 - (a) bring the misconduct to the educator's attention;
 - (b) determine the nature of the misconduct and give the educator an opportunity to respond to the allegations;
 - (c) after consultation with the educator decide on a method to remedy the conduct; and
 - (d) take steps to implement the decision as contemplated in sub items (3), (4) or (5).
- (3)
 - a) In cases where the seriousness of the misconduct warrants it, the employer of the educator may give the educator a verbal warning.
 - (b) The employer must inform the educator that further misconduct may result in more serious disciplinary action.
 - (c) The employer must record the warning contemplated in paragraph (b).
- (4) In cases where the seriousness of the misconduct warrants it, the employer may give the educator a written warning. The following provisions apply to written warnings:
 - (a) The written warning must be in accordance with Form A attached to this Schedule.
 - (b) The employer must give a copy of the written warning to the educator, who must acknowledge receipt on the copy.
 - (c) If the educator refuses to sign the copy for acknowledgement of receipt, the employer must hand the warning to the educator in the presence of another

- educator, who shall sign in confirmation that the written warning was conveyed to the educator.
- (d) The written warning must be filed in the educator's personal file.
 - (e) A written warning remains valid for six months.
 - (f) If during the six-month period the educator is subject to disciplinary action, the written warning and the written objection or additional information contemplated in paragraph (g), may be taken into account in deciding on an appropriate sanction;
 - (g) (i) If the educator disagrees with the written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction.
(ii) The additional information and the objection referred to in paragraph (a) must be filed with the written warning.
- (5) In cases where the seriousness or extent of the misconduct warrants it, the employer must give the educator a final written warning. The following provisions apply to a final written warning:
- (a) A final written warning must be in accordance with Form B attached to this Schedule.
 - (b) The employer must give a copy of the final written warning to the educator, who must sign a copy to acknowledge receipt.
 - (c) If the educator refuses to sign a copy to acknowledge the receipt of the final written warning, the employer must hand the warning to the educator in the presence of another educator, who must sign in confirmation that the written warning was conveyed to the educator.
 - (d) The final written warning must be filed in the educator's personal file.
 - (e) A final written warning remains valid for six months.
 - (f) If during the six-month period the educator is subject to disciplinary action, the final written warning and the written objection or additional information contemplated in paragraph (g), may be taken into account in deciding on an appropriate sanction;
 - (g) (i) If the educator disagrees with the final written warning or wishes to add any information, he or she may lodge such additional information or written objection against the sanction.
(ii) The additional information and the objection referred to in subparagraph (i) must be filed with the final written warning.
- (6) (a) If the seriousness or extent of the misconduct does not warrant a formal enquiry the procedures in paragraphs (b), (c) and (d) must be followed.
- (b) The employer must convene a meeting where—
- (i) the educator and, if he or she so chooses, the educator's trade union representative or other employee who is based at the institution, are present;
 - (ii) reasons are given to the educator as to why it is necessary to initiate this procedure; and

- (iii) the educator or the educator's representative is heard on the misconduct and reasons therefore
 - (c) After hearing the educator or his or her representative, the employer must—

 - (i) counsel the educator;
 - (ii) issue a verbal warning;
 - (iii) issue a written warning;
 - (iv) issue a final written warning;
 - (v) impose a combination of any of the above; or take no further action.
 - (d) (i) An educator may not appeal against any of the above sanctions but may lodge an objection in writing, against the sanction imposed, or provide additional written information.

 - (ii) The objection or additional information must be filed together with a record of the sanction in the educator's personal file.
- 7) For the purpose of determining appropriate disciplinary actions, valid warnings for similar offences by the educator must be taken into account.

NOTICE OF MEETING

[NAME OF EMPLOYEE]

[PERSONAL DETAILS OF THE EMPLOYEE]

Title _____

ALLEGED MISCONDUCT: YOURSELF

It has come to my attention that ... //I am aware that on _____ 2016 you ...

(describe nature of alleged misconduct)

In order to discuss the matter, you are required to attend a meeting in room _____//my office on

_____ at _____. Please note that you have the right to representation by your trade union representative or a fellow employee.

Failure to attend the meeting could result in the matter having to be determined by a formal disciplinary enquiry.

SIGNATURE OF SCHOOL PRINCIPAL

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (IF APPLICABLE)

DATE:

FORM A

WRITTEN WARNING

[Form A substituted by s. 11(a) of Act 57 of 2001]

DATE: _____

NAME OF EMPLOYEE: _____

PERSAL NO: _____

PERSONAL DETAILS OF THE EMPLOYEE:

This is a written warning in terms of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more serious sanction.

The written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

If you object to the warning or wish to furnish additional information, you may lodge a written objection or additional information, which will be filed together with this warning.

The nature of the misconduct is:

SIGNATURE OF THE REPRESENTATIVE OF EMPLOYER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (if applicable)

DATE:

FORM B

FINAL WRITTEN WARNING

[Form A substituted by s. 11(a) of Act 57 of 2001]

DATE: _____

NAME OF EMPLOYEE: _____

PERSAL NO: _____

PERSONAL DETAILS OF THE EMPLOYEE:

This is a final written warning in terms of the disciplinary procedure. Should you engage in further misconduct it could lead to formal misconduct proceedings being instituted against you.

The final written warning will be placed in your personal file and will remain valid for a period of six months from the date of the written warning.

Should you wish to do so, you may lodge a written objection or additional information, which will be filed together with this final warning.

The nature of the misconduct is:

SIGNATURE OF THE REPRESENTATIVE OF EMPLOYER

DATE:

SIGNATURE OF EMPLOYEE

DATE:

SIGNATURE OF WITNESS (if applicable)

DATE:

DISCIPLINE MANAGEMENT

PROGRESSIVE DISCIPLINE

1. Introduction

You should not rush into a disciplinary enquiry every time an employee transgresses. Progressive disciplinary action may yield the desired result and have the added advantage of building harmonious relationships. In this regard, you can use any of the following:

- ✓ Counselling
- ✓ Verbal warnings
- ✓ Written warnings
- ✓ Final written warnings

2. Application of corrective steps

The corrective steps may be applied progressively, but should not be applied mechanistically. In other words, the steps indicated above, do not necessarily have to build on one another. Depending on the seriousness of the transgression (which you have to judge) you might employ a written warning or a final written warning in the first instance.

3. Counselling

3.1 When to apply

The purpose of counselling is to probe causes of misconduct together with the employee and to jointly identify means of correcting the unacceptable conduct. It is normally applied in cases where there is room for change and where a trend has developed (e.g. late coming). It would generally not be used in a once-off situation.

3.2 Counselling steps

- ✓ Invite the employee and his/her union representative to your office. Inform the employee timeously what the meeting is about.
- ✓ Ensure absolute privacy for the meeting and ensure that there are no interruptions.
- ✓ Draw the employee's attention to the alleged misconduct and ensure that both agree that it indeed occurred or is occurring.
- ✓ Determine the reasons for the misconduct by asking the employee to explain his or her conduct.
- ✓ Request the employee to come up with ways of correcting the behaviour.

- ✓ Offer your suggestions and come to a consensus position on how to deal with the unacceptable conduct.
- ✓ After agreeing on how to correct the conduct, agree on each party's role and a return date for assessment of progress.
- ✓ Keep a note of the meeting and especially the agreement reached of addressing the employee's conduct.
- ✓ On the return date, check progress made and whether the employee co-operated or not. If the employee did not co-operate as agreed, then you should consider further disciplinary steps like warnings.

4. Warnings

4.1 When to apply

If you are of the opinion that the transgression –

- Requires more serious action than mere counselling

BUT

- Is less serious than a transgression for which you want to set up a disciplinary enquiry, then you should consider utilising warnings.

4.2 Steps

- Invite the employee concerned (and his/her representative if required) to a meeting by way of a written notice (see Example below)
- Hold the meeting in private and informal
- Recap the alleged misconduct and allow the employee to state his/her case
- Consider the employee's response and decide on the sanction
- Convey your decision to the employee at the end of the meeting or afterwards if you need more time to consider. See examples of written and final written warning below.

4.3 Severity of warnings

A verbal warning is the least severe and a final written warning the most severe form of warning.

4.4 Validity of warnings

Warnings remain valid for the following periods:

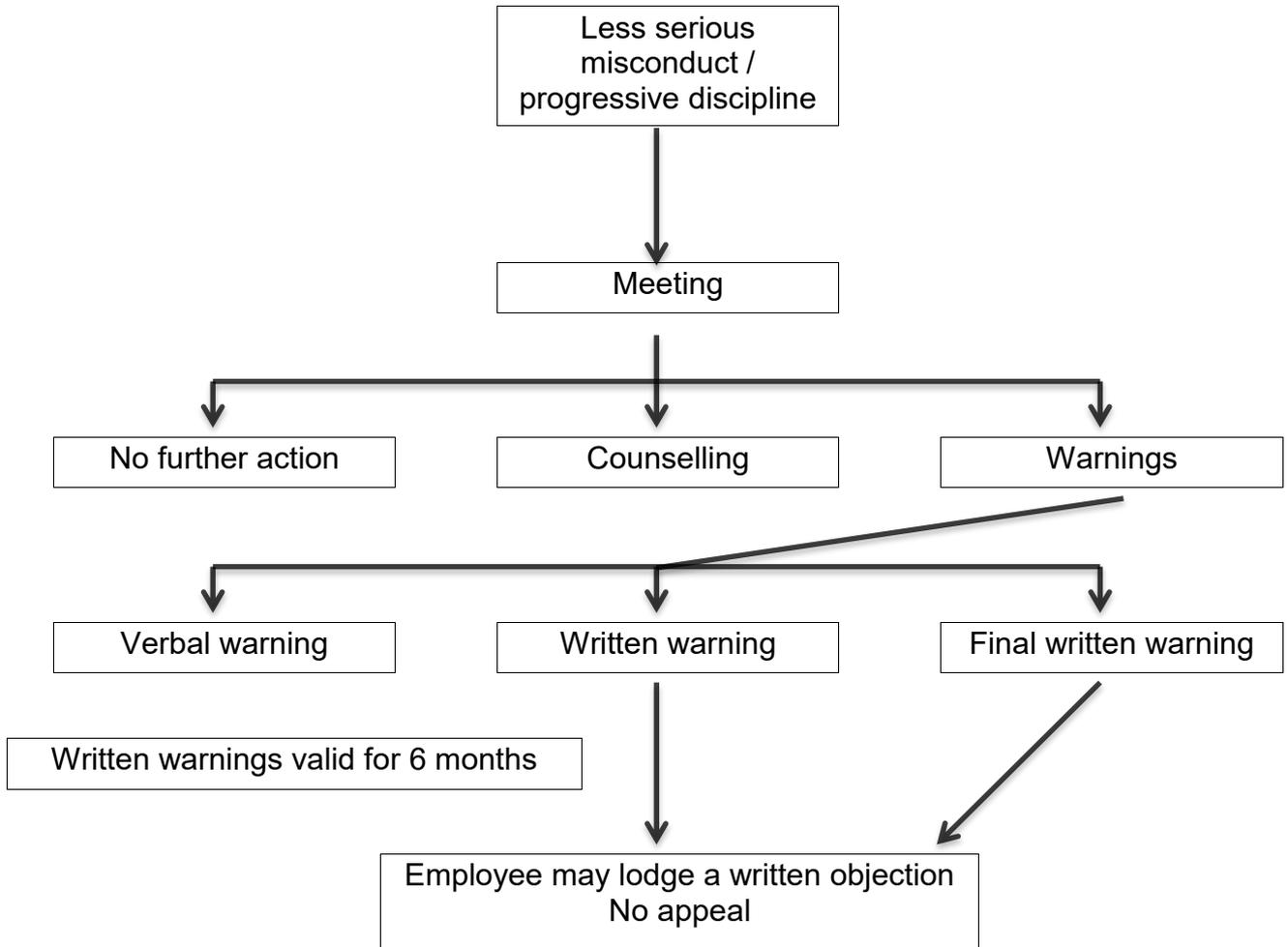
- Verbal warning: three months
- Written and final written warnings: six months

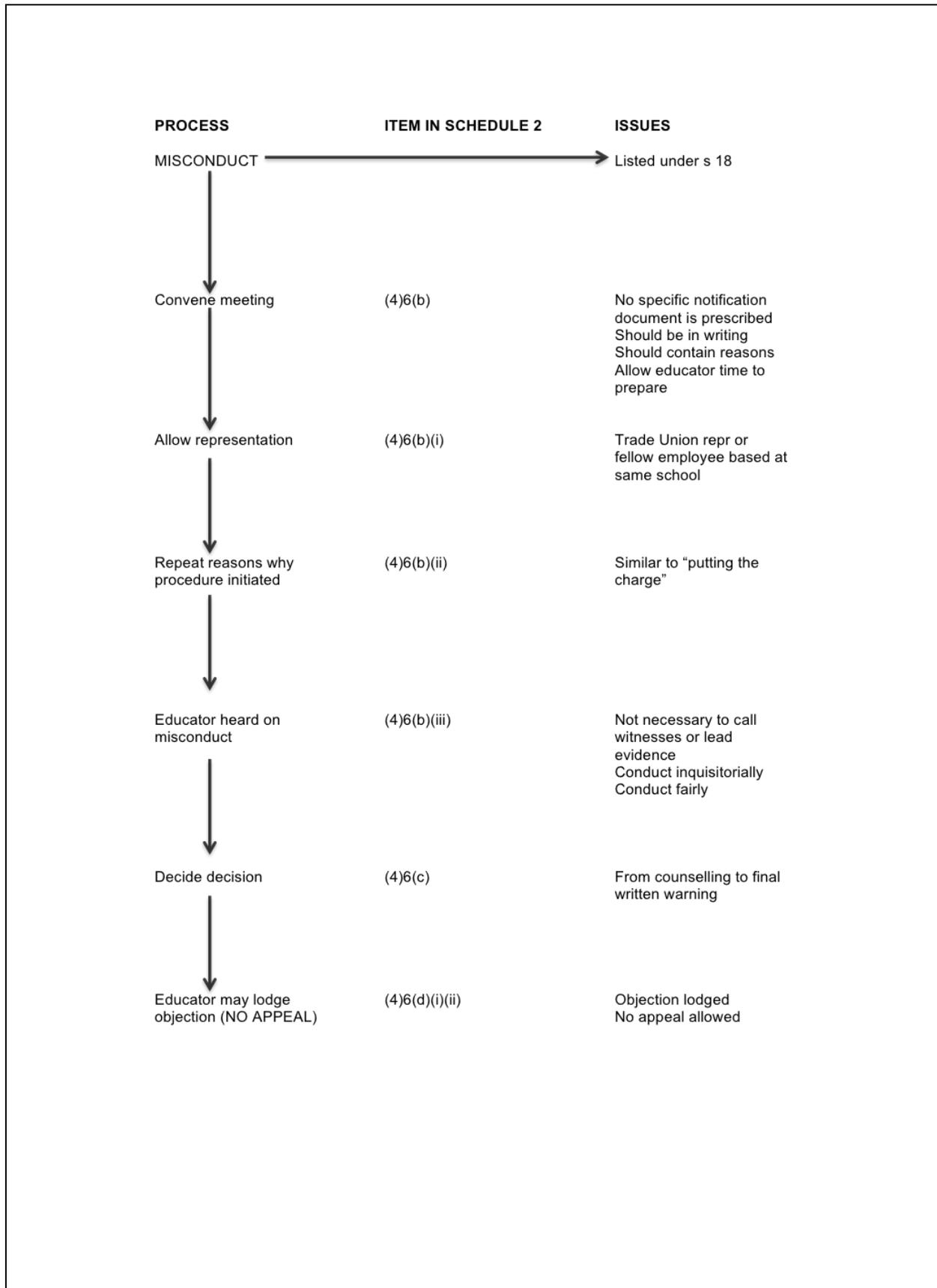
4.5 Placement and removal of warning

Written warnings must be filed on the employee's personal file and be removed and destroyed at the expiry of the period.

The District Office must be provided with a report on all informal disciplinary processes undertaken.

DISCIPLINE MANAGEMENT





DISCIPLINE MANAGEMENT

Individually, and then in pairs, record your response to the following questions:

1. Principals must ensure that discipline is managed effectively and efficiently in his/her school. In your own words, what is the meaning of “effectively” and “efficiently” within the context of the aforementioned sentence.
2. What must I refrain from doing so as to ensure that discipline is managed effectively in my school?
3. Identify three (3) key differences between grievance and disciplinary procedures.
4. Read the scenario below and indicate what the principal should have done in terms of procedural and substantive fairness.

Mr Jones the principal of Unathi Senior Secondary School received an anonymous phone call from a concerned parent that Mr Smith was found drunk over the weekend in a local tavern where he allegedly urinated in public.

On receipt of the aforementioned information, Mr Jones called a staff meeting where he related the story and pointed Mr Smith out. He shouted at Mr Smith and said that he wanted to see him in his office immediately after the staff meeting. He said that he wanted to make an example of Mr Smith so that other educators do not commit such horrendous crimes against humanity. He dragged Mr Smith at the collar to his office. With the office opened he shouted at Mr Smith that he would make sure that he never teaches again. He verbally instructed Mr Smith to leave the premises of the school and never to return. He chased Mr Smith out of the gate whilst leaners and the staff were watching his actions.

DISCIPLINE MANAGEMENT

Individually, and then in pairs, record your response to the following questions:

1. Principals must ensure that discipline is managed effectively and efficiently in his/her school. In your own words, what is the meaning of “effectively” and “efficiently” within the context of the aforementioned sentence. Give an example within your own work experience in this regard and how to improve both these issues.

	Effectiveness	Efficiency
Meaning	<p>Effectiveness is the level of results from the actions of employees and managers.</p> <p>Employees and managers who demonstrate effectiveness in the workplace help produce high-quality results.</p> <p>For example, an educator who stays updated with the latest teaching techniques may have better results than an educator who is lazy and not interested in improving his/her performance levels.</p> <p>Effectiveness is measured by conducting performance reviews (IQMS).</p> <p>The effectiveness of a teaching workforce has an enormous impact on the quality of learning and teaching.</p>	<p>Efficiency in the workplace is the time it takes to do something.</p> <p>Efficient employees and managers complete tasks in the least amount of time possible with the least amount of resources possible by utilizing certain time-saving strategies.</p> <p>Inefficient employees and managers take the long road.</p> <p>For example, suppose a manager is attempting to communicate more efficiently. He can accomplish his goal by using email rather than sending letters to each employee.</p> <p>Efficiency and effectiveness are mutually exclusive. A manager or employee who's efficient isn't always effective and vice versa.</p> <p>Efficiency increases productivity and saves both time and money.</p>
Effort oriented	No	Yes
Process oriented	No	Yes

	Effectiveness	Efficiency
Goal oriented	Yes	Yes
Time oriented	No	Yes

2. What must I refrain from doing so as to ensure that discipline is managed effectively in my school?
 - ✓ **I must not be biased or act in such a manner that I am biased.**
 - ✓ **I must keep proper record of the hearing .**
 - ✓ **I must institute discipline immediately when the misconduct is brought to my attention, or alert the DBE of the conduct.**
 - ✓ **I must remain calm and focus on the misconduct and not the educator, who is alleged to have committed the misconduct.**
 - ✓ **I must be conscious of the requirements of fairness.**
 - ✓ **The procedure that I follow must be transparent and fair.**
 - ✓ **I must not intimidate educators.**
 - ✓ **The manner in which I handle misconduct must be consistent and in line with the disciplinary code.**
 - ✓ **I must not allow myself to be influenced by unrelated external factors dealing with misconduct.**
3. Identify three (3) key differences between grievance and disciplinary procedures.
 - i. **A grievance is initiated by the employee; whilst disciplinary action is initiated by the employer.**
 - ii. **The aim of grievance procedure is to resolve the grievance to the satisfaction of the grievant; whilst in a disciplinary process the outcome is based on evidence that will determine who is guilty or not.**
 - iii. **The purpose of the grievance procedure is to facilitate the resolution of the employee's complaint; whilst the purpose of the disciplinary procedure is either to correct the employee's behaviour or to punish the employee, depending on the severity of the offence.**
4. Read the scenario below and indicate what the principal should have done in terms of procedural and substantive fairness.

