

**HOW DO PRINCIPALS MANAGE EDUCATOR MISCONDUCT IN
PUBLIC SCHOOLS?**

BY

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DISSERTATION

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2003

DECLARATION

I declare that this study entitled

HOW DO PRINCIPALS MANAGE EDUCATOR MISCONDUCT IN PUBLIC SCHOOLS?

Is my own work, that all the resources I have used or quoted have been indicated and acknowledged by means of complete references and that I or anyone else to this University or any other educational institution for degree purposes did not previously submit this study.

Kgabo Director Mothemane

Signed

Date

DEDICATION

This work is dedicated to the memory of my late father, Matome Albert Mothemane and my late grandfather Kgwaredi Petrus Mothemane for their inspiration and motivation that influenced my commitment to study further.

This dedication is extended to the following:

My mother, Mokgadi Christinah for the tremendous support and encouragement throughout my studies.

My brothers and a sister, Reneilwe for being kind and supportive for many years while I was persuing my studies.

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SUMMARY

This research project is an attempt to determine how principals handle educator misconduct in public schools in a sample of both primary and secondary schools. Procedures on handling misconduct are still new to schools principals. The need to empower principals with knowledge and procedures to handle educator misconduct is the main concern of the study. The main aim of the study is to investigate how principals handle educator misconduct in public schools.

It is revealed in the introductory orientation of this study that educator misconduct is one of major challenges in principals' management of schools. Educator misconduct is a continuous problem that principals experience in their management of schools. Principals being given legal authority to handle less serious misconduct at school level, have a mammoth task and responsibility to ensure that procedural requirements are met in such misconduct cases. The attempts to workshop train and educate principals on handling educator misconduct which all proved insufficient. Misconduct among educators is on the increase and principals seem to fall short of handling such misconduct cases properly.

In this regard both the literature study and an empirical investigation through interviews are used in the study. Principals are involved because they have a duty to handle educator misconduct. Procedures handling misconduct also involve educators. These data collection methods are useful in providing insights into principals' handling of educator misconduct as well as getting educators' views on how principals handle misconduct cases.

The findings and recommendations of this study are expected to improve principals' handling of educator misconduct. The findings are supposed to help principals to realise the need to follow procedural steps and to apply principles of handling misconduct fairly and consistently. Based on what the study will find, it is recommended that principals adhere to principles, rules and procedures of handling misconduct as they serve to empower principals in their management responsibilities. Principals support mechanisms in the form of workshops, seminars

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and training programme should be provided to ensure that principals are well trained and have clear knowledge in both theory and practice of handling educator misconduct.

KEY WORDS

1. Principal
2. Misconduct
3. Manage
4. Public schools
5. Substantive fairness
6. Procedural fairness
7. Disciplinary sanctions
8. Warnings
9. Legislation
10. Interview

CHAPTER ONE

INTRODUCTORY ORIENTATION

1.1 INTRODUCTION

The transformation of education in South Africa has undergone many changes. These changes have been regulated through different legislations like the South African Schools Act No. 84 of 1996, the Labour Relations Act No. 66 of 1995, the Employment of Educators Act No. 76 of 1998 among others. Public schooling is characterised by lower standards of education – hence legislation to improve the quality of education in areas like governance, management and administration.

The Employment of Educators Act No. 76 of 1998 regulates the conditions of service, discipline, retirement and discharge of educators and related matters. A matter of serious concern is the misconduct of educators. Several incidents of misconduct of educators have been reported. Incidents of disciplinary problems of misconduct seem to be one of the causes of decline in standard of education. The laws promulgated in education aim to reverse the situation. These laws provide a framework for the management of quality education. Yet educator misconduct continues to undermine the intended aim. Misconduct cases among educators are increasing. Sections 17 and 18 of the Education Law Amendments Act No. 53 of 2000 stipulate forms of misconduct such as absenteeism, late-coming, assault, insubordination, drunk on duty, sexual harassment, theft, fraud and dishonesty, negligence and sleeping on duty; these sections of the Act referred to prescribed procedures to be followed when dealing with alleged acts of misconduct (Rossouw, 2001:128). Principals are allowed to handle the informal phase of the disciplinary process regarding these acts of misconduct. Educators may eventually be dismissed if found guilty.