Mr Jones the principal of Unathi Senior Secondary School received an anonymous phone call from a concerned parent that Mr Smith was found drunk over the weekend in a local tavern where he allegedly urinated in public.

On receipt of the aforementioned information, Mr Jones called a staff meeting where he related the story and pointed Mr Smith out. He shouted at Mr Smith and said that he wanted to see him in his office immediately after the staff meeting. He said that he wanted to make an example of Mr Smith so that other educators do not commit such horrendous crimes against humanity. He dragged Mr Smith at the collar to his office. With the office opened he shouted at Mr Smith that he would make sure that he never teaches again. He verbally instructed Mr Smith to leave the premises of the school and never to return. He chased Mr Smith out of the gate whilst leaners and the staff were watching his actions.

1. Procedural fairness

- ✓ **Step 1: The principal should have conducted an investigation to determine whether there are grounds for an informal disciplinary meeting. This does not need to be a formal enquiry.**
- ✓ **Step 2: The principal should have notified Mr Smith of the allegations using a form and language that the *employee* can reasonably understand.**
- ✓ **Step 3: Mr Smith should have been allowed the opportunity to state his case in response to the allegations.**
- ✓ **Step 4: Mr Smith should have been entitled to a reasonable time to prepare the response and to the assistance of a *trade union representative* or fellow *employee*.**
- ✓ **Step 5: After the enquiry, Mr Jones should have communicated the decision taken, and preferably furnish the Mr Smith with written notification of his decision.**

1. Substantive fairness

- ✓ **Step 1: Mr Jones should have established whether there is a rule in the workplace in terms of the disciplinary code**
- ✓ **Step 2: Mr Jones should have established through the informal disciplinary process whether Mr Smith did contravene the rule, and if yes, whether**
- ✓ **Step 3: The rule was fair and reasonable**
- ✓ **Step 4: The rule was consistently applied**
- ✓ **Step 5: Mr Smith was aware of the rule**
- ✓ **Step 6: The appropriate sanction**

DISCIPLINE MANAGEMENT

Compare the two situations and answer the questions below:

- a) You are a principal, you call in an educator who came late for school; you sit the educator down and you tell him that it is unacceptable to be late and that if he is late again, you will write to the District Office and ensure that he is disciplined.
- b) You call the educator to your office and ask why he was late and after listening to the explanation, you advise of means to ensure that the same conduct does not happen again. You also explain the challenges posed and consequences of late coming. You explain the implications of this conduct occurring again.

Questions:

1. Which of the scenarios above is the most appropriate and give a reason for your answer?
2. Categorise the following acts of misconduct into progressive discipline or formal discipline and indicate at what level should the discipline enquiry be dealt with:

No	Allegation of Misconduct	Type	Level
1	Educator has sexually assaulted a learner	Formal discipline	District Office
2	Two educators fought during school hours resulting in serious injuries		
3	Educator performs poorly for reasons other than capacity		
4	An educator incites learners to chase the School Principal away from school resulting in damages to the car of the School Principal		
5	Educator found sleeping in sick bay whilst on duty		
6	Educator carries a firearm without written authorisation		
7	Educator signs the attendance register indicating that she was present whilst she was not		
8	Educator has tendency of late coming and has received a verbal warning		
9	Educator fails to carry out a lawful instruction to assist with soccer training after school		
10	Educator absents himself without a valid reason or permission		
11	Educator has been absent for two weeks without permission and his whereabouts are not known		

No	Allegation of Misconduct	Type	Level
12	Educator has a sexual relationship with a learner of the school where she is employed		
13	During recent strike action one of your educators went live on radio and TV and insulted the MEC of Education		
14	Educator has been criminally charged for stealing soap at local supermarket and has been found guilty and got suspended sentence		
15	Educator assisted learners with answers in trial examination.		
16	Educator has taken R 20,00 from school funds and when confronted admitted to the act and said that he did not have petrol money		
17	Educator has failed to mark the examination papers of his learners		
18	During a heated argument in the staff meeting two female educators verbally insulted one another of things unrelated to school work		
19	An educator operates a money-lending scheme for his own benefit during working hours resulting in his learners not receiving effective tuition		
20	Educator is found smoking an illegal substance during working hours claiming that it is part of his religious belief		

3. What is the purpose of fair discipline?

DISCIPLINE MANAGEMENT

Compare the two situations and answer the questions below:

- a) You are a principal, you call in an educator who came late for school; you sit the educator down and you tell him that it is unacceptable to be late and that if he is late again, you will write to the District Office and ensure that he is disciplined.
- b) You call the educator to your office and ask why he was late and after listening to the explanation, you advise of means to ensure that the same conduct does not happen again. You also explain the challenges posed and consequences of late coming. You explain the implications of this conduct occurring again.

Questions:

1. Which of the scenarios above is the most appropriate and give a reason for your answer?

The second scenario because the act of misconduct is not serious.

2. Categorise the following acts of misconduct into progressive discipline or formal discipline and indicate at what level should the discipline enquiry be dealt with:

No	Allegation of Misconduct	Type	Level
1	Educator has sexually assaulted a learner	Formal	District
2	Two educators fought during school hours resulting in serious injuries	Formal	District
3	Educator performs poorly for reasons other than capacity	Progressive	School
4	An educator incites learners to chase the School Principal away from school resulting in damages to the car of the School Principal	Formal	District
5	Educator found sleeping in sick bay whilst on duty	Progressive	School
6	Educator carries a firearm without written authorisation		
7	Educator signs the attendance register indicating that she was present whilst she was not	Progressive	School
8	Educator has tendency of late coming and has received a verbal warning	Progressive	School
9	Educator fails to carry out a lawful instruction to assist with soccer training after school	Progressive	School
10	Educator absents himself without a valid reason or permission	Progressive	School
11	Educator has been absent for two weeks without permission and his whereabouts are not known	Formal	District

No	Allegation of Misconduct	Type	Level
12	Educator has a sexual relationship with a learner of the school where she is employed	Formal	District
13	During recent strike action one of your educators went live on radio and TV and insulted the MEC of Education	Formal	District
14	Educator has been criminally charged for stealing soap at local supermarket and has been found guilty and got suspended sentence	Formal	District
15	Educator assisted learners with answers in trial examination.	Formal	District
16	Educator has taken R 20,00 from school funds and when confronted admitted to the act and said that he did not have petrol money	Formal	District
17	Educator has failed to mark the examination papers of his learners	Formal	District
18	During a heated argument in the staff meeting two female educators verbally insulted one another of things unrelated to school work	Progressive	School
19	An educator operates a money-lending scheme for his own benefit during working hours resulting in his learners not receiving effective tuition	Progressive	School
20	Educator is found smoking an illegal substance during working hours claiming that it is part of his religious belief	Progressive	School

3. What is the purpose of fair discipline?

- ✓ **to ensure that justice is done and seen to be done**
- ✓ **to do justice to the educator who has done wrong**
- ✓ **to do justice to the employer**
- ✓ **to do justice to all employees**
- ✓ **to assist the Department to exercise its prerogative fairly**
- ✓ **to enhance productivity**
- ✓ **to maintain trust in you as a manager of the school**
- ✓ **to enhance the legitimacy of the disciplinary system**
- ✓ **to communicate the unacceptable nature of certain behaviour**
- ✓ **to be corrective as opposed to punitive**

- ✓ **to prevent conflict**

- ✓ **to enhance the chances of the outcome being regarded as legitimate and acceptable**

DISCIPLINE MANAGEMENT

Read the disciplinary code and answer the following questions:

1. As a principal which section of the Disciplinary Code gives you the right to take discipline against educators?
2. Name any three principles of effecting discipline?
3. What sanctions are available as part of progressive disciplinary process?
4. Are educators allowed representation by their shop stewards during informal disciplinary meetings / corrective counselling?
5. Can an educator appeal against a written or final written warning?
6. How long does a warning remain on the record against an educator?
7. Can an expired warning be held against an educator who commits a similar act of misconduct?

DISCIPLINE MANAGEMENT

Individually answer the following questions:

1. As a principal which section of the Disciplinary Code gives you the right to take discipline against educators?

Section 4(1)(a)(i)

- (1) (a) The employer must delegate the function to deal with misconduct referred to in sub items (2) to (6), to—**
- (i) the head of the institution or office where the educator is employed;**

2. Name any three principles of effecting discipline?

- **Corrective**
- **Prompt**
- **Fair and consistent**

3. What sanctions are available as part of progressive disciplinary process??

Counselling

Verbal warning

Written warning

Final written warning

4. Are Educators allowed representation by their shop stewards during informal disciplinary meetings / corrective counselling?

Yes it is a fundamental right to be represented in disciplinary enquiries

5. Can an educator appeal against a written or final written warning?

No. An educator may only object to such warnings. See Schedule 2 of the Employment of Educators Act no 76 of 1998 as amended (Disciplinary Code) in this regard.

6. How long does a warning remain on the record against an educator?

Six (6) months thereafter it must be removed from the file and be destroyed.

7. Can an expired warning be held against an educator who commits a similar act of misconduct?

No, because the warning is no longer valid.

8. Do only similar acts of misconduct committed in the past and which have not expired count when deciding on the sanction for a repeated act of misconduct, e.g. the educator has one current warning for late coming and another for verbal abuse – he is now found guilty of negligence – must the past warnings be considered even though they are different acts?

The past, but different acts can be cumulative provided that the warnings have not expired.

9. Is it always necessary to first issue a verbal, written, final written warning before a disciplinary hearing can be held to consider dismissal?

No, the severity of the misconduct also applies here in deciding what action to take. The idea of progressive discipline is that the employee should get increasingly more severe warnings for more serious acts of misconduct to warn that he/she could get dismissed if the misconduct continues after corrective measures have been taken. However if an educator has raped a learner, a disciplinary hearing will be held immediately because of the serious nature of the act of misconduct.

DISCIPLINE MANAGEMENT

ABSENTEEISM

Please answer the following questions:

1. What is the difference between absenteeism, abscondment and desertion?
2. Why in your view is it important to effectively manage absenteeism?
3. What are the duties of both educators and the Department in relation to attendance of work?
4. Explain the following examples of absenteeism:
 - (a) Abscondment
 - (b) Personal problems of employee
 - (c) Uncontrollable events
 - (d) Political stay-away
 - (e) Absent without leave
 - (f) Deliberate absence after permission had been refused
 - (g) Absence due to external demands
 - (h) Extended "comfort" breaks
5. Briefly explain how you will deal with (a) abscondment; (b) political stay-away and (c) deliberate absence after permission had been refused referred to above.
6. What are the elements of absenteeism?
7. What are your responsibilities in respect of an educator who is late at school? Please explain your answer.

DISCIPLINE MANAGEMENT

ABSENTEEISM

Please answer the following questions:

2. What is the difference between absenteeism, abscondment and desertion?

Absenteeism is undoubtedly one of the most contentious workplace relationship issues and the Department of Education with a workforce of over 40,000 educators is also affected. The most reported misconduct cases by far are related to absenteeism.

Absenteeism can be divided into late coming, absences from an employee's workstation, and absences from the workplace itself for short periods.

Abscondment is deemed to have occurred if the employee is absent for a time that warrants the inference that the employee does not intend to return to work.

Desertion is deemed to have taken place when the employee has actually intimated expressly or by implication that s/he does not intend to return to work

3. Why in your view is it important to effectively manage absenteeism?

It is the School Principal's planning, organisation and leadership that will impact on the extent to which the human resource is effectively managed. In essence the effective management of authorised leave can assist in increasing or decreasing unauthorised leave. The School Principal who understands this will set high expectations in the management of time whilst at the same time demonstrating understanding for genuine people-related concerns.

4. What are the duties of both educators and the Department in relation to attendance of work?

Educators duties include:

- ✓ **Reporting for work**
- ✓ **Being punctual in getting to work**
- ✓ **Working the hours agreed while at work**

The Department's duties are to:

- ✓ **Provide employees with work as agreed**
- ✓ **Pay employees for work performed**
- ✓ **Provide safe working conditions**
- ✓ **Meet the statutory requirements of the job**

5. Explain the following examples of absenteeism:

(a) Abscondment

It refers to a clear intention on the part of the employee not to return to work. The law provides that if an educator is absent for 14 consecutive days then the services of such an educator may be terminated on the basis of operation of law. Most importantly the whereabouts of the educator must not be known to the school.

(b) Personal problems of employee

The absence is caused by an educator having to attend a personal matter which prevents attendance, e.g. a sick child, financial crisis, domestic crisis, etc.

(c) Uncontrollable events

An educator is unable to attend work due to circumstances beyond his/her control, e.g. extreme weather conditions.

(d) Political stay-away

Educators stay away from work as a result of a call by a trade union. The reasons employees often give for such an absence include fear of their lives and/or damage to property.

(e) Absent without leave

Refers to situations where the educator is absent from work and fails to provide a satisfactory explanation for such absence.

(f) Deliberate absence after permission had been refused

An educator asks for time off, the request is refused for good operational reasons but the employee proceeds on leave in any event.

(g) Absence due to external demands

The educator is required to attend court as a witness or is required to be absent for an "official" matter.

(h) Extended "comfort" breaks

The educator remains in the staff room long after his/her "free time" has expired during his/her free period.

5. Briefly explain how you will deal with (a) abscondment and (b) political stay-away referred to above.

(a) Abscondment:

- ✓ An attempt must be made to contact the educator at his/her last known address;
- ✓ Where practical a registered letter should also be delivered to the last known address informing the educator of his/her rights and the obligations of the Department;
- ✓ School Principals must follow the relevant policy provisions pertaining to abscondment;
- ✓ If the educator has failed to report for duty after the expiry of the 14 days, the School Principal must make a submission to the relevant District Office for the possible termination of service of the educator due to operation of law.
- ✓ Should the educator be present in a disciplinary hearing, then s/he should substantiate the reason(s) for absence and provide a reasonable explanation regarding the lack of notification. Reasonable proof of the educator's whereabouts should be provided.
- ✓ Should the educator who is dismissed for abscondment reappear at a later date then the affected educator should make a submission to the Superintendent-General for his/her possible reappointment or reinstatement on good cause shown.

(b) Political stay-away

- ✓ This is a form of absence without leave and should be treated within the policy of "no work no pay" of the Department.
- ✓ School Principals must ensure that consistent action is taken against all employees who are absent during such actions, especially where trade unions publically announced that their members must stay away from work.
- ✓ Where visible intimidation takes place inside or outside the school premises disciplinary action should be considered against the intimidators if they are identifiable.
- ✓ All precautionary measures must be taken to protect the safety of learners and other educators who are in attendance.

(c) Deliberate absence after permission had been refused:

- ✓ This must be treated as unauthorised absence. In addition, allegations of gross insubordination and a refusal to obey management's reasonable and legitimate instructions should be put to the educator. These are both serious offences and a disciplinary enquiry should be instituted; which may result in the dismissal of the educator concerned.

6. What are the elements of absenteeism?
- (a) The educator must have been absent from work at a time he/she was contractually obliged to be at work;
 - (b) The educator must have had no reasonable excuse for his/her absence.

In *Ndlovu v Supercare Cleaning (Pty) Ltd* (1995) 4 LCD 338 (IC), the Court held that, with absenteeism, an explanation for absence will be adequate if an employee can prove that the reason beyond his control.

7. What are your responsibilities in respect of an educator who is late at school? Please explain your answer.
- (a) Bring the misconduct to the educator's attention by calling the educator to your office for a discussion.
 - (b) At the office you must determine the nature of the misconduct (late-coming) and give the educator an opportunity to respond to the allegations. This you must do by asking the educator why he/she is late, explain the implications of the late-coming in ensuring that the kids have an educator in front of them.
 - (c) After hearing the educator, advise him/her on a method to remedy the conduct, i.e. record the session as a corrective counselling session or issue a verbal warning, depending on the circumstances.
 - (d) Advise the educator that if the misconduct happens again you will take more serious action.

8. Can an educator be dismissed, the first time, he/she comes in late, please explain your answer?

No, it is moderate misconduct.

Discipline is corrective not punitive.

9. Can you as a principal request and insist on proof of an explanation offered for lateness, e.g. an educator that says she took his/her child to hospital, can you as the principal ask for proof thereof? Please explain your answer.

At the level of the principal, discipline is corrective and is less formal. It is not necessary at this stage to request proof, but proof may be required.

You need to ensure that the misconduct does not happen, if it happens again, then you must notify the Circuit/District Office and advise it that you had already communicated on the first occurrence that the misconduct is unacceptable.

DISCIPLINE MANAGEMENT

INSUBORDINATION VERSUS INSOLENCIE

The Head of Department in your school gives an educator X an instruction to take over a class, that is normally taught by an educator who is absent on the day, educator X refuses. Educator X says it is not his responsibility to take over the said class.

The Head of Department brings this refusal to your attention as the principal and asks for your intervention. You then ask your secretary call educator X to your office. Your secretary advises you that she has asked educator X to report to your office but educator X indicated that if its about taking the class who educator is absent he is not interested as he has more important things to do.

Upon receipt of this information you decide to personally go and give the instruction. Educator X advises you that he has a test he is setting for his class, which is due in an hour and that when he is done he will attend to the class. Two hours later, educator X submits the test, and goes to attend to the class needing attention.

Please answer the following questions:

1. Read the above scenario. Is educator X guilty of insubordination? Please explain.
2. If your answer is yes, please indicate if he is guilty for insubordination against the Head of Department or the principal, or against both. Please explain your answer?
3. After how many refusals would you say an educator makes himself guilty of insubordination?
4. Is partial refusal insubordination? Please explain your answer.
5. When does insubordination occur?

6. What circumstances would increase insubordination to gross insubordination?

7. What is the meaning of insolence?

8. What test will you apply in determining both the above forms of misconduct?

9. What as a general rule indicates that insubordination constitutes misconduct?

10. What are the essential elements for insubordination?

DISCIPLINE MANAGEMENT

INSUBORDINATION VERSUS INSOLENCES

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Please answer the following questions:

1. Is educator X guilty of insubordination? Please explain.

It started when the instruction was given by the HOD. When you as the principal went to give the instruction however, educator X advised you that he would comply after finishing with setting the test. You did not insist that the instruction must be carried through now; instead you impliedly accepted the response.

2. If your answer is yes, please indicate if he is guilty for insubordination against the Head of Department or the principal, or against both. Please explain your answer?

While insubordination arises from the initial refusal, it is best that the instruction is repeatedly given and is given by you, the principal as the highest authority in the school.

3. After how many refusals would you say an educator makes himself guilty of insubordination?

As explained above, that whilst insubordination arises from the first refusal, it is suggested that the instruction must be repeated so that there is no ambiguity on it, and therefore generally it is best if the instruction is repeated.

4. Is partial refusal insubordination? Please explain your answer.

This will depend on the explanation offered for the partial compliance with the instruction. Clearly where an educator tried his/her best to comply with the instruction but there were circumstances beyond his/her control that would not necessarily amount to insubordination.

5. When does insubordination occur?

Insubordination occurs when an educator refuses to accept the authority of his / her employer (HOD / Principal). It may be described as resistance to, or defiance of, authority or a disobedience, refusal or failure to obey reasonable and lawful instructions.

6. What circumstances would increase insubordination to gross insubordination?

Whether the insubordination is gross depends on the circumstances, including:

- ✓ **the manner in which it is expressed;**
- ✓ **the position of the person whose authority is repudiated;**
- ✓ **the reason for defiance; and**
- ✓ **the number of times it occurs**

7. What is the meaning of insolence?

Insolence means repudiation by an employee of his/her duty to show respect. Insolence is an employee's disrespectful behaviour towards the employer

8. What test will you apply in determining both the above forms of misconduct?

The test for both forms of misconduct is whether the employee's conduct demonstrates an intention to defy the employer's authority. The court equated insolence with impudence, cheekiness, disrespect or rudeness.

9. What as a general rule indicates that insubordination constitutes misconduct?

As a general rule, for insubordination to constitute misconduct justifying a dismissal it has to be shown that the employee deliberately refused to obey a reasonable and lawful instruction by the employer.

10. What are the essential elements for insubordination?

The essential elements for insubordination are as follows:

- ✓ **It should be evident that an order, which may even be in the form of a warning, was given;**
- ✓ **The order must be lawful;**
- ✓ **The reasonableness of the order should be beyond reproach;**

- ✓ **The refusal or failure to obey must have been serious enough to warrant dismissal.**

John Grogan noted that: "*employees are obliged to respect and obey their employers because lack of respect renders the employment relationship intolerable and disobedience undermines the employer's authority*".

DISCIPLINE MANAGEMENT

NEGLIGENCE VERSUS GROSS NEGLIGENCE

2. What is the difference between negligence and gross negligence?
3. How would you determine whether an educator's has been negligent in his/her duties?
4. What is the difference between negligence and incapacity?
5. Do you think the scenarios below refer to negligence or gross negligence? Give reasons for your answer.

Scenario 1: John teaches Biology for Grade 12. John has recently attended a departmental workshop on how to improve one's marking skills. He has been teaching for 5 years. You have moderated his marking of an internal examination and found glaring mistakes and oversights.

Scenario 2: In the same scenario referred to above you found that in addition to the glaring mistakes and oversights a number of scripts were not marked but John has allocated fictitious marks.

DISCIPLINE MANAGEMENT

NEGLIGENCE VERSUS GROSS NEGLIGENCE

1. What is the difference between negligence and gross negligence?

Negligence is a broad term used for an employee's conduct or failure to act; which shows that s/he isn't applying an acceptable level of care to his contractual duties.

Gross negligence is similar to negligence but the implications for not doing what is expected of an employee are much more serious.

2. How would you determine whether an educator's has been negligent in his/her duties?

Consider: if

- a. The educator didn't exercise the standard of work and skill reasonably expected from him/her;
- b. The act or failure to act actually led to damage, loss or harm. Or it had the potential to lead to damage, loss or harm.
- c. The damage or potential damage that came directly from his/her negligence.

Judge the educator's action or failure to act against:

- a. The standard of a reasonable employee in that particular job including particular skills;
- b. The circumstances at the time of the negligence;
- c. The standards of the occupation;
- d. If the educator could have or should have seen the possible harm resulting from his/her actions; and if
- e. The educator had the means to take reasonable steps to avoid the situation.

3. What is the difference between negligence and incapacity?

Incapacity is when an employee cannot carry out the duties of his/her job properly. This is of no fault of his own. Incapacity can either be due through poor performance or ill health.

Negligence is misconduct because an employee knows and understands what is expected of him/her. The employee is aware of the standard required to do the work, but fails to do so.

4. Do you think the scenarios below refer to negligence or gross negligence? Give reasons for your answer.

Scenario 1: John teaches Biology for Grade 12. John has recently attended a departmental workshop on how to improve one's marking skills. He has been teaching for 5 years. You have moderated his marking of an internal examination and found glaring mistakes and oversights.

Scenario 2: In the same scenario referred to above you found that in addition to the glaring mistakes and oversights a number of scripts were not marked but John has allocated fictitious marks.

Scenario 1 is an example of negligence; whilst scenario 2 refers to gross negligence. The implications of the failure to do his work properly are more severe in scenario 2 than 1.

CASE LAW FOR SPECIFIC MISCONDUCT CASES

1. According to Grogan, an onus rests on employees to explain their absence. Possible excuses are infinite. It is therefore not possible to lay down a watertight test for establishing whether a particular excuse is 'adequate'. Generally, where employees are charged with absenteeism, an explanation for an absence will be adequate if employees can prove that the reason was beyond their control. In *Ndlovu v Supercare Cleaning (Pty) Ltd (1995) 4 LCD 338 (IC)*, the dismissal of a security guard for being absent from his post was ruled unfair because he was attending to other duties at the time.
2. Grogan indicated that the dividing line between absenteeism and abscondment is flexible. Section 14 of the Employment of Educators Act 76 of 1998 as amended provides that when 14 consecutive days have expired, the employee will be 'deemed' to have absconded, or to have 'dismissed himself'. Employees are deemed to have absconded only when it is proved that they have formed an intention not to resume work. In such circumstances it is the employer that terminates the employment contract by accepting the employee's repudiation. See *SACWU v Dyasi [2001] 7 BLLR 731 (LAC)*. On this approach abscondment remains a disciplinary offence, and the employees concerned retain the procedural right to present their cases if the assumption that the employee intended to abandon the contract turns out to be incorrect.
3. In *Samancor Tubatse Ferrochrome v MEIBC (2010 8 BLLR 824 (LAC))* the employee, after having been incarcerated for 150 days, was advised (by means of a letter addressed to the police station at which he was held) of his dismissal for "operational incapacity" due to his inability to tender his services. The Labour Appeal Court (LAC) noted that dismissal for incapacity should not be confined to incapacity arising from ill-health, injury or poor performance and that the determination of the fairness of a dismissal for incapacity depends upon the facts of the matter. The court was satisfied that, in light of the commercial need to fill the employee's position, which was critical to the workplace, and due to the uncertain period of incarceration, dismissal for "operational incapacity" was appropriate in the circumstances. (Nonetheless the court held that the dismissal was procedurally unfair as the employee had been deprived of the right to a hearing and compensation was awarded in this regard.) The approach of the LAC in *Samancor* serves to reconcile common law and statute, by accommodating common-law principles of impossibility within the regulatory framework of the LRA. In this way the employer's common-law rights to the employee's uninterrupted services can be fairly balanced against the employee's entitlement to a procedurally and substantively fair dismissal.
4. A distinction has traditionally been drawn between insolence (repudiation by an employee of the employee's duty to show respect) and insubordination (refusal to obey the employer's instructions). However nothing turns on the distinction. In *Wasteman*

Group v SAMWU & others (2012) 33 ILJ 2054 (LAC) the court held that the true distinction is between mere insubordination, which does not usually warrant dismissal, and gross insubordination, which does.

5. Employees take a grave risk if they seek to pressurise their employers by refusing to obey instructions until some grievance is remedied. In *Johannes v Polyoak Industries [1998] 1 BLLR 18 (LAC)* the employee refused to complete certain tasks until the employer attended to her complaints. She admitted that this amounted to an offence, but claimed that the employer acted unfairly when it dismissed her because she merely asked for a 'small indulgence'. The court was unimpressed, saying that it must have been clear to the employee that her 'lone crusade' would end in disaster.
6. The test in negligence cases is 'objective': the employee's conduct is compared with the standard of skill and care that would have been expected of a hypothetical 'reasonable' employee in the same circumstances. However, the test also entails a 'subjective' element in that hypothetical 'reasonable' employee with whom the employee is compared must have experience and skill comparable with that of the employee charged. The common characteristic of all negligent cases is a failure by the employee to take steps necessary to ensure that work is properly performed.
7. What may or may not be offensive is a matter for debate. In *Lebowa Platinum Mines Ltd v Hill (1998) 19 ILJ 1112 (LAC)*, the court was required to decide whether calling a worker a 'bobbejaan' was racist. In deciding that issue in the affirmative, the court had particular regard to the fact that the particular employee to whom the remark was addressed was upset, and to have taken judicial notice of the fact that black people generally regard the term as abusive.
8. In *SATAWU obo Collins v Spoornet [2002] 8 BALR 825 (AMSSA)* the employee was dismissed for swearing at a female colleague on the telephone and for addressing racist expressions to a male colleague.
9. In *Cronje v Toyota Manufacturing (2001) 22 ILJ 735 (CCMA)*, the employee was dismissed for circulating a cartoon that depicted the president of Zimbabwe, Robert Mugabe as a gorilla.
10. A common excuse of employees found to be under the influence of alcohol or with alcohol in their bloodstreams is that they consumed the alcohol before reporting for duty – usually at a late night party. This excuse will not serve as a defence if the prescribed offence is being under the influence or having alcohol in the bloodstream. It is arguable in such cases that the employee knew or should have known that s/he would be suffering the after-effects when s/he reported for duty.

KEY LEARNING AREAS: DISCIPLINE MANAGEMENT

1. The employee's duty to obey is at the core of the employment relationship. Grogan indicates that obedience implies discipline, discipline implies rules, and rules, to be effective, imply the power to impose sanctions on those who break them. Employers have a right, indeed a duty, to maintain discipline in the workplace.
2. The function of discipline in the employment context is to ensure that individual employees contribute effectively and efficiently to the goals of the common industry, i.e. Education. Disciplinary sanctions are regarded as corrective rather than punitive.
3. Progressive discipline is a powerful tool to ensure a stable and productive workplace. However School Principals must ensure that such discipline is implemented promptly, fairly and in a consistent manner among all employees in the workplace.
4. The burden of proof in all disciplinary cases is on a balance of probabilities and not beyond reasonable doubt as is the case in criminal matters.
5. School Principals must keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for such action.
6. The general requirements for procedural and substantive fairness are summarised in the table below:

CONSIDERATIONS FOR MISCONDUCT	
SUBSTANTIVE FAIRNESS	PROCEDURAL FAIRNESS
<p>Assesses the breach of a rule. If there was a breach, whether –</p> <ul style="list-style-type: none"> (i) the rule was reasonable or valid (ii) the employee was aware or could reasonably be expected to have been aware of the rule (iii) the employer consistently applied the rule (iv) dismissal was an appropriate sanction including consideration of: <ul style="list-style-type: none"> • the nature of the job • the circumstances surrounding the breach of the rule • whether the disciplinary action would be consistent with previous cases 	<p>An investigation that ensures:</p> <ul style="list-style-type: none"> (i) notice is given of allegation (ii) reasonable time to prepare (iii) representation by trade union representative or fellow employee (iv) employee opportunity to hear the employer's case (v) employee opportunity to state his/her case and question employer's evidence (vi) communication of decision to employee (vii) mitigating factors are considered (viii) employee's right to appeal

POOR WORK PERFORMANCE

EDUCATOR'S CODE FOR POOR WORK PERFORMANCE AND INCAPACITY

1. Codes, rules and standards —

- (1) The Code of Good Practice contained in Schedule 8 to the Labour Relations Act, 1995 (Act No. 66 of 1995), insofar as it relates to incapacity, constitutes part of this Code and Procedures, in respect of poor work performance.
- (2) In applying this Code and Procedures, the relevant employer must assess the incapacity of an educator by considering—
 - (a) the extent to which the incapacity impacts on the work of the Department of Basic Education or provincial Department of Basic Education, or the public school, public further education and training institution or public adult learning center;
 - (b) the extent to which the educator fails to meet the required performance standards as contemplated in item 2 (2);
 - (c) the extent to which the educator lacks the necessary skills to perform in accordance with the educator's job description;
 - (d) the nature of the educator's work and responsibilities; and
 - (e) the circumstances of the educator.

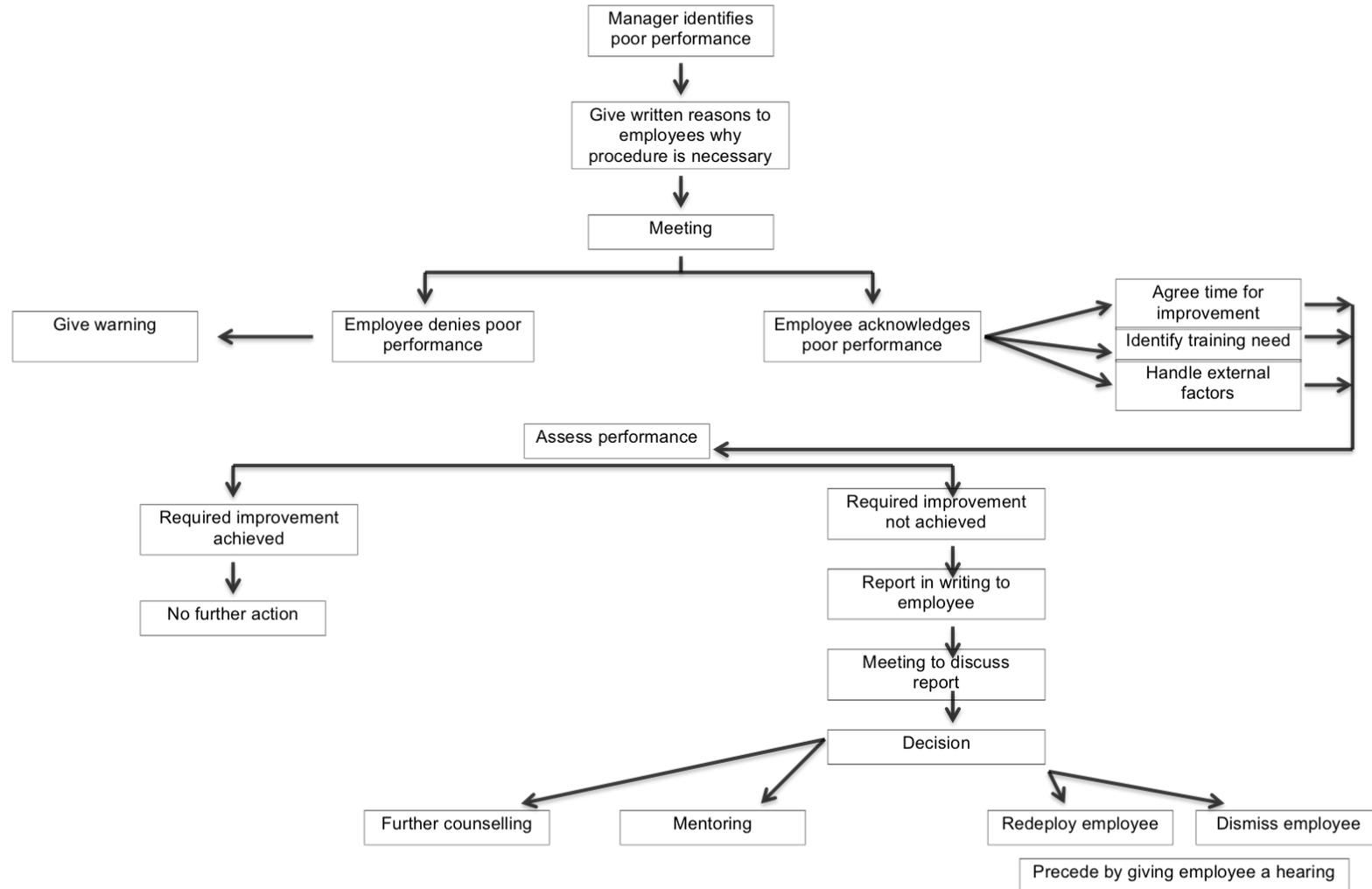
2. Procedure in respect of poor performance —

- (1) If the employer is of the view that an educator, whether on probation or a permanent staff member, is not performing in accordance with the job that the educator has been employed to do, the employer must—
 - (a) give written reasons to the educator why it is necessary to initiate the procedure in respect of poor performance; and
 - (b) after serving the written reasons referred to in paragraph (a), meet with—
 - (i) the educator; or
 - (ii) the educator and the educator's trade union representative or a fellow employee, if the educator so chooses.
- (2) Despite section 4 of this Act, the performance of educators must be evaluated according to performance standards, which may be prescribed by the Minister.
- (3) In the meeting referred to in item 2 (1) (b), the employer must—
 - (a) explain the requirements, grade, skills and nature of the job;
 - (b) evaluate the educator's performance in relation to the job;
 - (c) indicate the perceived poor performance; and
 - (d) hear the educator or, if the educator agrees, the educator's trade union representative or a fellow employee on—
 - (i) whether or not the educator has performed in accordance with the

- requirements of the job; or
 - (ii) reasons why the educator has not performed in accordance with the requirements of the job.
- (4) After hearing the educator, his or her trade union representative or the educator's fellow employee, the employer must, if necessary, develop and initiate a formal programme of counselling and training to enable the educator to reach the required standard of performance, which must include—
 - (a) assessing the time that it would take for the educator to overcome the poor work performance;
 - (b) on the basis of the assessment referred to in paragraph (a), the establishment of realistic time frames within which the employer will expect the educator to meet the required performance standards; and
 - (c) the identification and provision of appropriate training.
- (5)
 - (a) If the educator fails or refuses to follow a formal programme of counselling and training as contemplated in sub item (4), the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.
 - (b) If the educator, after being subjected to a formal programme of counselling and training as contemplated in sub item (4), fails to meet the required performance standard for the post, the employer, after consulting the educator, may—
 - (i) provide further training to the educator;
 - (ii) provide counselling to the educator;
 - (iii) transfer the educator;
 - (iv) demote the educator; or
 - (v) terminate the employment of the educator.
- (6)
 - (a) Before transferring or demoting an educator or terminating his or her services for poor performance, the employer must convene an inquiry in order to give the educator the opportunity to make representations in response to the allegations against him or her, which shall include the right to—
 - (i) call, examine and cross-examine witnesses;
 - (ii) bring all relevant documentation to the attention of the person presiding over the inquiry, and have access to documents produced in evidence by the employer;
 - (iii) be represented at the proceedings by a co-employee or trade union representative;
 - (iv) have an interpreter present if the Educator so requires;
 - (v) lead all evidence relevant evidence, including evidence in mitigation of the sanction, if necessary.
 - (b) The provisions of items 5, 7, 8 and 9 of Schedule 2 apply to these inquiries, read with the changes required by the context.