According to Rossouw (2001:124) section 4(1)(a) of the Education Laws Amendment Act No. 53 of 2000, the principal is given specific responsibility to take initial steps in the disciplinary process of less serious misconduct. For the first time in education new legislation gives the principal legal authority to exercise disciplinary procedures regarding educators' misconduct. Previously principals dealt only with counselling

and warning educators. Counselling and warnings issuing differed from legal authority since principals could not enforce disciplinary measures. Departmental officials like inspectors were involved in disciplinary matters that principals could handle. Without power of legal authority it was very difficult for principals to manage cases of misconduct in schools. As a result there were inconsistencies in handling educator misconduct in schools, e.g. the case of *Juta versus Western Cape Department of Education*, CCMA. WE 2430, and supported by *Bennete versus Bethany Playschool*, Case No. EC9133, and *Rangasami versus Western Cape Education Department*, CCMA. WE1266.

There are serious cases of misconduct that the principal does not have the authority to handle. These include matters relating to finances, sexual relations of educators with learners and others in which an educator misuses the position of trust he has in his profession (Rossouw, 2002:76). I will not deal with these types of misconduct in this project. In this study it is important to establish the legal status of the principal.

The legal status of a principal does not differ from that of an educator. However, the principal's responsibility, as given by the new law, elevates him/her above that of the educator. Principals therefore have certain discretionary powers.

The principal is the link between the educational authorities and all other participants in the school. She/He represents educational authority in the school. The principal is the employee representing the employers, in this case the Department of Education in a particular province (Joubert & Prinsloo, 2001:81).

Section 4(1)(a) of the Education Laws Amendment Act 53 of 2000 delegates the authority to handle misconduct to principals. When a principal is accused of misconduct he/she is investigated by immediate superior officials. I will not deal with principal misconduct as the focus in this research is on the way principals handle educator misconduct. The principal must be fully aware of various legal instruments, such as the Labour Relations Act No. 66 of 1995 and the Employment of Educators Act No. 76 of 1998. Therefore, principals need to be fully aware of the responsibility of their positions. They need to be familiar with the procedures required on disciplinary matters. As some forms of misconduct may eventually lead to the dismissal of educators, principals need to deal with matters of misconduct appropriately.

Handling misconduct is one of the most difficult and demanding responsibilities of a principal. Dealing with misconduct is time-consuming, emotionally draining and frustrating for school principals and others involved. The challenge of handling misconduct requires up to date information and a steadfast commitment on the part of the principal. The principal faces the challenge of the ever changing nature of laws she/he needs to have discretion, confidence and knowledge when dealing with disciplinary matters (Lawrence & Vachon, 1995:xi).

Since legislation presenting procedures for misconduct is in place, many educators are more likely to be charged with misconduct at school level than before. The onus is with the principal to follow prescribed procedures fairly. Cases of misconduct drag for too long if the relevant process is not followed correctly. Knowledge of relevant process and procedural fairness is very important in handling cases of misconduct (Lawrence & Vachon, 1995:xii).

The procedures are based on Section 18 of the Employment of Educators Act No. 76 of 1998. Schedule 2 of the Education Laws Amendments Act No. 53 of 2000 (now part of the amended 76 of 1998) provides a disciplinary code and procedures for educators and stipulates procedures on handling misconduct.

1.2 RATIONAL AND MOTIVATION

Educator discipline is very important for the establishment of quality education. Schools with good discipline among educators are normally productive. The working relations among educators are fundamental to a good culture of learning and teaching. The interaction between school management and educators is one of the factors influencing the human relations in schools. Teaching staffs that have good working relations with the principal and also have trust and confidence in management are more likely to be motivated in their work. A situation where disciplinary problems are more common tends to demand more attention from the principal. Such a situation divests the principal's focus from the core responsibilities of managing the school effectively.

Managing misconduct is time-consuming. It may take much time to resolve one case of misconduct. Some cases may take weeks, months or even years to resolve.