- (7) (a) The person appointed by the employer to conduct procedures referred to in sub items (1) to (4), must be an employee on a higher post level than the educator concerned, and must as far as practically possible be his or her direct supervisor or the immediate superior of such supervisor.
- (b) If the direct supervisor or the immediate superior of such supervisor of the educator is the cause for the procedures referred to in sub items (1) to (4), the employer must appoint a person within the Department of Basic Education or the provincial Department of Basic Education, as the case may be, who is on the same level as the supervisor or the immediate superior of such supervisor.

INCAPACITY CODE AND PROCEDURES IN RESPECT OF POOR PERFORMANCE



POOR WORK PERFORMANCE

1 DIFFERENCE BETWEEN POOR WORK PERFORMANCE AND MISCONDUCT

- 1.1 Poor Performance does not look at the behavior of the employee at work. Problems of behavior are addressed under misconduct. Poor Performance looks at whether the job, which the employee is being paid to do, is being done properly.
- 1.2 Therefore, in establishing whether poor performance exists, one must ask the following questions in relation to the employee and the job:
 - (a) is the output sufficient?
 - (b) is the quality acceptable?
 - (c) are operating procedures being followed?
 - (d) is the effort put in by the employee sufficient?
 - (e) is it perhaps inability to do the job at the required level – can the employee perform satisfactorily at a lower level?
 - (f) is just plain incompetence? I.e. not insufficient effort, but clearly a lack of ability to do the job?
 - (g) is it carelessness – lack of attention to detail?
 - (h) is it a form of negligence but not misconduct? In other words "I don't care."
- 1.3 From the above, it is clear that misconduct deals with behavior – performance deals with ability.
- 1.4 Misconduct or unacceptable behavior occurs when a rule is broken, or some other unacceptable behavior happens. Assault, swearing at a colleague, etc. Example – an employee is never absent, performs well, and always gives output above standard in terms of both quality and quantity – but the employee is caught stealing. This is clearly misconduct – not poor performance. Misconduct usually results in immediate and severe disciplinary action – perhaps even dismissal.
- 1.5 Poor Performance results in investigation, counseling, meeting and discussion with the employee, training and so on, before dismissal is even contemplated.
- 1.6 The procedures for handling poor performance are completely different from the procedures for handling misconduct. Performance is all about how the employee does the job – i.e. quality.
- 1.7 Misconduct is all about behavior or conduct of the employee on the job in relation to company rules, policies and procedures. Now, before we go any further, you must clearly understand that the employer MUST ensure that the employee is

fully aware of the Department's Standards for the job, and that the employee is fully trained to do the job.

- 1.8 The employee cannot meet standards of quality and quantity when those standards have never been communicated to him/her, and likewise the employee cannot perform if no training has been given. If the required standards have never been communicated to the employee, and you have never taken steps to ensure proper training, you don't have a case against the employee related to his/her poor performance.

2. THE PURPOSE OF COUNSELLING

- 2.1 The aim of the counseling session is not to punish the employee, but to assist him/her to recognize and overcome the problem.
- 2.2 In the counseling session, you must be specific – it is not acceptable to state that the employee is "not making the grade" or "is not doing the job properly." The specific problem area must be defined and discussed in detail. It is no good telling the employee to "pull his socks up" or "get his act together." Be specific about what improvement is required, what standard is required to be met, in what area and by when.
- 2.3 The counseling process is termed as "evaluation, instruction, training or guidance."
- 2.4 Generally speaking, and considering all the facts of the matter, you should spend as much time as is reasonably expected to show that the employee was afforded all reasonable opportunity to rectify the matter. Obviously, if the poor performance is causing major operational problems, you will have to inform the employee that he has only a limited amount of time to rectify the matter before action is taken.
- 2.5 It is vitally important that all the proceedings are recorded in detail. These records will be required if eventually the employee is dismissed. You will have to prove that correct and fair procedures were followed, and you need written records to do this. In a case of unfair dismissal, the employee only has to prove that a dismissal took place. The employer must prove the fairness of the dismissal.

3. THE 5-STEP REMEDY FOR POOR PERFORMANCE

- 3.1 The first step is to hold an informal meeting with the employee. You explain where the employee is falling short, what standard is not being met, and discuss the matter fully to see if the reason for the poor performance can be established. It may be a domestic crisis that the employee has (pending divorce, sick child, financial problem, etc.) or it may even be a work related problem, such as a

supervisor who is victimizing the employee, harassing the employee in some way.

- 3.2 The second step is to establish the real cause – if you don't know the cause, you cannot treat the problem. Treating the symptoms is a useless exercise – the problem will not go away unless you treat the cause.
- 3.3 The third step is to try to find a mutually acceptable way of dealing with it – it may be training that is required, etc.
- 3.4 The fourth step is at the end of the counseling session. The employee must be warned of the consequences of failure to improve where such warning is appropriate.
- 3.5 The fifth step is to ensure constant monitoring, evaluating and action.

POOR WORK PERFORMANCE

Read the scenarios below and decide whether it is poor performance or misconduct and give reasons for your answers as well as the appropriate remedy in each case:

Scenario 1:

Mrs Jackson is a Grade 2 teacher for 10 years. For the past 8 years she has received numerous awards for outstanding performance. During the last two years you have noticed that she has developed a tendency of being absent from work especially on Mondays and Fridays and during pay dates. The results of her learners have shown a constant decline and her class discipline has become a serious challenge. Mrs Jackson has also slowly withdrawn her from school related functions and no longer sits in the staff room during her off periods.

Answer

Approach and remedy:

Scenario 2

Mr Busy Bee is teaching English for Grade 12. He has been a teacher for 20 years. His learners have always received satisfactory results at the end of the year. During the last trial examination for Grade 12 you have discovered that half of the scripts of the learners was not marked and the schedule was incorrectly completed. This has resulted in learners who were supposed to pass have failed. Mr Busy Bee has continued to teach as if nothing has happened.

Answer:

Approach and remedy:

Scenario 3:

Mrs Compassion one of your Grade R teachers has been teaching for the last 25 years. She is everyone's favourite because of her friendly attitude and her love for teaching, learners and colleagues. She is soft-spoken, caring and just a wonderful person to work with. On Friday during the last period of the day, you were called by screaming and crying learners alleging that Mrs Compassion has verbally insulted them of having "kroes" hair, they act like baboons and that they don't belong in school but on the streets where their lazy parents stay.

Answer:

Approach and remedy

Scenario 4:

You are a principal at Ke Nako High School, one of the e educators at the school, Mr Phillips often submits pupils' marks late. You brought this to his attention but the situation has not changed. The effect of his actions is that the pupils taught by him receive their mid-term and end-of-the year reports late. The issue was raised in the SGB meeting as the parents had complained.

1. Explain your obligation in this regard as the principal. How would you deal with the situation?

2. Assume that you have raised the issue with Mr Phillips but his conduct does not change. How would you deal with the persistent behaviour?

POOR WORK PERFORMANCE

Scenario 1:

Mrs Jackson is a Grade 2 teacher for 10 years. For the past 8 years she has received numerous awards for outstanding performance. During the last two years you have noticed that she has developed a tendency of being absent from work especially on Mondays and Fridays and during pay dates. The results of her learners have shown a constant decline and her class discipline has become a serious challenge. Mrs Jackson has also slowly withdrawn herself from school related functions and no longer sits in the staff room during her off periods.

Answer

It is poor performance, because it relates to the quality of her work.

Approach and remedy:

1. **The first step is to hold an informal meeting with the employee. You explain where the employee is falling short, what standard is not being met, and discuss the matter fully to see if the reason for the poor performance can be established. It may be a domestic crisis that the employee has (pending divorce, sick child, financial problem, etc.) or it may even be a work related problem, such as a supervisor who is victimizing the employee, harassing the employee in some way.**
2. **The second step is to establish the real cause for her under-performance**
3. **The third step is to try to find a mutually acceptable way of dealing with it – it may be training that is required, etc.**
4. **The fourth step is at the end of the counseling session. The employee must be warned of the consequences of failure to improve where such warning is appropriate.**
5. **The fifth step is to ensure constant monitoring, evaluating and action.**

Scenario 2

Mr Busy Bee is teaching English for Grade 12. He has been a teacher for 20 years. His learners have always received satisfactory results at the end of the year. During the last trial examination for Grade 12 you have discovered that half of the scripts of the learners was not marked and the schedule was incorrectly completed. This has resulted in learners who were supposed to pass have failed. Mr Busy Bee has continued to teach as if nothing has happened.

Answer:

It is misconduct, because it related to the conduct of the employee.

Approach and remedy:

To follow the path of progressive discipline by:

- ✓ **Investigating the matter;**
- ✓ **Informing the employee in writing of an informal meeting to discuss the matter where s/he is allowed to be represented by trade union representative or a fellow employee**
- ✓ **Depending on the outcome follow the available remedies, i.e. counselling or warning.**
- ✓ **The employee must correct his actions**

Scenario 3:

Mrs Compassion one of your Grade R teachers has been teaching for the last 25 years. She is everyone's favourite because of her friendly attitude and her love for teaching, learners and colleagues. She is soft-spoken, caring and just a wonderful person to work with. On Friday during the last period of the day, you were called by screaming and crying learners alleging that Mrs Compassion has verbally insulted them of having "kroes" hair, they act like baboons and that they don't belong in school but on the streets where their lazy parents stay.

Answer:

It is misconduct, because it related to the conduct of the employee.

Approach and remedy

To follow the path of progressive discipline by:

- ✓ **Investigating the matter;**

- ✓ **Informing the employee in writing of an informal meeting to discuss the matter where s/he is allowed to be represented by trade union representative or a fellow employee**
- ✓ **Depending on the outcome follow the available remedies, i.e. counselling or warning.**
- ✓ **It is possible to refer the matter to the District Office for a formal disciplinary enquiry should circumstances so dictate.**

Scenario 4:

You are a principal at Ke Nako High School, one of the educators at the school, Mr Phillips often submits pupils' marks late. You brought this to his attention but the situation has not changed. The effect of his actions is that the pupils taught by him receive their mid-term and end-of-the year reports late. The issue was raised in the SGB meeting as the parents had complained.

1. Explain your obligation in this regard as the principal. How would you deal with the situation?
 - (a) **You must call Mr Phillips to your office. In the office you must:**
 - (i) **explain the required deadlines for submitting marks;**
 - (ii) **indicate the poor work performance;**
 - (iii) **hear the educator on why the marks were submitted late;**
 - (iv) **if the educator has a problem, assist them and/or refer them to the Circuit/District Office;**
 - (v) **if the educator has no problem, give corrective counselling.**
2. Assume that you have raised the issue with Mr Phillips but his conduct does not change. How would you deal with the persistent behaviour?

If Mr Phillips indicated no problem that he needs assistance with, then the matter must be dealt with as misconduct and be reported to the Circuit/ District Office.
3. If the department convenes a poor work performance hearing / meeting, what are the educator's rights in that hearing / meeting?

Mr Phillips has the following rights:

- (i) **call, examine and cross-examine witnesses;**
 - (ii) **bring all relevant documentation to the attention of the person presiding over the inquiry, and have access to documents produced in evidence by the employer;**
 - (iii) **be represented at the proceedings by a co-employee or trade union representative;**
 - (iv) **have an interpreter present if the educator so requires;**
 - (v) **lead all evidence relevant, including evidence in mitigation of the sanction, if necessary.**
4. If it comes out in the hearing / meeting, that the Head of Department to whom Mr Phillips reports to is the cause of Mr Phillips' poor work performance, what should the Department do?

The matter must be dealt with by the Circuit / District Office or the Provincial Office.

KEY LEARNING AREAS: POOR PERFORMANCE

1. THE 5-STEP REMEDY FOR POOR PERFORMANCE

- 1.1 The first step is to hold an informal meeting with the employee. You explain where the employee is falling short, what standard is not being met, and discuss the matter fully to see if the reason for the poor performance can be established. It may be a domestic crisis that the employee has (pending divorce, sick child, financial problem, etc.) or it may even be a work related problem, such as a supervisor who is victimizing the employee, harassing the employee in some way.
- 1.2 The second step is to establish the real cause – if you don't know the cause, you cannot treat the problem. Treating the symptoms is a useless exercise – the problem will not go away unless you treat the cause.
- 1.3 The third step is to try to find a mutually acceptable way of dealing with it – it may be training that is required, etc.
- 1.4 The fourth step is at the end of the counseling session. The employee must be warned of the consequences of failure to improve where such warning is appropriate.
- 1.5 The fifth step is to ensure constant monitoring, evaluating and action.

2. Considerations for incapacity: poor work performance

CONSIDERATIONS FOR INCAPACITY: POOR WORK PERFORMANCE	
SUBSTANTIVE FAIRNESS	PROCEDURAL FAIRNESS
Whether there was a breach of the required work standards and if yes whether or not – ✓ the educator was aware or could reasonable be expected to have been aware of the required work standards The following factors must also be taken into consideration: ✓ fairness and legitimacy of the required work standards ✓ degree of sub-standard performance ✓ opportunity given to the educator to meet the required standard ✓ factors to consider before deciding to	A probationer or permanent educator may not be dismissed for poor work performance due to incapacity unless the Department has: ✓ given the educator appropriate evaluation, instruction, training, guidance or counselling; ✓ given the educator a reasonable time to improve his/her performance; ✓ conducted an investigation to establish reasons ✓ considered alternative ways short of dismissal to remedy the poor performance; ✓ allowed the educator the right to be

CONSIDERATIONS FOR INCAPACITY: POOR WORK PERFORMANCE	
SUBSTANTIVE FAIRNESS	PROCEDURAL FAIRNESS
terminate <ul style="list-style-type: none">○ prospects of future employment○ training○ demotion or transfer	heard (<i>audi alteram partem</i> rule) <ul style="list-style-type: none">✓ allowed a trade union representative or fellow employee to represent the educator;✓ a finding outcome is made in writing.

ILL HEALTH OR INJURY

EDUCATOR'S INCAPACITY CODE AND PROCEDURES

1. Procedures in respect of ill health or injury —

- (1) If the employer is of the view that an educator is not performing in accordance with the post requirements that the educator has been employed to perform, as a result of poor health or injury, or an educator applies for a discharge from service on account of continuous ill health or injury, the employer must investigate the extent of the ill health or injury.
- (2) In conducting the investigation the employer must give the educator, or the trade union representative of the educator or fellow employee, the opportunity to state the case of the educator and to be heard on all the issues that the employer is investigating.
- (3)
 - (a) Subject to section 7 of the Employment Equity Act, 1998 (Act No. 55 of 1998), the employer must appoint at least one registered medical practitioner to examine the educator at the State's expense and to report on the educator's state of health.
 - (b) An educator is entitled to nominate any other registered medical practitioner of his or her choice at the educator's own expense to report on the educator's state of health.
 - (c) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only—
 - (i) in accordance with the ethics of medical practice;
 - (ii) if required by law or court order; or
 - (iii) if required by the employer to determine the extent to which the educator is able to perform in accordance with the job requirements.
 - (d)
 - (i) The medical practitioner contemplated in paragraph (a) must, on completion of the medical examination, provide the employer with a report on the nature and extent of the educator's ill health or injury and whether it is temporary or permanent, and the expected period of the educator's incapacity.
 - (ii) The medical practitioner contemplated in paragraph (b) may also submit a report if the educator is dissatisfied with a report contemplated in paragraph (a).
- (4) Based on the medical reports the employer must determine whether or not the nature of the educator's ill health or injury is of a temporary or permanent nature and the period of time that the educator is likely to be absent from work.
- (5) After the investigation of the extent of the educator's ill health or injury, the

employer must provide the educator with a written report setting out the results or findings of the investigation.

- (6) If the educator's ill health or injury is of a permanent nature the employer must investigate the possibility of—
 - (a) securing alternative employment for the educator;
 - (b) adapting the duties or work circumstances of the educator to accommodate the educator's ill health or injury; or
 - (c) consider the termination of the educator's service with effect from a date determined by the employer.

- (7) If an educator refuses or fails to be subjected to an examination contemplated in subitem (3) when requested to do so by the employer, the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18.

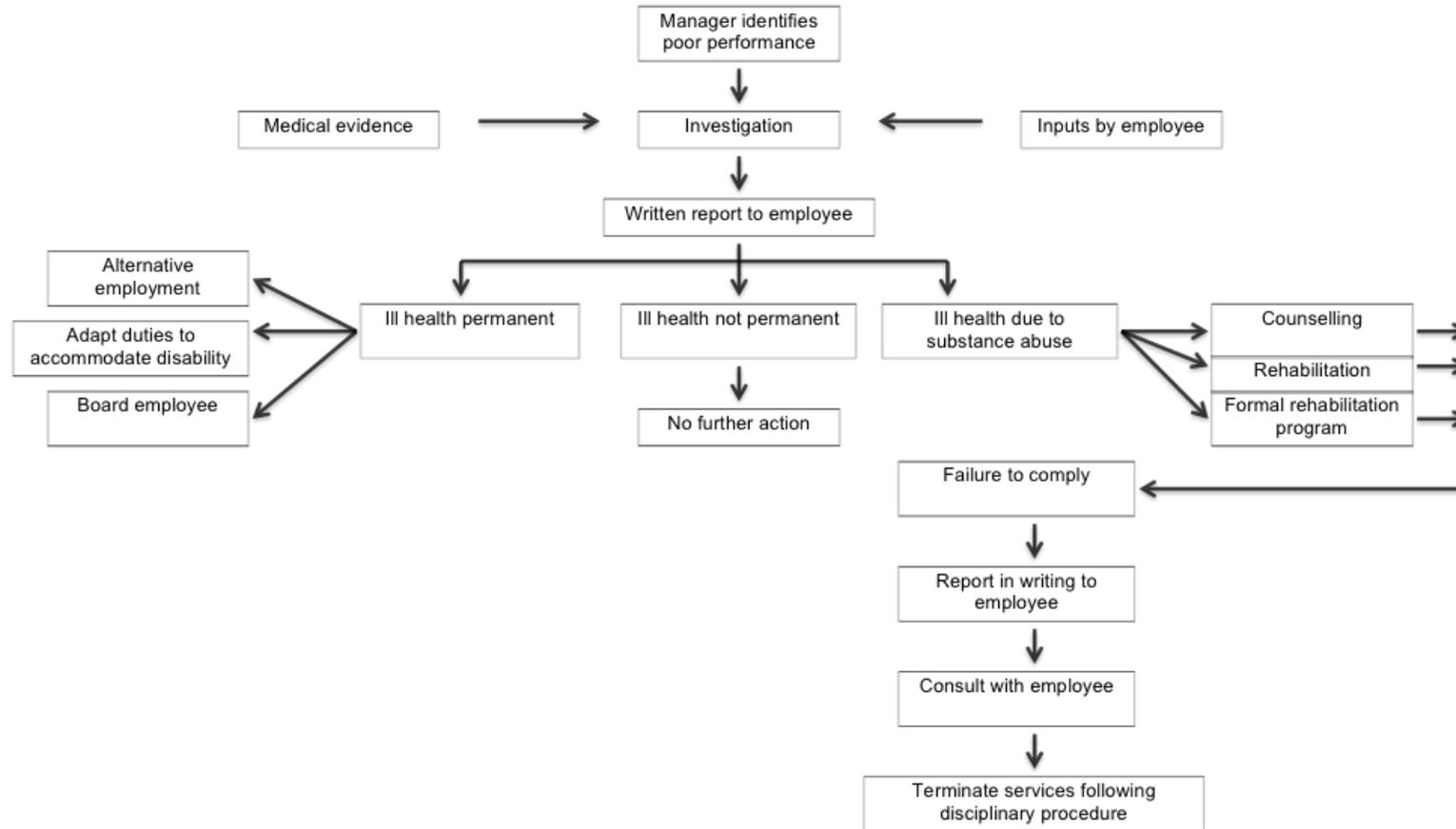
- (8)
 - (a) Before acting in accordance with subitem (6), the employer must convene an inquiry in order to give the educator the opportunity to make representations in response to the allegations against him or her, which shall include the right to—
 - (i) call, examine and cross-examine witnesses;
 - (ii) bring all relevant documentation to the attention of the person presiding over the inquiry, and have access to documents produced in evidence by the employer;
 - (iii) be represented at the proceedings by a co-employee or trade union representative;
 - (iv) have an interpreter present if the educator so requires;
 - (v) lead all relevant evidence, including evidence in mitigation of sanction, if necessary.
 - (b) The provisions of items 5, 7, 8 and 9 of Schedule 2 apply to these inquiries, read with the changes required by the context.

- (9) If the educator's ill health is as a result of alcohol or drug abuse, the employer may—
 - (a) counsel the educator;
 - (b) encourage the educator to attend rehabilitation;
 - (c) recommend a formal rehabilitation programme which the educator will be expected to follow at the cost of the employee; or
 - (d) terminate the employment of the educator, if the behavior is repetitive.

- (10) The employer must give the educator or the educator's representative a written report and consult again with the educator if the educator fails to—
 - (a) follow the formal rehabilitation programme;
 - (b) attend rehabilitation; or
 - (c) address the problem of alcohol or drug abuse.

- (11) After consulting with the educator as contemplated in sub item 10
 - (12) the employer may initiate disciplinary proceedings against the educator for misconduct as contemplated in section 18
- .

INCAPACITY CODE AND PROCEDURES IN RESPECT OF ILL HEALTH AND INJURY



THE MANAGEMENT OF TEMPORARY INCAPACITY LEAVE AT SCHOOL LEVEL

Incapacity leave is not an unlimited amount of additional sick leave days at an employee's disposal. Incapacity leave is additional sick leave granted conditionally at the Employer's discretion, as provided for in the *Leave Determination* and *PILIR*.

For purposes of managing temporary incapacity leave and the application of *PILIR*, temporary incapacity leave is regarded to be-

- 7.1.3.1. a short period of incapacity leave, if the employee is absent for not longer than 29 working days per occasion, after the normal sick leave credit have been exhausted, in a sick leave cycle; and
- 7.1.3.2. a long period of incapacity leave, if the employee is absent for 30 working days or more per occasion, after the normal sick leave credit have been exhausted, in a sick leave cycle.

An employee must submit his/her application for temporary incapacity leave in respect of clinical procedures in advance, unless the treating medical practitioner certifies that such procedures have to be conducted as an emergency.

If overcome by a sudden incapacity, the employee must personally notify his/her supervisor/manager **immediately**. A verbal message to the supervisor/manager by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the incapacity prevents the employee to inform the supervisor/manager personally.

An employee must submit application form for TiL within 5 working days after the first day of absence

Failure to do so, leave will be deemed to be leave without pay if not submitted within 2 working days

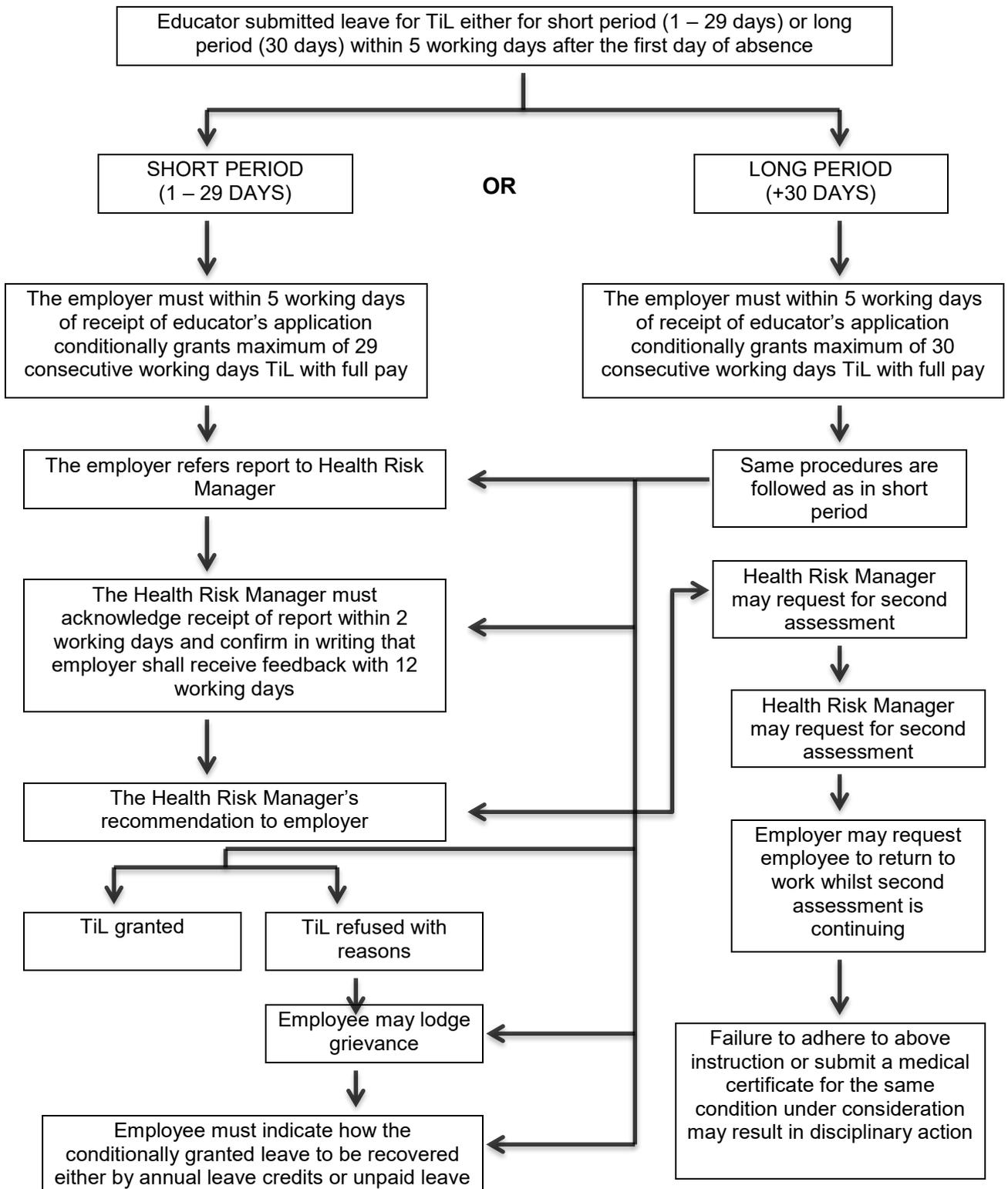
If employee still fails to comply, the supervisor must immediately inform HR to cover the absence by annual leave and/or unpaid leave if insufficient annual leave days

Failure by the employee to submit the application form within stated timeframe or failure by supervisor to manage the process is regarded as serious misconduct

employee must submit sufficient proof that s/he is too ill/injured to perform his/her work satisfactorily;

application form must, regardless the period of absence, be accompanied by a medical certificate issued and signed by a medical practitioner that certifies his/her condition as temporary incapacity and if the employee has consented, the nature and extent of the incapacity.

ILL HEALTH OR INJURY



ILL HEALTH OR INJURY

Read the below extract and answer the questions that follow:

Mr Joe an educator in your school fails to report for duty on Monday. As a principal when he report for duty on Tuesday you speak to him and he promises that it will not happen again. For two weeks nothing happens and Mr Joe reports for work normally. On the third week, Mr Joe comes to school on a Monday with blood red eye and slurred speech. You call him to your office and speak to him. This eventually becomes a pattern with rest periods of two weeks.

1. What is your responsibility towards Mr Joe, as a principal? Please explain your answer.
2. How should the Department deal with Mr Joe?
3. What are an employee's rights in respect of sick leave?
4. What must an employee do when planning to utilise his/her right sick leave?
5. What are your responsibilities as School Principal in managing sick leave in your school?
6. What does incapacity leave entail?
7. What is the general procedure for applying for incapacity leave?

8. What are the preconditions for granting incapacity leave?

9. What is ill-health retirement?

10. What does ill-health retirement entail?

11. What is the general procedure for applying for ill-health retirement?

12. What are the responsibilities of the Department at District and Provincial level in this regard?

13. What are the basic requirements of a medical certificate / sick note?

ILL HEALTH OR INJURY

Read the below extract and answer the questions that follow:

Mr Joe an educator in your school, fails to report for duty on Monday. As a principal when he report for duty on Tuesday you speak to him and he promises that it will not happen again. For two weeks nothing happens and Mr Joe reports for work normally. On the third week, Mr Joe comes to school on a Monday with blood red eye and slurred speech. You call him to your office and speak to him. This eventually becomes a pattern with rest periods of two weeks.

1. What is your responsibility towards Mr Joe, as a principal? Please explain your answer.
 - (a) **Inquire if Mr Joe has an ill-health problem, as this is a pattern;**
 - (b) **if he has, then pass the matter to the Circuit / District Office for an investigation;**
 - (c) **if Mr Joe has no health-related problem, then deal with the matter as misconduct;**
 - (d) **Alcolism and drug dependency is regarded as illnesses, but often employees deny such a problem and conduct arising is dealt with as misconduct.**
2. How should the Department deal with Mr Joe?

If Mr Joe has an ill-health problem, the Department must conduct an investigation.

In conducting the investigation the employer must give the educator, or the trade union representative of the educator or fellow employee, the opportunity to state the case of the educator and to be heard on all the issues that the employer is investigating.

3. What are an educator's rights in respect of sick leave?

In the normal cause of events of life, you might fall ill or get injured in which case you will need leave to recover from your illness or injury. Please note injuries in this context; do not refer to injuries on duty.

You are entitled to 36 working days normal sick leave with full pay in a sick leave cycle. A sick leave cycle is a period of three consecutive years.

4. What must an educator do when planning to utilise his/her right sick leave?

If you know in advance that you have to go for a clinical procedure, for example, an operation, apply and submit your application form in advance.

However, if you are overcome by a sudden illness or sustained an injury, notify your supervisor immediately if you are unable to work due to your illness or injury.

A verbal message by a relative, fellow educator or friend is only acceptable if the nature and/or extent of the illness/injury prevents you from informing your supervisor/manager personally

5. What are your responsibilities as School Principal in managing sick leave in your school?

- ✓ **To consider and grant you sick leave in accordance with your application.**
- ✓ **To monitor and investigate specific normal sick leave trends for possible abuse and to take action if necessary.**
- ✓ **May in certain instances request a medical certificate for periods of shorter than 3 days if a specific trend is detected.**
- ✓ **To advise employees on the sensible use of sick leave.**
- ✓ **Adapt the work environment or job requirements or seek alternative employment, etc. in cases where necessary.**

6. What is incapacity leave?

Incapacity leave is a benefit for which you can apply in the event where you have exhausted your normal sick leave in the 3-year sick leave cycle.

Incapacity leave is for management purposes categorized into two types: -

- **Short incapacity – this is when the period of incapacity leave that you request is for 29 days or less. •**
- **Long incapacity – this is when you apply for 30 or more days of incapacity leave.**

7. What does incapacity leave entail?

You may apply for each and every occasion that you need incapacity leave, subject to-

- **the submission of a medical certificate for each and every occasion; and**

- **the employer's investigation into the nature and extent of your illness or injury.**
8. What is the general procedure for applying for incapacity leave?
- ✓ **Apply on the required application forms. Please note that you must apply on the prescribed application forms for short and long incapacity leave respectively.**
 - ✓ **You may no longer use the Z1 form for this purpose. If you know in advance that you have to go for a clinical procedure, for example, an operation, apply and submit your application form in advance.**
 - ✓ **However, if you are overcome by a sudden illness or sustained an injury, notify your supervisor immediately if you are unable to work due to your illness or injury.**
 - ✓ **A verbal message by a relative, fellow employee or friend is only acceptable if the nature and/or extent of the illness/injury prevents you from informing your supervisor/manager personally.**
 - ✓ **You must always submit a medical certificate with your application. You may also submit available supporting medical reports and information, as well as a written motivation with your incapacity leave application.**
 - ✓ **Refrain from abusing incapacity leave.**
 - ✓ **Adhere to and honour appointments for further medical examinations requested and arranged by the Employer's Health Risk Manager.**
9. What are the preconditions for granting incapacity leave?
- ✓ **The Department will conditionally grant you incapacity leave pending the outcome of its investigation into the nature and extent of your incapacity.**
 - ✓ **The Department shall manage and investigate your application, with the assistance of a Health Risk Manager, in terms of the Policy and Procedure on Incapacity Leave and Ill-health Retirement (PILIR).**
 - ✓ **You may be required to undergo further medical examinations as part of the investigation so that the employer could take an informed decision on incapacity leave or e.g. the possible adaptation of your work environment or alternative employment.**
 - ✓ **The Department will notify you of its findings and take appropriate action according to its findings.**

10. What is ill-health retirement?

When you become permanently unable to work due to medical reasons, you could be discharged/retired from the employ of the Public Service on medical grounds.

11. What does ill-health retirement entail?

Either you or your employer could initiate an ill-health retirement should it be suspected that you have become permanently unable to work. This could, for example, be after a serious car accident.

If you applied for long incapacity leave and the investigation of the Department shows that you will be permanently unable to work, they may escalate your incapacity application to an ill-health retirement application.

12. What is the general procedure for applying for ill-health retirement?

You may be requested to complete ill-health retirement specific application forms. Submit medical certificates and any other available supporting medical reports and information with the application.

Adhere to and honour appointments for further medical examinations requested and arranged by the Health Risk Manager.

13. What are the responsibilities of the Department at District and Provincial level in this regard?

The Department shall manage and investigate your application, with the assistance of a Health Risk Manager, in terms of PILIR.

You may be required to undergo further medical examinations as part of the investigation so that the employer could take an informed decision on your possible ill-health retirement, or if it is that you are permanently unable to work, to take an informed decision on, for example, the possible adaptation of your work environment or alternative employment.

The Department will notify you of its findings and take appropriate action according to its findings.

14. What are the basic requirements of a medical certificate / sick note?

For purposes of normal sick leave medical certificates issued and signed by practitioners and persons who are certified to diagnose and treat patients and

who are registered with the following professional councils established by an Act of Parliament shall be accepted:

- **The Health Professions Council of South Africa**
- **The Allied Health Professions Council of South Africa**
- **The South African Nursing Council**

For purposes of incapacity leave, the employer shall only accept medical certificates issued and signed by medical practitioners registered with the Health Professions Council of South Africa and who are legally certified to diagnose and treat patients. Such a medical certificate must, with your informed consent, describe the nature and extent of the illness/injury.

A medical certificate must contain the following information:

- **Name, address and qualifications of the practitioner.**
- **Name of the patient.**
- **Date and time of examination.**
- **Whether the practitioner is issuing the certificate as a result of personal observations during an examination or as the result of information received from the patient and which is based upon acceptable medical grounds.**
- **Description of the illness/disorder, provided that the patient gave consent to disclose such information.**
- **Whether the patient is totally indisposed for duty or whether the patient will be able to perform less strenuous duties in the work situation.**
- **Period of recommended sick leave and the date of issue of the certificate of illness.**
- **Identity of practitioner if he/she uses pre-printed medical certificates, wording not applicable to the patient should be deleted.**

ILL HEALTH OR INJURY

TOOLKIT FOR EFFECTIVE MANAGEMENT OF LEAVE

TOOLS	PURPOSE
Daily attendance register/ time book	<ul style="list-style-type: none"> ✓ Educators are expected to sign in and out on a daily basis, noting the times of arrival and departure. ✓ These registers are usually found at the entrance to the schools' administrative building or near the staffroom. ✓ When educators are absent or arrived late, the space in the register for that day had to be struck off by the principal or his/her delegate. ✓ The reason for absence should also be indicated in this register. ✓ Principals are able to control late arrivals and absences as long as good recording was maintained.
Leave forms	<ul style="list-style-type: none"> ✓ On application, the educator completes the form in triplicate. ✓ The type and period of leave applied for must be indicated on the form against the signature of the applicant. ✓ The principal must recommend or reject the application. ✓ Where educators had exhausted their sick leave entitlement, they had to apply for temporary incapacity by filling in a PILIR form. ✓ Schools should keep their own individual employee leave records.
Composite leave register	<ul style="list-style-type: none"> ✓ Composite leave registers reflect a summary of leave days and duration per month per educator by category of leave. ✓ Registers should include copies of the leave forms completed. Schools may ✓ Compile monthly reports on absence/leave for the leave file. ✓ Schools should also have leave registers for the three-year sick leave cycle as well and/or annual leave registers.
Movement register / time-off book	<ul style="list-style-type: none"> ✓ This document should be kept in the principal's office. ✓ It records all staff movement during school hours, (e.g. visits to doctors, meetings, DoE workshops, union activities and all official business). ✓ One of its particular applications is for recording and managing 'casual leave'. This referred to short periods of time that was taken during the school day that overlapped with existing leave categories. ✓ The hours of casual leave should be added together and when an educator had reached a total of seven hours (a standard school day) of casual leave, they were required to fill in a leave form for one day for either sick leave or urgent private matters.
Log book / incident book	<ul style="list-style-type: none"> ✓ A logbook is also referred to as an incident book, school journal or permission book. ✓ It records incidents that occurred at school related to the School Management Team, teachers and learners.

TOOLS	PURPOSE
	<ul style="list-style-type: none"> ✓ These incidents included: principals' activities; meetings of principals with individual educators; warnings given to educators; visits to schools by departmental officials and by other people; unusual incidents; violent incidents; and robberies at schools
Relief register for absent educators	<ul style="list-style-type: none"> ✓ A relief register, sometimes called a supervision register, is created manually along with the timetables for learners and teachers. ✓ The principal uses it for arranging which educators had to supervise the classes of colleagues who were absent, as determined every morning before the school started. ✓ SA-SAMS (also see below) automated this task as part of the electronic system's capacity to develop timetables.
Weekly reports	<p>These normally reflect the number of educators who had been absent during each week.</p>
South African School Administration and Management System (SA-SAMS)	<ul style="list-style-type: none"> ✓ SA-SAMS can be used for leave administration and management with automatic handling of public and school holidays. ✓ The system provides on-tap knowledge about credits per individual and per type of leave. ✓ Immediate reports can be generated (within 30 seconds) by selecting the desired fields (e.g. calendar period, type of leave, staff member name, staff category, etc.). ✓ This system can generate monthly and quarterly consolidated leave reports and rates, develop timetables and relief registers, and much more. ✓ One drawback is that this system is not linked to online transfer of data or files, although it automates production of hard-copy records or reports that have to go to the district, or kept at school in a correct format. ✓ Leave administration, monitoring, management, reporting and a range of other functions can be aligned and facilitated extremely well if used optimally. ✓ The greatest benefits are that all information is immediately available and the policy requirements, caps, cycles, etc. are built in automatically into SA-SAMS.