The entire process may cost the department much money in legal proceedings (Lawrence & Vachon, 1995:xvii). It is therefore imperative that the principal have knowledge to handle misconduct effectively. Poor management decisions in handling less serious cases of misconduct may affect the relationship between principals and educators (Lawrence & Vachon, 1995:3). The way in which a principal manages a case of misconduct may have implications for both human and labour relations between educator and principal.

Knowledge of substantive and procedural fairness is very important in handling educator misconduct. Substantive fairness and procedural fairness are explained by Swanepoel (2000:100) as follows:

Substantive fairness implies the following:

- Did the employee break a workplace rule?
- Was the rule reasonable and valid?
- Was the employee aware (or could he or she reasonably have been expected to be aware) of the rule?
- Was the rule consistently applied?
- Is the sanction an appropriate punishment for the transgression?

Other factors in the substantive fairness of dismissal for misconduct might be the following:

- The seriousness of the transgression.
- The nature of the post and of the workplace.
- The employee's circumstances.
- The employer's circumstances.

The following are procedural fairness steps to be followed:

- Investigate the matter.
- Notify the employee in advance of the complaint or charge and of the result of the investigation.
- Give the employee a reasonable period of time in which to prepare a reply to the complaint.
- An employee is entitled to state his or her case in reply to a charge (usually in the form of disciplinary hearing).
- An employee is entitled to trade union representation.

- An employee must be notified in writing of the employer's decision.
- Give reasons for the sanction.

With misconduct on the increase among teaching staff this research project is valuable in presenting important information on handling less serious misconduct. It has been reported in a labour relations workshop for principals that there have been many cases of misconduct that resulted in many educators being dismissed and principals demoted. It has also been reported that most cases remain unresolved due to a lack of procedural knowledge in principals. The procedural and documentation requirements are not met in most cases.

The significance of this study emanates from the fact that although educators are given information about their expected conduct and discipline, misconduct is increasing. Teacher unions, the South African Council for Educators and the Code of Good Practice in schedule 8 of Labour Relations Act No. 66 of 1995, all have a code of discipline expected from educators. It therefore means that before procedural steps are instituted because of a particular misconduct, such an educator must have contravened the code of conduct of one of the organisations he/she belongs to.

This research is necessary to shed light on current practices on handling misconduct.

1.3 RESEARCH PROBLEM

- How do principals manage educator misconduct in public schools?

1.4 AIM OF THE RESEARCH

The aim of this research is attained as follows:

- To investigate how school principals handle misconduct cases.

1.5 CONCEPTUALISATION

This section defines and explains the most important concepts and terms that will be used throughout the research.

1.5.1 Misconduct

Misconduct is a deed or behaviour of an educator not complying with expected behaviour and conduct of the profession as stipulated by Section 17 and 18 of the Education Laws Amendment Act 53 of 2000. Section 17 refers to misconduct as a breakdown in the employment relationship and stipulates deeds through which an educator commits misconduct.

Misconduct is behaviour or conduct that is contrary to the expected code of conduct. Various unions and organisations have their own code of conduct for their members. The South African Council for Educators Act 31 of 2000 stipulates the code of conduct for educators.

Mothata (2000:56) defines misconduct as any behaviour on the part of the educator that deviates from an approved or expected pattern. Actions of an educator that do not conform with codes of the profession's ethics constitute a misconduct.

Misconduct in this study will be viewed in the light of contravening any of the stipulations of Section 17 and 18 of the Education Amendment Act 53 of 2000.

Grosset and Venter (1998: 265) indicate less serious misconduct as; late coming, reporting late after lunch break, unjustified absence from the workplace, loafing, wasting time. There is further indication of serious misconduct such as; unauthorised absenteeism, abusing sick leave benefits and sleeping on duty. The more serious misconduct are being under influence of alcohol or drugs, theft, fraud, assault, fighting and dishonesty.

1.5.2 Misconduct procedures

The Education Laws Amendment Act 53 of 2000 section 18 delegate the handling of educator misconduct to the school principal. Before the implementation of this Act in November 2000, principals had no legal statutory status to handle educator misconduct. Delegated with this important

managerial function, misconduct procedures that principals have to follow are also stipulated.

A school principal needs to have a firm understanding of the concepts of just cause, the process and progressive discipline when handling misconduct cases.

1.5.3 Just cause

Just cause statement serves as the basis for the impartial hearing body to make decisions to determine whether or not the requirements were met. Just cause therefore embodies the elements of substantive fairness. Substantive fairness is determined by means of whether the employer acted against the employee for a valid reason and whether the action taken was appropriate in the light of proven reason (Rossouw, 2002(a): 7).

To determine the appropriateness of the misconduct case the following factors need consideration:

1. Circumstances surrounding the violation.
2. Seriousness of the offence.
3. Past record of the offender.
4. Disciplinary action taken in similar situations.

1.5.4 Due process

Due process provides the right to objective determination of misconduct based on established evidence. Due process is the concept of fair play. An educator charged with misconduct must be assured of procedural fairness (Lawrence & Vachon, 1995:5).

Procedural fairness implies procedural steps in accordance with rules. The principal's failure in following appropriate procedure would be unfair to the process.

Procedural due process requirements are basic to outcomes in misconduct cases.

1.5.5 Progressive discipline

The purpose of the misconduct process is to correct employee behaviour, not to impose punishment.

Progressive discipline refers to a series of steps in which disciplinary action is taken each time an employee commits an act of misconduct. Progressive discipline according to the Education Laws Amendment Act 53 of 2000 is a corrective approach prescribed to employers, according to which efforts are made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling, oral warnings, written warnings and ultimately dismissals.

1.6 DEMARCATION OF THE STUDY

The research project will be conducted in the Bochum District, Central Region in the Limpopo Province. The researcher will investigate the management of educator misconduct in both public primary and secondary schools in the area. No particular schools will be visited for this research but a representative sample of all schools in the district will be selected. Principals and educators will be interviewed for this research.

1.7. METHODOLOGY

1.7.1 Basic research approaches

Quantitative and qualitative approaches are more than just differences between research strategies and data collection procedures. These approaches represent fundamentally different epistemological frameworks for conceptualising the nature of knowing, social reality and procedures for comprehending the phenomena (Bauer & Gaskell, 2000:12). Berg (1998:3) distinguishes quantitative and qualitative approaches as follows:

Quantitative research deals with numbers, uses statistical models to explain data while qualitative research deals with interpreting social realities through meanings, concepts, definitions, and descriptions of things.

This research project will apply qualitative methods because qualitative techniques allow the researcher to share in the understanding and perceptions of others and to explore how people structure and give meaning to their workplace phenomena. Qualitative research gives the researcher a first-hand, holistic understanding of the phenomena of interest by means of a flexible strategy of problem formulation and data collection on educator misconduct (De Vos, 1998:71).

1.7.2 Research design

Bianche and Durrnheim (1999:29) explain research design as a strategic framework for action that serves as a bridge between research questions and the execution or implementation of the research. It is a plan that guides the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose.

According to Berg (1998:27) research design is a plan for how the study will be conducted. It is a matter of thinking about, imagining and visualising how the research study will be undertaken. It is concerned with what types of information or data will be gathered and through what forms of data collection techniques. The research design for this project is interviews.

1.7.3 Interviews

Interviews are defined by Johnson (1994:43) as a social encounter between two people that have a particular focus and purpose. Interviews are used in this research with the aim of being able to gain an in-depth understanding of the participants and to make follow up questions where clarity is needed. Robson (1993:229) and Baily (1994:174) give the advantages of interviews as:

- Being flexible and adaptable.

- Face to face interviews offer the possibility of modifying one's line of inquiry, following up interesting responses and investigating underlying motives.
- Non-verbal clues may give messages which help in understanding the verbal responses.
- Respondent alone can answer questions at a given time.

There are however, problems encountered in the interviews as identified by Berg (1993:230). It is difficult to arrange visits, secure necessary permissions, confirm arrangements, reschedule appointments to cover absences and crises as they all need much time.

For this research structured and semi-structured interview questions will be asked to the participants with the aim of focusing on a set of predefined questions.