CASE LAW: POOR WORK PERFORMANCE AND ILL HEALTH OR INJURY

1. In *ZA One (Pty) Ltd t/a Naartjie Clothing v Goldman NO (2013) 34 ILJ 2347 (LC)* the court formulated a useful test for whether poor work performance constitutes misconduct or incapacity. The court distinguished the difference between misconduct and poor work performance by asking two questions: 'Did the employee try but could not?' and 'could the employee do it?'

If the answer to the first question is 'yes', the matter concerns poor performance because the employee tries to achieve what is expected of him/her, but cannot do so; this employee does not behave wilfully or indifferently or fail to apply the necessary care.

If the second question is answered in the affirmative then the substandard performance constitutes misconduct. In that case, the employee is capable of doing what is required, and the failure to do so can only arise from indifference or deliberate failure to take care.

2. In *Independent Municipal & Allied Trade Union obo Strydom v Witzenberg Municipality (2008) 29 ILJ 2947 (LC)* Mr Strydom was plunged into depression as a result of being demoted. So severe was his depression that Strydom absented himself from work for nearly a year in total, then applied to be medically boarded. When that application was refused, Strydom was called before an 'incapacity inquiry' and dismissed.

The court recognised that employers saddled with incapacitated employees are still obliged to investigate the causes of the employee's incapacity, and to investigate alternatives to dismissal. As it happened, Strydom sealed his own fate. According to medical reports prepared by his own doctors for the boarding application, his condition was inextricably linked to his work situation and was bound to deteriorate. The medical board had concluded that Strydom could not return to work that had induced his melancholia, but might find alternative employment in the open market. Furthermore, Strydom had at no stage tender his services for a job with less responsibility. Finally, it was clear that Strydom wished to escape from work permanently, and had changed his tune only when that option was closed to him by the medical board. The review application failed.

KEY LEARNING AREAS: SICK LEAVE, INCAPACITY LEAVE AND ILL HEALTH RETIREMENT

1. Summary

Health-related leave measures for institution-based educators		
Categories	Period	Key points
Sick leave	36 working days per 3 year leave cycle	<ul style="list-style-type: none"> • Medical certificate is required when applying for 3 or more days of continuous sick leave • If an educator in his/her first 36 days normal sick leave period, who has been absent from work on more than two occasions during an eight-week period, must regardless of the duration of the sickness or injury, submit a medical certificate stating that the educator was unable to work for the duration of the employee's absence due to sickness or injury
Temporary incapacity	Up to 30 consecutive working days	<ul style="list-style-type: none"> • Temporary incapacity is granted when sick leave credits are exhausted. • During these 30 days an investigation can be conducted. • The Head of Department may grant additional leave.
Permanent incapacity	30 working days	<ul style="list-style-type: none"> • During these 30 days an investigation can be conducted into the nature of the incapacity. • During the 30 days the employer must ascertain the feasibility of alternative employment or adapting the duties of the educator. Failing this, the educator must apply for termination of service, due to ill health.
Occupational injuries and diseases	Leave for the duration of period the educator cannot work	Educators who suffer occupational injuries and diseases are entitled to leave for the period they cannot work

Source: PAM

- ✓ When leave is granted for temporary or permanent incapacity, a maximum of 30 working days paid leave is granted. The Policy and Procedure on Incapacity Leave Ill-health Retirement (PILIR) stipulates that an educator may apply for temporary incapacity leave when their sick credits are exhausted.
- ✓ You must submit your sick leave application personally or through a relative, fellow educator within 5 working days after the first day of absence.

- ✓ Submit a medical certificate for periods of three days and more and in the event where you have utilised sick leave more than twice in an eight-week period, regardless the period of absence.
- ✓ Use and manage normal sick leave in a responsible manner and with circumspect during the sick leave cycle. Refrain from using sick leave for other purposes than illness or injuries since you might end up in a predicament later in the sick leave cycle.
- ✓ You must submit your sick leave application personally or through a relative, fellow educator within 5 working days after the first day of absence. You may no longer use the Z1 leave application form for incapacity leave.
- ✓ There are specific prescribed application forms for short and long periods of incapacity leave, respectively. Ensure that your forms are duly completed and all supporting evidence attached.
- ✓ The Department could only consider and initiate the investigation of your application once you have submitted a duly completed application form and all the documentation required. This includes going back to your doctor for him/her to fill in the necessary report that is part of the application forms. An incomplete application form may jeopardise your access to incapacity leave or ill-health retirement. If you–
 - need time off to consult a doctor, therapist, etc. for reasons related to your health/wellness; or
 - are absent for part of a day due to an illness or injury; or
 - is disabled and has to go for maintenance of equipment used as a result of your disability, the employer will grant you time off for these absences.
- ✓ The Department will keep manual records of such periods used as time off until a full day is completed. It will then be deducted from your sick leave. You will in such an instance be expected to fill in a time off register for record purposes.
- ✓ Proof of such occurrences will obviously be necessary. Be assured that the Department shall, in accordance with your constitutional rights to privacy, the Code of Conduct in the Public Service Regulations, treat at all times any information regarding the medical condition of an employee with the necessary respect and confidentiality.
- ✓ Any transgression of these rights shall be viewed in a serious light and the necessary disciplinary action shall be instituted

2. Considerations for incapacity: Ill health or Injury

CONSIDERATIONS FOR INCAPACITY: ILL HEALTH OR INJURY	
SUBSTANTIVE FAIRNESS	PROCEDURAL FAIRNESS
<p>Whether or not the educator is capable of performing the work for which he or she was employed, and if not –</p> <ul style="list-style-type: none"> ✓ Relevant factors to consider: <ul style="list-style-type: none"> ○ temporary incapacity ○ nature of the job ○ the period of absence and seriousness of illness or injury ○ the possibility of securing temporary replacement ○ consideration of rehabilitation (e.g. alcohol dependence) ✓ In more permanent capacity: <ul style="list-style-type: none"> ○ the extent to which the educator is able to perform the work ○ the extent to which the educator's duties may be adapted ○ the availability of any suitable alternative work 	<ul style="list-style-type: none"> ✓ Conduct an investigation to establish the extent of the incapacity and the prognosis ✓ Investigation of alternatives to dismissal if educator is unable to perform or will be absent for an unreasonable period ✓ Educator has the right to be heard and represented by a trade union representative or fellow employee.

KEY LEARNING AREAS: MISCONDUCT, POOR PERFORMANCE AND ILL HEALTH OR INJURY

MISCONDUCT	POOR PERFORMANCE	ILL HEALTH OR INJURY
<p>Progressive discipline: ✓ In terms of Item 4 of Schedule 2 of the Employment of Educators Act no 76 of 1998 as amended, the function to deal with misconduct is delegated to:</p> <ul style="list-style-type: none"> a) the head of the institution where the educator is employed, i.e. the School Principal; or b) the immediate supervisor of the educator where the educator concerned is the head of the institution, i.e. the Education Development Officer (EDO) 	<p>In terms of Item 7(a) and (b) of Schedule 1: Incapacity Code and Procedures for Poor Work Performance of the Employment of Educators Act no 76 of 1998 as amended, the person appointed by the employer to conduct the procedure of procedure must be an employee on a higher post level than the educator concerned and must as far as practically possible be his/her direct supervisor or the immediate supervisor of such supervisor, i.e. Head of Department (HoD) or Deputy Principal.</p> <p>In terms of Item 7(b) if the direct supervisor or the immediate supervisor of such supervisor of the educator is the cause for the procedure, the employer must appoint a person within the Department of Education (DoE) or within the Provincial Department of Education (PDoE) who is on the same level as the supervisor or the immediate supervisor of such supervisor, i.e. EDO, Chief Education Specialist (CES)</p>	<p>Not delegated. To be handled by the relevant District Office and/or PDoE.</p>
<p>Depending on the nature and seriousness of the misconduct it may or may not warrant a formal disciplinary</p>	<p>In terms of Item 6(b) of Schedule 1: Incapacity Code and Procedures for Poor Work Performance of the</p>	<p>In terms of Item 8(b) of Schedule 1: Incapacity Code and Procedures in respect of Ill Health or Injury of the</p>

MISCONDUCT	POOR PERFORMANCE	ILL HEALTH OR INJURY
enquiry.	Employment of Educators Act no 76 of 1998 as amended the <u>formal disciplinary process</u> must be followed as provided for in Item 5, 7, 8 and 9 of Schedule 2.	Employment of Educators Act no 76 of 1998 as amended the <u>formal disciplinary process</u> must be followed as provided for in Item 5, 7, 8 and 9 of Schedule 2.
The School Principal may only impose sanctions ranging from verbal warning to final written warning and counselling. Cannot impose sanction of dismissal	The decision to terminate the service of the affected educator rests with the Superintendent-General (SG)	The decision to terminate the service of the affected educator rests with the Superintendent-General (SG)
School Principal must keep disciplinary and/or criminal records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for such action.	The School Principal must keep all relevant performance records.	The School Principal must keep all relevant medical records.

APPOINTMENT AND PROMOTION

1. PROVISIONS OF THE PERSONNEL ADMINISTRATION MEASURES (PAM)

B.5 ADVERTISING AND FILLING OF EDUCATOR POSTS (ELRC Resolution 5 of 1998)

B.5.1 General (school-based and office-based educator posts)

B.5.1.1 In the making of any appointment or the filling of any post on any educator establishment due regard must be given to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution and which include the following factors, namely:

B.5.1.1.1 The ability of the candidate.

B.5.1.1.2 The need to redress the imbalances of the past in order to achieve broad representation. (Section 7, EEA, 1998)

B.5.1.2 Any appointment or transfer to any post on the educator establishment of a public school may only be made on the recommendation of the SGB (unless the relevant SGB has not been established yet). (Section 6(3)(a) and (m) of the EEA)

B.5.4 Short-listing and interviews (school-based educator posts)

B.5.4.1 Interview Committees must be established at educational institutions where vacancies are advertised.

B.5.4.2 The Interview Committee must comprise:

B.5.4.2.1 One departmental representative (who may be the School Principal), as an observer and resource person.

B.5.4.2.2 The principal of the school (if he/she is not the departmental representative), except in the case where he/she is an applicant.

B.5.4.2.3 Members of the SGB, excluding educator members who are applicants to the advertised post/s.

B.5.4.3.4 One union representative per union that is a party to the provincial chamber of the ELRC. The union representatives will be observers to the shortlisting, interviews and the drawing up of a preference list.

B.5.4.3 Each Interview Committee must appoint from amongst its members a chairperson and a secretary.

B.5.4.4 All applications that meet the minimum requirements and provisions of the advertisement must be handed over to the SGB responsible for that specific institution.

B.5.4.5 The SGB is responsible for the convening of the Interview Committee and they must ensure that all relevant persons/trade unions are informed at least 5 working days prior to the date, time and venue for the shortlisting, interviews and

- the drawing up of the preference list.
- B.5.4.6 Where the principal of the institution is an applicant, a departmental official may assist the SGB.
- B.5.4.7 In considering the applications, the Interview Committee must ensure that the principles of equity, redress and representivity are complied with and they must adhere to: (Section 6(b) (i – v), EEA)
- B.5.4.7.1 The democratic values and principles referred to in paragraph B.5.1.1.
- B.5.4.7.2 The procedures stipulated in paragraph B.5.
- B.5.4.7.3 The minimum requirements for appointment with regard to educational qualifications, statutory and experiential requirements stipulated in paragraph B.3.2.1.
- B.5.4.7.4 Procedures that would ensure that the recommendation is not obtained through undue influence on the members of the SGB.
- B.5.4.8 The Interview Committee must also consider:
- B.5.4.8.1 The curricular needs of the institution.
- B.5.4.8.2 The obligations of the employer towards serving educators.
- B.5.4.9 The list of short-listed candidates for interview purposes should not exceed five per post. An educator, who has been acting in the advertised post for 12 months or more and has applied for the post, must be shortlisted.
- B.5.4.10 The interviews will be conducted according to agreed upon guidelines and procedures. These are to be jointly agreed upon by the parties to the provincial chamber.
- B.5.4.11 All interviewees must receive similar treatment during the interviews.
- B.5.4.12 At the conclusion of the interviews the Interview Committee must rank the candidates in order of preference, together with a brief motivation, and submit this to the SGB for their recommendation to the relevant employing department.
- B.5.4.13 The SGB must, after having ensured that the principles and processes stipulated in paragraph B.5.4 have been adhered to, submit in order of preference to the HoD, a list of -
- B.5.4.13.1 At least three names of recommended candidates; or
- B.5.4.13.2 Fewer than three candidates in consultation with the HoD. (Section 6(c), EEA,1998)

B.5.5 Appointment (school-based educator posts)

- B.5.5.1 When the HoD considers the recommendation contemplated in paragraph B.5.4.13, he/she must, before making the appointment, ensure that the SGB has met the requirements in paragraph B.5.4.7.
- B.5.5.2 If the SGB has not met the requirements in paragraph B.5.4.13 the HoD must

- decline the recommendation.
- B.5.5.3 Despite the order of preference (paragraph B.5.4.13) and subject to paragraph B.5.5.1, the HoD may appoint any suitable candidate on the list. If the HoD declines a recommendation, he/she must –
- B.5.5.3.1 Consider all the applications submitted for the post.
- B.5.5.3.2 Apply the requirements in paragraph B.5.4.7, appoint a suitable candidate temporarily or re-advertise the post.
- B.5.5.4 The SGB may appeal to the MEC against the decision of the HoD regarding the temporary appointment.
- B.5.5.4.1 The appeal must be lodged within 14 days of receiving the notice of appointment.
- B.5.5.4.2 The appeal must be finalized by the MEC within 30 days.
- B.5.5.4.3 If no appeal is lodged within 14 days, the HoD may convert the temporary appointment into a permanent appointment as contemplated in paragraph B3.1.8. (Section 6(d – k), EEA)
- B.5.5.4.4 The employer will inform all unsuccessful candidates in writing within eight weeks of an appointment being made.

2. ELEMENTS OF A FAIR APPOINTMENT

2.1 Introduction

Appointment and promotion disputes constitute approximately 80% of the disputes that are referred to the ELRC. A useful framework to use in considering whether a particular appointment or promotion was fair is to ascertain whether the employer:

- (a) followed a fair procedure;
- (b) did not discriminate;
- (c) did not make a grossly unreasonable decision when appointing a particular person.

2.2 Fair Procedure

An employer must follow a fair procedure that includes following a collectively agreed procedure or alternatively a legislated or regulated procedure such as that in the PAM. Procedural issues include advertising, sifting, shortlisting, the interview process, the school governing body's recommendation, the Head of Department's appointment, and challenges to whether the school governing body was properly constituted or followed a proper procedure around issues such as recusal, correctly convening meetings etc.

2.3 Non Discriminatory

The Employer must not discriminate either directly or indirectly. Certain discrimination would be categorised as fair discrimination such as where the discrimination is occasioned by the inherent requirements of a job or where it

is in pursuit of the goals of employment equity. Employment equity policies and/or affirmative action plans have given rise to a multitude of disputes.

2.4 Appointments must not be grossly unreasonable

Management has a general managerial prerogative to make appointments and arbitrators will not easily substitute their views for the views of the employer.

Certain appointments may be categorised as grossly unreasonable in that they are not objectively or rationally defensible to the outside observer which gives rise to a suspicion of mala fides or negligence.

3. ROLE OF THE OBSERVER AND RESOURCE PERSON

The departmental representative (the School Principal) and the union representative are observers which means they should not actively participate in any of the processes.

In addition the departmental representative, i.e. the School Principal is referred to as a "resource person"; which means that he/she could be asked by the interview committee for advice on procedures etc. (this does not extend to advice on who is the best candidate).

The role of the School Principal in this regard is crucial to ensure that procedural fairness is adhered to during the process. This becomes especially important where the members of the interview committee are either new members and/or illiterate.

The role of the union observer has often been controversial and in the matter of **G Singh and the Minister of Education and Culture and the Government for the Province of Kwazulu-Natal and Others**, the Arbitrator, Mr K Tipp SC, said the following:

"In my view what is contemplated is that an observer has a positive duty to intervene at the appropriate stage whenever there is a prospect that one candidate may be prejudiced or another given advantage. However, there is clearly a line to be drawn between the input of an observer and full participation of a committee member, particularly in relation to matters such as scoring. It does not form part of the function of an observer to insist on the amendment of questions that the scoring members of the selection committee have discussed and formulated. Similarly, it is not for an observer to insist upon the revision of a particular score. It is not the function of the observer to give directions on matters of substance. Committee members receive independent training to that end. The primary role of an observer is to ensure procedural fairness and equality of treatment of different candidates."

PROCESS MAP: ADVERTISING AND FILLING OF EDUCATOR POSTS

PROCESS	PAR IN PAM	ISSUES
Advertising	Chapter B, Par 3.1	All vacancies in public schools are to be advertised in a gazette, bulletin or circular and must include: <ul style="list-style-type: none"> ✓ the minimum requirements ✓ procedure to be followed for application ✓ names and telephone numbers of contact persons ✓ preferable date for appointment ✓ closing date for the receipt of applications
Sifting	Chapter B, Par 3.2	The employing department shall handle the initial sifting process to eliminate applications of those candidates who do not comply with the requirements as stated in the advertisement. No observers present. Report to Trade Unions that are parties to PELRC
Shortlisting and Interviews	Chapter B, Par 3.3	<p>The interview committee comprises of:</p> <ul style="list-style-type: none"> ✓ one departmental representative (who may be the School Principal), as an observer and resource person; ✓ the School Principal (if s/he is not the departmental representative), except in the case where s/he is an applicant; ✓ members of the school governing body (SGB), excluding educator members who are applicants; ✓ one union representative per union that is a party to the PELRC; ✓ The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list <p>Each interview committee shall appoint from among its members a chairperson and secretary.</p> <p>The SGB is responsible for the convening of the interview committee.</p> <p>The interview committee may conduct shortlisting subject to the following guidelines:</p> <ul style="list-style-type: none"> ✓ the criteria used must be fair, non-discriminatory and in keeping with the Constitution; ✓ the curricular needs of the school ✓ the obligations of the employer towards serving educators ✓ the list of shortlisted candidates should not exceed five per post <p>At the conclusion of the interview process the interview committee shall rank the candidates in order of preference together with a brief motivation and submit this to the SGB for their recommendation to the relevant employing department (SG)</p>
Appointment	Chapter B, Par 3.4	The employing department (SG) makes the final decision subject to: <ul style="list-style-type: none"> ✓ satisfying itself that agreed upon procedures were followed; and ✓ that the decision is in compliance with the Employment of Educators Act, 1998, the South African Schools Act, 1996 and the Labour Relations Act, 1995
Records	Chapter B, par 3.5	The employer must ensure that accurate records are kept of proceedings dealing with the interviews, decisions and motivations relating to the preference list submitted by the SGB and other structures.