1.7.4 Data collection

Data collection is a detailed description of the data gathering procedures for the planned investigation. This description covers the specific techniques to be employed, specific measuring instruments to be conducted in making the measurement (De Vos 1998: 100). For this research data will be collected through interviews. Several public primary and secondary schools in the Bochum district, Limpopo Province have been selected to participate in this research.

A tape recorder will be used as an Aide-Memoire or helpful record of the conversation for later analysis. A tape recorder allows the researcher (interviewer) to concentrate on what is said rather than taking the notes. Tape recording also allows the researcher to keep a full record of the interview without being distracted by detailed note keeping (Bianche & Durrnheim, 1999:129).

1.7.5 Data analysis

According to De Vos (1998:100) and Maykut and Morehouse (1994:127), data analysis is the process through which one understands more about the phenomenon under investigation and to describe what one has learnt with a minimum of interpretation. It simply explains the procedures that one will use to analyse the data.

In this case where a qualitative interview is used, data analysis starts after each interview. After completing each interview and then again after finishing a larger group of interviews, one examines the data one has collected, pulls out concepts and themes that describe the world of interviewees (Rubin & Rubin, 1995:226).

The interview data will be coded through a process of grouping interviewee responses into categories that bring together similar ideas, concepts of themes one has discovered. In case of the tape-recorded interviews, one can analyse the length of pauses, the order of wording and the exact words that were used.

When coding is complete, the data are regrouped into categories that allow for comparison of what different people said, what themes were discussed and how concepts were understood (Rubin & Rubin, 1995:228).

1.8. VALIDITY AND RELIABILITY OF THE RESEARCH

1.8.1 Validity

Babbie (2001:143) explains validity as the extent to which an empirical measure adequately reflects the real meaning of concepts under consideration. According to Wilkinson (2000:42) validity relates broadly to the extent to which the measure achieves its aim, that is the extent to which an instrument measures what it aims to measure, what it claims to measure or test, what it is intended to test. Burroughs (1985:78) indicates that no tests measure has universal validity but validity relation to the following factors:

- The particular population for which it is designed.

- The particular purpose for which it is designed.
- The particular conditions under which it was administered.

The research methodology for this project will strive to establish the validity of findings by providing and reflecting the implications of misconduct management on labour relations. There are two types of validity, namely, internal validity and external validity. Slavin (1984:12) outlines the difference between internal validity and external validity as follows:

Internal validity refers to the degree to which a study rules out any explanations for the study's findings other than the one claimed by the researcher. External validity is concerned with whether the results are applicable to persons who did not actually participate in the study. The central focus of external validity is the generalisability of the results from the sample to the population that the sample is supposed to represent. To achieve this, the researcher must select a population sample that represent the real and practical life situations and ideally represents the entire population.

1.8.2 Reliability

Reliability deals with an indicator's dependability. If one has a reliable measure it gives the same result each time the same thing is measured. Reliability constitutes the ability of a measuring instrument to produce the same results on successive occasions when no changes have occurred in the thing being measured (Burroughs, 1985:72).

Reliability according to Wilkinson (2000:42) refers to a matter of consistency of measure, the likelihood of the same results being obtained if the procedure is repeated. The reliability of research can be achieved if someone else can repeat the research and get the same results. It means that the information provided by indicators (e.g. interview) does not vary as a result of characteristics of the indicator, instrument or measurement of the device itself.

1.9. ETHICAL ASPECTS OF RESEARCH

Ethics is a set of moral principles that are suggested by an individual or group, are subsequently widely accepted and offer rules and behavioural expectations about the most correct conduct towards experimental subjects, and respondents, employers, sponsors, other researchers, assistants and students (De Vos, 1998:240). Ethical guidelines are standards and the basis upon which the researcher ought to evaluate his/her own conduct. Ethical principles need to be internalised in the personality of the researcher to such an extent that ethically guided decision-making becomes part of his/her total lifestyle. The researcher in this research will abide by the following ethical issues:

1.9.1 Voluntary participation

The principles of voluntary participation according to Trochim (2001:24) requires that people not be coerced into participation in research. Subjects need to participate voluntarily and without any pressure or manipulation. Closely related to voluntary participation is the aspect of informed consent.