The resource person must play a key role during this phase of the process

APPOINTMENT AND PROMOTION

1. List the members of the Interview Committee
2. Who is responsible for the convening of the Interview Committee?
3. What are the four core principles that the Interview Committee must ensure are complied with?
4. What is the maximum number of short-listed candidates for interview purposes?
5. What must the Interview Committee do at the end of the interview?
6. What is the minimum of names of recommended candidates that must be submitted to the SG?
7. Within how many days may the SGB appeal to the MEC against the decision of the SG?
8. Describe the procedure to be followed (a) before an interview; (b) during an interview and (c) after an interview.
9. How would you explain the concepts of equity and redress to members of the SGB on the Interview Committee that might be illiterate?

APPOINTMENT AND PROMOTION

1. List the members of the Interview Committee

The Interview Committee must comprise:

One departmental representative (who may be the School Principal), as an observer and resource person.

The principal of the school (if he/she is not the departmental representative), except in the case where he/she is an applicant.

Members of the SGB, excluding educator members who are applicants to the advertised post/s.

One union representative per union that is a party to the provincial chamber of the ELRC. The union representatives will be observers to the shortlisting, interviews and the drawing up of a preference list.

Each Interview Committee must appoint from amongst its members a chairperson and a secretary.

2. Who is responsible for the convening of the Interview Committee?

The SGB is responsible for convening the Interview Committee in terms of the PAM, Chapter B, par 3.3 (e).

3. What are the four core principles that the Interview Committee must ensure are complied with?

The Interview Committee must ensure that the principles of equity, redress and representivity are complied with and they must adhere to: (Section 6(b) (i – v), EEA)

The democratic values and principles referred to in paragraph B.5.1.1.

The procedures stipulated in paragraph B.5.

The minimum requirements for appointment with regard to educational qualifications, statutory and experiential requirements stipulated in paragraph B.3.2.1.

Procedures that would ensure that the recommendation is not obtained through undue influence on the members of the SGB.

4. What is the maximum number of short-listed candidates for interview purposes?

Should not exceed five.

5. What must the Interview Committee do at the end of the interview?

At the conclusion of the interviews the Interview Committee must rank the candidates in order of preference, together with a brief motivation, and submit this to the SGB for their recommendation to the relevant employing department.

The SGB must, after having ensured that the principles and processes stipulated in paragraph B.5.4 have been adhered to, submit in order of preference to the HoD, a list of -

At least three names of recommended candidates; or

Fewer than three candidates in consultation with the HoD. (Section 6(c), EEA, 1998)

6. What is the minimum of names of recommended candidates that must be submitted to the HoD?

At least three names.

7. Within how many days may the SGB appeal to the MEC against the decision of the HoD?

Within 14 days.

8. Describe the procedure to be followed (a) before an interview; (b) during an interview and (c) after an interview.

See PELRC Resolution 2 of 2002.

9. How would you explain the concepts of equity and redress to members of the SGB on the Interview Committee that might be illiterate?

Equity refers to fairness and justice for everyone. Redress means that something in the past that was wrong must be made right.

10. What is your understanding of the status of observers in the Interview Committee?
See PELRC Resolution 2 of 2002

Observers have participatory status but no voting rights.

11. How would you address a situation where the Interview Committee is unable to reach consensus on the ranking of the applicants from a procedural point of view?

The disagreement must be recoded. In order to unlock the deadlock members will have to use scores to determine the outcome.

12. What steps will you take to ensure the confidentiality of the interview process?

Each member of the Interview Committee to sign a declaratory form on confidentiality.

CASE LAW FOR APPOINTMENTS

1. Section 28(2) of the Constitution of the Republic of South Africa provides that the best interests of the child are of paramount importance in every matter concerning the child. In *Settlers Agricultural High School v HOD, Limpopo [2002] JOL 10167 (T)* the court held that section 28(2) is also applicable in promotion disputes in the education sector.
2. There is no general right to promotion. Employees have the right to be fairly considered for promotion when a vacancy arises. In *Public Service Association of SA obo Helberg v Minister of Safety and Security & another (2004) 25 ILJ 2373 (LC)* it was held that it was expected that the employer should appoint the best candidate when selecting suitable candidates for promotion. In terms of section 6(2) of the Employment Equity Act no 55 of 1998 this expectation is subject to the employer's right to appoint a weaker candidate in the name of affirmative action in order to address the imbalances of the past.
3. It is generally accepted that the manner in which candidates perform during interviews and other subjective impressions may be taken into account when making an appointment. In *PSA obo Badenhorst v Department of Justice [1998] 10 BALR 1293 (CCMA)* it was held that there may be reasons for preferring one employee to another apart from formal qualifications and experience. The employer may take into account subjective considerations such as performance at an interview and life skills. This however does not mean that appointments can be made solely based on subjective impressions. Merit always remains the most important factor to be considered.
4. In *SAPS v SSSBC [2010] 8 BLLR 892 (LC)* the court held that the mere fact that an employee is already in a post, does not give him or her an automatic right to a promotion when the position becomes available.
5. In *Mashegoane and another v University of the North [1998] 1 BLLR 73 (LC)* the court pronounced that promotion means an employee is elevated to a position that carries greater authority and greater status than the current position that the employee is employed.
6. In *PSA v Minister of Safety & Security & another (2004) 25 ILJ 2373 (LC)* the court said that employers are expected to appoint the best, and / or the strongest candidate
7. Unless an applicant proves that he was the best of all the candidates who applied for the position, no substantive unfairness exists. In this regard refer to *National Commissioner of the SAPS v SSBC (2005) 26 ILJ 903 (LC)*; *Woolworths (Pty) Ltd v Whitehead (2000) 21 ILJ 571 (LAC)*; *UCT v Auf der Heyde (2001) 22 ILJ 2647 (LAC)*; *Minister of Safety and Security v Jansen NO (2004) 25 ILJ 708 (LC)*; *KwaDukuza*

Municipality v SALGBC [2008] 11 BLLR 1057 (LC)

8. In the absence of gross unreasonableness, bad faith, irrational, arbitrary or capricious conduct, arbitrators should be hesitant to interfere with the exercise of management's discretion in promotion disputes. In this regard see *PSA v Minister of Safety & Security & another* (2004) 25 ILJ 2373 (LC); *PAWC (Department of Health & Social Services) v Bikwani & others* (2002) 23 ILJ 761 (LC) 771; *Arries v CCMA and Others* (2006) 27 ILJ 2324 (LC)
9. In *Head, Western Cape Education Department and others v Governing Body, Point High School and others* 2008 (5) SA 18 (SCA) the court held that the test is not whether the employer arrived at the correct decision, but whether his decision was reasonable. The court also held the following:
"The Executing Authority is required to act reasonably... The court has no power to review his decision purely because there may be another, perhaps better, 'equilibrium' which could have resulted by attributing more weight to some factor or factors and less to others. If that struck by the decision-maker is reasonable, then it must stand..."
10. Unless an applicant has proved that he was the best of all the candidates who applied for the position, then, even if unfair conduct was proved, no form of substantive relief can be granted – gross irregularity to do so. In this regard see *National Commissioner of the SAPS v SSSBC* (2005) 26 ILJ 903 (LC); *Woolworths (Pty) Ltd v Whitehead* (2000) 21 ILJ 571 (LAC); *UCT v Auf der Heyde* (2001) 22 ILJ 2647 (LAC); *Minister of Safety and Security v Jansen NO* (2004) 25 ILJ 708 (LC); *KwaDukuza Municipality v SALGBC* [2008] 11 BLLR 1057 (LC). Examples of Substantive Relief:
 - ✓ *Appointment to the post*
 - ✓ *Appointment to a similar post*
 - ✓ *Directing the employer to compensate the employee at the same salary level as that of the promotion post*
 - ✓ *Protective Promotion*
11. In *Pityana v MEC, Department of Education, Eastern Cape Province* (2009) 30 ILJ 2664 (Ck) it was held that arbitrators should not order the employer to repeat the process unless the applicant stands a realistic chance of being appointed – He cannot have a realistic chance if he is not one of the best candidates.

KEY LEARNING AREAS: APPOINTMENT AND PROMOTION

1. An effective resource person must:-
 - (a) Know the relevant provisions of the PAM in relation to the interview process and procedures;
 - (b) Know the provisions of Schedule 1 of ELRC Resolution 5 of 1998;
 - (c) Know the provisions of PELRC Resolution 2 of 2002;
 - (d) Know the provisions of ELRC Collective Agreement 4 of 2016;
 - (e) Know the relevant provisions of the Constitution of the Republic;
 - (f) Know the relevant provisions of the Employment Equity Act 55 of 1998.
2. The departmental representative (resource person) must advise the members of the interview committee on matters pertaining to procedure and not on who is the best candidate.
3. The departmental representative (resource person) has observer status and has no influence over the outcome of the shortlisting and interview process.
4. In the making of any appointment or the filling of any post on any educator establishment due regard must be given to equality, equity and the other democratic values and principles which are contemplated in section 195(1) of the Constitution and which include the following factors, namely:
 - 4.1 The ability of the candidate.
 - 4.2 The need to redress the imbalances of the past in order to achieve broad representation. (Section 7, EEA, 1998)
 - 4.3 Any appointment or transfer to any post on the educator establishment of a public school may only be made on the recommendation of the SGB (unless the relevant SGB has not been established yet). (Section 6(3)(a) and (m) of the EEA)
5. In considering the applications, the Interview Committee must ensure that the principles of equity, redress and representivity are complied with and they must adhere to: (Section 6(b) (i – v), EEA)
 - 5.1 The democratic values and principles referred to in paragraph B.5.1.1 of the PAM
 - 5.2 The procedures stipulated in paragraph B.5 of the PAM.
 - 5.3 The minimum requirements for appointment with regard to educational qualifications, statutory and experiential requirements stipulated in paragraph B.3.2.1 of the PAM
 - 5.4 Procedures that would ensure that the recommendation is not obtained through undue influence on the members of the SGB.
6. The Interview Committee must also consider:
 - 6.1 The curricular needs of the institution.
 - 6.2 The obligations of the employer towards serving educators. (Collective Agreement 4 of 2016).

7. The interviews will be conducted according to agreed upon guidelines and procedures. These are to be jointly agreed upon by the parties to the provincial chamber. (Resolution no 2 of 2002).

GROUP ASSIGNMENTS

In your groups discuss how best to deal with the scenarios below, e.g. as a grievance, misconduct, poor performance other than incapacity, incapacity due to ill health, incapacity due to poor performance etc. and give detailed reasons for your decision and suggest appropriate remedies:

1. An educator is unhappy about her subject allocation. In 2015 she taught Life Orientation and First Additional Language but in 2016 the principal allocated Maths, which was one of her major subjects at University 20 years ago. The educator is very upset about this and refuses to teach the subject.
2. An educator claims that the HOD is sexually harassing her. She stays absent from school for 2 weeks. When asked to submit her grievance in writing, she refuses to do so because her husband advised her to report the harassment to the police. However, this is not done and the educator remains absent claiming that the employer does not protect her in the workplace.
3. An educator Mr. A, refuses to attend the morning briefings at school. When asked by the principal why, he claims that he does not feel comfortable praying in the morning with colleagues who are backstabbers. During the morning briefing sessions, the smooth running of the school for the day is discussed meaning educators are placed to invigilate in classes of absent colleagues. During one of these sessions Mr. A. Is allocated duties, which he does not perform claiming he was not consulted.

4. Ms. B an educator at a primary school has a tendency to stay absent on or about the 20th of each month. The principal informs Ms. B that she must submit a doctor's certificate for every day that she claims to be ill because of the pattern that is detected. Ms. B refuses to do so and the principal does NOT recommend her leave without informing her. Ms. B consults Labour Relations who informs her that the *audi* rule must be applied in all circumstances.

5. A parent visits the school and claims that an educator Mr. C is having a sexual relationship with her 15-year-old daughter.

6. The HOD accuses the Deputy Principal of having an affair with a post level 1 educator and therefore this PL 1 educator gets special preferences. Both parties are married and the matter spills over into their homes. The PL 1 educator wants to sue the HOD for defamation of character.

7. A HOD at a special school has a very bombastic personality. She speaks loudly at all times and is known for this at school. A soft-spoken educator is reprimanded by the HOD and leaves the school in tears. The HOD claims that she did not scream at the educator as it is her normal voice and the educator claims that the HOD "bullied" her.

8. Mr X your Biology teacher was the victim of a hijacking incident three months ago. He is still in hospital in ICU and the doctors have informed him that he will be wheelchair-bound for the rest of his life and he has also lost his speech completely.

9. Mrs Y has failed to mark the examination scripts of her Grade 12 class and claims that she was unable to do so, because of the overload she is under. She has the same number of periods of her other colleagues in the same Department.

10. You have given Mr B an instruction to take the under 11 boys soccer team to Queenstown to play in the final. Mr B afterwards came to your office and verbally abused you in front of other colleagues. He claimed that you are harassing him because he is the youngest on the staff. However he eventually took the team to Queenstown as instructed.

11. Use the same scenario in par. 10 above. However in this instance Mr B after he has verbally abused you, refused to carry out your instruction and as a result the soccer team was disqualified and lost the final.

16. During a staff meeting a serious confrontation between two teachers developed following the recent local government elections. The confrontation escalated into a fight between the two of them. To complicate matters, one teacher was a female and the other one a male and your staff is divided over the matter.

PERFORMANCE ADMINISTRATION MEASURES (PAM)

JOB TITLE	EDUCATIONAL QUALIFICATION	STATUTORY REQUIREMENTS	COMPETENCIES AND SKILLS		EXPERIENTIAL COMPETENCY
			FUNCTIONAL FIELD	GENERIC	
3.2.1.1 School-based Educators					
(a) School-based Educator: General Classroom Teacher					
Teacher (REQV 13)	A recognised three-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	Basic knowledge of subject/ programme/phase as provided for in the professional qualification.	1. Teaching and assessment skills 2. Extra- and co-curricular skills 3. Administrative skills 4. Able to interact with stakeholders. 5. Communication skills.	12 months probation
Teacher (REQV 14 ¹)	A recognised four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	Basic knowledge of subject/ programme/phase as provided for in the professional qualification.	1. Teaching and assessment skills 2. Extra- and co-curricular skills 3. Administrative skills 4. Interaction with stakeholders. 5. Communication skills.	12 months probation
Senior Teacher (REQV 13)	A recognised three-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	Experienced educator with good knowledge of subject/ programme/phase as provided for in the professional qualification.	1. Good teaching and assessment skills 2. Extra- and co-curricular skills 3. Administrative skills 4. Interaction with stakeholders. 5. Good communication skills. 6. Is able to give guidance.	Becomes a Senior Teacher once he/she reaches notch code 103.
Senior Teacher (REQV 14 ¹)	A recognised four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	Experienced educator with good knowledge of subject/ programme/phase as provided for in the professional qualification.	1. Good teaching and assessment skills 2. Extra- and co-curricular skills 3. Administrative skills 4. Interaction with stakeholders. 5. Good communication skills. 6. Is able to give guidance.	Becomes a Senior Teacher once he/she reaches notch code 103.

PAM Chapter B

B - 44

PERSONNEL ADMINISTRATION REGULATIONS (PAM)

JOB TITLE	EDUCATIONAL QUALIFICATION	STATUTORY REQUIREMENTS	COMPETENCIES AND SKILLS		EXPERIENTIAL COMPETENCY
			FUNCTIONAL FIELD	GENERIC	
Master Teacher (REQV 13)	A recognised three-year professional teacher education.	Registration with SACPE as professional educator.	Experienced educator with good knowledge of subject programme/phase as provided for in the professional qualification.	<ol style="list-style-type: none"> 1. Good teaching and assessment skills. 2. Extra- and co-curricular skills. 3. Administrative skills. 4. Interaction with stakeholders. 5. Good communication skills. 6. Is able to give guidance. 	Becomes a Master Teacher once he/she teaches match code 120.
Master Teacher (REQV 14)	A recognised four-year professional teacher education.	Registration with SACPE as professional educator.	Experienced educator with good knowledge of subject programme/phase as provided for in the professional qualification.	<ol style="list-style-type: none"> 1. Good teaching and assessment skills. 2. Extra- and co-curricular skills. 3. Administrative skills. 4. Interaction with stakeholders. 5. Good communication skills. 6. Is able to give guidance. 	Becomes a Master Teacher once he/she teaches match code 120.
(b) School-based Educator: Departmental Head	Maangir A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACPE as professional educator.	Advanced knowledge of teaching as provided for in the professional qualification.	<ol style="list-style-type: none"> 1. Good teaching and assessment skills. 2. Good extra- and co-curricular skills. 3. Good people management skills. 4. Good administrative skills. 5. Good communication skills. 	3 years of actual teaching experience.

PAM Chapter B

B - 45

PERSONNEL ADMINISTRATIVE MEASURES (PAM)

JOB TITLE	EDUCATIONAL QUALIFICATION	STATUTORY REQUIREMENTS	COMPETENCIES AND SKILLS FUNCTIONAL FIELD	GENERIC SKILLS	EXPERIENTIAL COMPETENCY
Deputy Principal	A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	<ol style="list-style-type: none"> Advanced knowledge of teaching as provided for in the professional qualification. Good management skills. Leadership. 	<ol style="list-style-type: none"> Good teaching and assessment skills. Good extra-curricular skills. Good people management skills. Good administrative skills. Good communication skills. 	5 years of actual teaching experience in the field.
Principal	A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	<ol style="list-style-type: none"> Good knowledge of teaching as provided for in the professional qualification. Good management skills. Good leadership skills. 	<ol style="list-style-type: none"> Good co-curricular skills. Good people management skills. Good administrative skills. Good communication skills. Good knowledge of applicable educator legislation, regulations and policies. 	7 years of actual teaching experience in the field.

3.2.1.2 Office-based Educators

Office-based Educator: Specialist	Office-based Educator: Specialist	Office-based Educator: Specialist	Office-based Educator: Specialist	Office-based Educator: Specialist	Office-based Educator: Specialist
Education Specialist	A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.	<ol style="list-style-type: none"> Leader Communicator Financial planner and manager Strategic planner and transformer Policy developer Researcher Curriculum developer Staff developer Organiser 	<ol style="list-style-type: none"> Leadership Communication Financial planning and management Strategic planning and transformation Policy development Researching Curriculum developing Staff developing Organising 	3 years' experience in the educational field.
Senior Education Specialist	A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.			5 years' experience in the educational field.
Deputy Chief Education Specialist	A recognised three- or four-year qualification, which includes professional teacher education.	Registration with SACE as professional educator.			8 years' experience in the educational field.

SCHEDULE 1

THE ADVERTISING AND FILLING OF EDUCATOR POSTS

1. ADVERTISING

1.1 The advertisement of vacant posts for educators must:

- (a) be self-explanatory and clear and must include:-
 - i) minimum requirements,
 - ii) procedure to be followed for application,
 - iii) names and telephone numbers of contact persons,
 - iv) preferable date of appointment, and
 - v) closing date for the receipt of applications;
- (b) be accessible to all who may qualify or are interested in applying for such post(s);
- (c) be non discriminatory and in keeping with the provisions of the Constitution of the RSA, and
- (d) clearly state that the State is an affirmative action employer.

1.2 All vacancies in public schools are to be advertised in a gazette, bulletin or circular. The existence of which shall be made public by means of an advertisement in the public media both provincially and nationally. The information to be furnished in the latter advertisement shall include offices and addresses where the gazette, bulletin or circular is obtainable. The gazette, bulletin or circular must be circulated to all educational institutions within the province.

1.3 Educator posts outside public schools shall be advertised both in the national and provincial media and by circular to all schools in the relevant province, ensuring that the provisions of paragraph 1.1 are met.

1.4 Educator posts at colleges shall be advertised in the national and provincial media by the employing department, ensuring that the provisions of paragraph 1.1 are met.

2. SIFTING

2.1 The employing department shall acknowledge receipt of all applications by:

- 2.1.1 informing all applicants in writing of receipt,
- 2.1.2 clearly indicating whether the application is complete or not, and
- 2.1.3 indicating whether the applicant meets the minimum requirements for the post and that such applications have been referred to the institutions concerned.



- 2.2 The employing department shall handle the initial sifting process to eliminate applications of those candidates who do not comply with the requirements for the post(s) as stated in the advertisement.
- 2.3 In the case of colleges, where applications are received at the institution, the college council shall acknowledge receipt of all applications in terms of 2.1 above.
- 2.4 Trade Union parties to Council will be given a full report, at a formal meeting, on:-
 - 2.4.1 names of educators who have met the minimum requirements for the post/s in terms of the advertisement;
 - 2.4.2 names of educators who have not met the minimum requirements for the post/s in terms of the advertisement; and
 - 2.4.3 other relevant information that are reasonably incidental thereto.

3. SHORTLISTING AND INTERVIEWS

- 3.1 Interview Committees shall be established at educational institutions where there are advertised vacancies.
- 3.2 The Interview Committee shall comprise:
 - 3.2.1 In the case of public schools:-
 - a) one departmental representative (who may be the school principal), as an observer and resource person;
 - b) the Principal of the school (if s/he is not the departmental representative), except in the case where s/he is an applicant;
 - c) members of the school governing body, excluding educator members who are applicants to the advertised post/s; and
 - d) one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.
 - 3.2.2 In the case of colleges:-
 - a) one departmental representative, as an observer and resource person;



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- b) the head of the institution, except in the case where s/he is an applicant;
- c) members of the college council, excluding educator members who are applicants to the advertised post/s; and
- d) one union representative per union that is a party to the provincial chamber of the ELRC. The union representatives shall be observers to the process of shortlisting, interviews and the drawing up of a preference list.

- 3.3 Each Interview Committee shall appoint from amongst its members a chairperson and a secretary.
- 3.4 All applications that meet the minimum requirements and provisions of the advertisement shall be handed over to the school governing body responsible for that specific public school.
- 3.5 The school governing body is responsible for the convening of the Interview Committee and they must ensure that all relevant persons/organisations are informed at least 5 working days prior to the date, time and venue of the shortlisting, interviews and the drawing up of the preference list.

Where the Principal is an applicant, a departmental official may assist the school governing body.

- 3.6 The Interview Committee may conduct shortlisting subject to the following guidelines:
 - 3.6.1 The criteria used must be fair, non-discriminatory and in keeping with the Constitution of the country.
 - 3.6.2 The curricular needs of the school.
 - 3.6.3 The obligations of the employer towards serving educators.
 - 3.6.4 The list of shortlisted candidates for interview purposes should not exceed five per post.
- 3.7 The interviews shall be conducted according to agreed upon guidelines. These guidelines are to be jointly agreed upon by the parties to the provincial chamber.
- 3.8 All interviewees must receive similar treatment during the interviews.



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- 3.9 At the conclusion of the interviews the interviewing committee shall rank the candidates in order of preference, together with a brief motivation, and submit this to the school governing body for their recommendation to the relevant employing department.
- 3.10 The governing body must submit their recommendation to the provincial education department in their order of preference.
- 3.11 In the case of colleges, the interviewing committee shall submit its ranked, preference list to the college council for their recommendation to the relevant employing department.

4. APPOINTMENT

- 4.1 The employing department must make the final decision subject to:
- 4.1.1 satisfying itself that agreed upon procedures were followed; and
- 4.1.2 that the decision is in compliance with the Employment of Educators Act of 1998, the South African Schools Act, 1996 and the Labour Relations Act, 1995.
- 4.2 The employer will inform all unsuccessful candidates, in writing, within eight weeks of an appointment being made.

5. RECORDS

The employer must ensure that accurate records are kept of proceedings dealing with the interviews, decisions and motivations relating to the preference list submitted by school governing bodies and other such structures.

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PROVINCIAL EDUCATION LABOUR RELATIONS CHAMBER: EASTERN
CAPE

RESOLUTION NO. 2 OF 2002

GUIDELINES FOR INTERVIEWS

1. PURPOSE OF THIS AGREEMENT

- 1.1 To interpret resolution no. 5 of 1998 signed in the Education Labour Relations Council (ELRC).
- 1.2 To establish guidelines for interviews in accordance with clause 3.7 in Schedule 1 of Resolution no. 5 of 1998.

2. SCOPE OF AGREEMENT

- 2.1 This agreement binds:
 - 2.1.1 The employer; and
 - 2.1.2 All the employees of the employer as defined in the Employment of Educators Act, no. 76 of 1998, whether such employees are members of trade union parties to this agreement or not.

3. THE PARTIES TO COUNCIL NOTE:

- 3.1 Resolution no. 5 of 1998 of the Education Labour Relations Council contains the agreed to process for the filling of educator posts at institutions.
- 3.2 Differences in application and interpretation of the mentioned resolution have led to several alleged unfair labour practice disputes.
- 3.3 The need to assist School Governing Bodies to perform their functions in accordance with the relevant legislation.
- 3.4 Paragraph 3.7 in Schedule 1 of Resolution no. 5 of 1998 requires the Provincial Chamber to develop guidelines for interviews.
- 3.5 The commitment of parties to the Provincial Chamber to pursue dispute prevention in the process of maintaining labour peace in education.

PROVINCIAL EDUCATION LABOUR RELATIONS CHAMBER: EASTERN CAPE
RESOLUTION NO. 2 OF 2002
GUIDELINES FOR INTERVIEWS

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4. THE PARTIES TO COUNCIL AGREE TO THE FOLLOWING:

- 4.1 Interpretation to the following clauses contained in Resolution no. 5 of 1998
- 4.1.1 Clause 2.1: The Employer shall send letters of acknowledgement to all applicants before the application forms are sent to School Governing Bodies.
- 4.1.2 Clause 2.2: The initial sifting of applications in terms of the minimum requirements for the posts as stated in the Personnel Administration Measures (PAM) shall be done by the Employer.
- 4.1.3 Sub-clause 3.2.1 (a): The School Governing Body must send an invitation for 1 (one) observer per union to both the unions and the relevant Districts.
- 4.1.4 Sub-clause 3.2.1 (b): The Employer shall fulfill its obligation and ensure that a departmental representative is present at all processes.
- 4.1.5 In the event of a departmental representative not being present at the start of proceedings due to unforeseen circumstances, the School Governing Body should:
- 4.1.5.1 In the case of a principal post adjourn the meeting to allow for the departmental representative to be present.
- 4.1.5.2 In the case of any other educator post continue as the school principal will be the departmental representative. Where neither the school principal nor any other designated departmental official is present, the School Governing Body must adjourn the meeting to allow for the departmental representative to be present.
- 4.1.6 Sub-clause 3.2.1 (c): Members co-opted for their expertise or skills, including resource persons and observers, in the Interview Committee do not have voting rights.
- 4.1.7 Clause 3.4.: As all instruction and relevant information would appear in the vacancy list, School Governing Bodies shall not open the envelope containing the application forms prior to the short-listing criteria having been finalised.
- 4.1.8 Clause 3.6: Short-listing criteria must be tabled for adoption at the short-listing meeting of the Interview Committee and comply with the set guidelines. The



shortlisting criteria should be drawn up in consultation with all parties.

4.1.9 Consultation with the departmental representative and union observers is strongly encouraged where additional criteria are concerned.

4.1.10 Sub-clause 3.6.3: The Interview Committee must short-list those educators who are "carried additional to the establishment" and suitable in terms of the curricula needs of the school.

4.1.11 Sub-clause 3.6.4: The number of 5 (five) applicants is a guideline and the total to be short-listed, in addition to those suitable excess educators, is subject to the discretion of the School Governing Body.

4.2 Procedure before interviews

4.2.1 The School Governing Body should establish an Interview Committee.

4.2.2 The School Governing Body must convene the first meeting of the Interview Committee.

4.2.3 The Interview Committee must elect among themselves a chairperson and secretary.

4.2.4 The Interview Committee must set and adopt short-listing criteria;

4.2.5 The Interview Committee must short-list applicants as guided by resolution no. 5 of 1998;

4.2.6 The Interview Committee must draft questions for interviews;

4.2.7 The above draft questions must under no circumstances be made available in whatever form to any of the applicants / interviewees prior the actual interview session;

4.2.8 The Interview Committee must finalise and adopt the questions to be asked;

4.2.9 The above questions should be in accordance with the criteria / requirements for the post.

4.3 Procedure during interviews

4.3.1 Allow enough time for each interview;

- 4.3.2 Each applicant must receive more or less the same amount of time per interview;
- 4.3.3 The Chairperson of the Interview Committee should allow members of the Committee to put questions according to a pre-arranged plan;
- 4.3.4 Interviewees should be treated in a similar manner, both in terms of questions asked and manner in which interviews are conducted;
- 4.3.5 Indicate when and how the applicant will be informed of the final decision.
- 4.3.6 Do not:
 - 4.3.6.1 Rush the interview;
 - 4.3.6.2 Allow any person who is an applicant to be part of any of the processes;
 - 4.3.6.3 Ask questions about religion, sexual orientation personal questions or leading questions;
 - 4.3.6.4 Cross-examine a applicant;
 - 4.3.6.5 Interrupt answers of applicants, unless the purpose is to get clarity from applicant;
 - 4.3.6.6 Inform any of the applicants about the success or not of the applicant during the interview – this is the role of the Employer.

4.4 Procedure after interviews

- 4.4.1 The Interview Committee should reach a decision as soon as possible;
- 4.4.2 The Interview Committee must rank all the applicants interviewed in order of their preference and motivate the ranking of each applicant to the School Governing Body;
- 4.4.3 The School Governing Body, not the Interview Committee, must submit its recommendation in order of preference to the Eastern Cape Education Department. This submission of the School Governing Body may or may not differ from the earlier submission of the Interview Committee. The School Governing Body must give reasons to the Interview Committee when changes are to be made to the preference list submitted by the Interview Committee.

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- 4.4.4 The Eastern Cape Education Department must notify the successful applicant first and, as soon as possible, obtain his / her acceptance of the nomination in writing; thereafter
- 4.4.5 The Eastern Cape Education Department must notify the unsuccessful interviewees as soon as possible;
- 4.4.6 The School Governing Body must return all applications and forward copies of the minutes to the Eastern Cape Education Department;
- 4.4.7 An applicant has the right to request and obtain information about his / her unsuccessful interview;
- 4.4.8 The School Governing Body must ensure that the nomination form and support documentation are correctly and fully completed and submitted to the Eastern Cape Education Department as soon as possible;
- 4.4.9 The School Governing Body must retain accurate records of proceedings related to both short-listing and interviewing.

5. DISPUTE RESOLUTION PROCEDURE:

- 5.1 Any dispute arising from this agreement shall be referred to the Education Labour Relations Council for resolution.

6. DATE OF IMPLEMENTATION:

- 6.1 This agreement shall in respect of parties and non-parties, come into effect the date it is signed, subject to this agreement being ratified and endorsed by the ELRC.

7. DEFINITIONS:

- 7.1 "School Governing Body" refers to the relevant governance structure of the educational institution or college as defined in the ELRC Resolution no. 5 of 1998.
- 7.2 "Observer" shall have participatory status meaning the right to ask questions for clarification, but shall not take part in actual interview process and shall not have any voting rights.
- 7.3 "District" means the newly demarcated areas as per departmental organogram 2002.

EDUCATION LABOUR RELATIONS COUNCIL

Established in terms of the LRA of 1995 as amended.



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EDUCATION LABOUR
RELATIONS COUNCIL

RESOLUTION 7 OF 2001

13 DECEMBER 2001

**NEW LEAVE MEASURES FOR EDUCATORS
AND PROVISION FOR THE REMUNERATION
OF EDUCATORS WHO PERFORM CHILD
CARE DUTIES DURING PERIODS OF LEAVE**

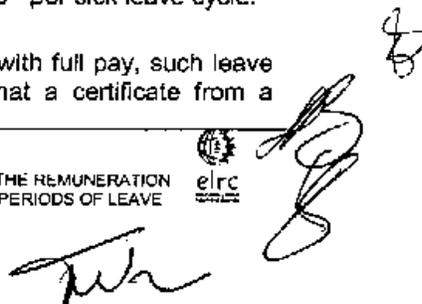
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7 ANNUAL LEAVE WITH FULL PAY GRANTED IN EXCESS

- 7.1 An educator may not be granted annual leave with full pay in excess of that which the educator has to his or her credit, including leave credit in terms of paragraph 5.1 above.
- 7.2 If due to a *bona fide* error, an educator has been granted annual leave with full pay in excess of that which stood to her or his credit at that time, such excess grant must be deducted from the subsequent leave cycle.
- 7.3 If an educator who has been granted excess annual leave with full pay exits the service of the State, such leave granted in excess of what stood to the educator's credit on such last day of duty must be regarded as an overpayment that must be recovered from her or him.

8 NORMAL SICK LEAVE

- 8.1 Educators are entitled to 36 working days sick leave with full pay over a three-year cycle. Unused sick leave shall lapse at the expiry of the three-year cycle.
- 8.2 If an educator is unable to report for duty due to sudden illness, she or he must immediately notify his/her immediate supervisor of her or his inability to report for duty.
- 8.3 Educators who apply for three or more sick leave days must submit a certificate from a registered and recognised medical practitioner as defined by the Health Professionals' Council of South Africa, citing the reason for and duration of absence.
- 8.4 In instances where a pattern in the utilisation of sick leave has been established, a certificate may be required for absences of less than three working days. Notwithstanding the submission of a certificate, the employer may, on the grounds of further medical advice, refuse to grant sick leave for any absence from duty to which the certificate relates, and the absence shall be considered as leave without pay.
- 8.5 For every 15 consecutive days' leave taken without pay, an educator's sick leave entitlement shall be reduced by 1/36th per sick leave cycle.
- 8.6 If an educator falls ill whilst on annual leave with full pay, such leave may be converted to sick leave provided that a certificate from a



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registered medical practitioner is submitted within 30 days to substantiate the indisposition.

8.7 Vacation leave without pay may not be converted into sick leave.

9 TEMPORARY INCAPACITY LEAVE

9.1 An educator who has exhausted her or his sick leave credit in a three - year cycle and who, according to the relevant medical practitioner, requires to be absent due to incapacity that is not permanent may be granted additional sick leave with full pay.

9.2 Such a condition must have been certified in advance by the attending medical practitioner as a temporary incapacity except where conditions do not permit.

9.3 The Head of Department may require the educator to obtain a second opinion before granting approval for additional sick leave. Expenditure in this regard will be met from the departmental budget.

9.4 The Head of Department may grant a maximum of 30 consecutive working days leave with full pay during which period an investigation must be conducted into the nature and extent of the incapacity. The investigation shall be conducted in accordance with item 10(1) of Schedule 8 of the Labour Relations Act, 1995.

9.5 On the basis of medical evidence, the Head of Department may approve the granting of additional sick leave days on conditions that she or he shall determine.

9.6 If the educator is of the view that she or he has been unfairly treated as regards the granting of additional sick leave, she/he has the right to follow the grievance procedure and the relevant dispute resolution procedures in order to settle the matter.

10 PERMANENT INCAPACITY

10.1 Educators whose degree of incapacity has been certified by a competent medical practitioner as permanent shall, with the approval of the Head of Department, be granted a maximum of 30 working days paid sick leave, or such additional number of days required by the employer to finalise processes mentioned below.

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- 10.2 The employer shall, within 30 working days, ascertain the feasibility of:
- 10.2.1 Alternative employment; or
 - 10.2.2 Adapting duties or work circumstances to accommodate the educator.
- 10.3 An educator, whose degree of incapacity has been certified as permanent but who can still render a service, may, in terms of the applicable measures, be redeployed horizontally with retention of her or his benefits.
- 10.4 If the redeployment necessitates reallocation to a job of a lower grading, such action should be explained well in advance and the continued utilisation of such an educator should, in this regard, be with her or his consent.
- 10.5 In instances where the educator's redeployment entail retraining, the employer shall take requisite resources (time and financial) and potential returns into consideration before approving redeployment.
- 10.6 The redeployment of an educator's services should ensure the optimal utilisation of her or his competencies and should not compromise service delivery.
- 10.7 If the employer or the educator is convinced that the educator will never be able to render an effective service at her or his level or rank, the educator may proceed with an application for termination of service due to ill health.

11 LEAVE FOR OCCUPATIONAL INJURIES AND DISEASES

- 11.1 Educators who, as a result of their work, suffer occupational injuries or contract occupational diseases, shall be granted occupational and disease leave for the duration of the period they cannot work.
- 11.2 If an educator suffers a work-related injury as a result of an accident involving a third party, the Head of Department shall grant her or him occupational injury leave provided that the educator:
- 11.2.1 Brings a claim for compensation against the third party.

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11.2.2 Undertakes to use compensation (in terms of the Compensation for Occupational Injuries and Diseases Act of 1993) received to recompense as far as possible for the employer's contribution to the cost arising from the accident.

11.3 The Head of Department shall take reasonable steps to assist an educator to claim compensation according to sub -paragraph 11.2 above.

12 SPECIAL LEAVE FOR QUARANTINE PURPOSES

12.1 Special leave with full pay may be granted to an educator who has been exposed to a medical condition that requires such person to be placed under quarantine.

12.2 Application for such leave must be accompanied by a certificate from a medical practitioner stating the period of quarantine as well as the reasons necessitating such leave.

13 MATERNITY LEAVE

13.1 An educator is entitled to 4 consecutive months' maternity leave on full pay to commence at least 14 days prior to the expected date of birth but not later than the actual date of birth in a case of a premature confinement.

13.2 Maternity leave may be extended upon application by one or more of the following:

13.2.1 the granting of sick leave as a result of a medical complication;

13.2.2 the granting of up to 184 consecutive days unpaid leave; and

13.2.3 the granting of annual leave, including leave accrued in terms of paragraph 5.1, if applicable.

13.3 An Educator who experiences a miscarriage, still birth or termination of the pregnancy after starting paid maternity leave, shall be eligible for six consecutive weeks paid maternity leave, where -after sub-paragraph 13.2.1 shall apply in the event of a medical complication.