1.9.2 Informed consent

Informed consent is the knowing consent of individuals to participate as an exercise of choice, free from any element of fraud, deceit or similar unfair inducement or manipulation (Farnham & Pilmlott, 1995:47).

In Trochim (2001:24) informed consent essentially means that prospective research participants are fully informed about the procedures and risks involved in research and must give their consent to participate. This informed consent implies that all possible or adequate information on the goal of investigation and the credibility of the research be rendered to potential subjects. Informed consent is necessary even if the subjects do not listen to explanation or is not really interested in knowing (De Vos, 1998:26).

1.9.3 Deception of respondents

This is a deliberate misrepresentation of facts in order to make another person believe what is not true. It refers to withholding information or offering incorrect information in order to ensure participation of subjects when they

would otherwise possibly have refused it (De Vos, 1998:27). The researcher should not deceive the respondents and if it happens inadvertently, it must be rectified immediately.

1.9.4 Confidentiality and anonymity

Confidentiality and anonymity are two standards that help to protect the privacy of research participants (Trochim, 2001:24).

According to Farnham & Pilmlott (1995:48) confidentiality is an active attempt to remove from the research records any elements that might indicate the subject's identities while anonymity means subjects remain nameless. Trochim (2001:24) indicates further that participant confidentiality assures the participants that identifying information will not be made available to anyone who is not directly involved in the study. Anonymity is a stricter standard that means that the participants will remain anonymous throughout the study, even to the researchers themselves.

1.9.5 Securing data

Records must take intentional precautions to ensure that information does not accidentally fall into the wrong hands or become public. Precautions will also be taken to ensure that research-related information is not carelessly discussed (Farnham & Pilmlott, 1995:48).

The researcher of this research project will abide by the ethical code illustrated by these ethical aspects.

1.10. RELEVANCY OF THE STUDY TO EDUCATION MANAGEMENT

The study of managing educator misconduct is relevant to education management on the basis of its relation to public law in education. Education management comprises regulative tasks and actions executed by a person in a position of authority. Educator misconduct is one regulative task that a principal performs in a school. The employment relationship is one of the key areas in education management.

Labour relations in general and misconduct in particular are one of the central areas of education management. Without labour relations regulations management in schools will be difficult. The management tools that are needed for managerial duties like planning, organising, leading and control are provided for in labour relations.

Most importantly, a legal framework guides education. This legal framework provides critical elements in education management. The legal aspects of the employment relationship resulting from educator misconduct will be the focus of this research.

1.11 RESEARCH PROGRAMME

This section outlines the research project in the form of chapters.

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1.12 CONCLUSION

Employment relationship legislation in South Africa has made management of education in schools clear and easy to implement. The authority given to school principals makes management of disciplinary matters very effective. The legislators regard principals as being in a better position to judge certain misconduct and apply certain disciplinary measures than officials not based at school.

Educators who contravene norms of accepted conduct and rules will be dealt with and those who abuse their position of trust will be removed. Those who do any harm to children will be punished.

With educator misconduct on the increase and education departments determined to improve the quality of education, any form of misconduct is to be considered in a very serious light. This research will provide guidelines that will help principals with skills to manage misconduct effectively. The legal framework is provided in which procedural provisions are outlined. The general misconduct framework and procedures will be the focus of the next phase of this study.

CHAPTER 2

2.1 MANAGEMENT OF MISCONDUCT AT SCHOOL LEVEL

2.1.1 INTRODUCTION

Schedule 2 section 4 (1) (a) of Employment of Educators Act 76 of 1998 as amended in the disciplinary procedures and sanctions pertaining to less serious misconduct cases, indicates that the employer (i.e. Head of Provincial Education Department) must delegate the function to deal with misconduct to the head of institution or office where the educator is employed. This clearly indicates that the function of dealing with less serious misconduct of educators is the duty of the school principal as head of the institution (school).

According to Rossouw (2002: 75) Education Laws Amendment Act 53 of 2000 is regarded as an attempt by legislators to bring to clarity regarding exactly which kind of conduct is expected and not expected as well as procedures to be followed

2.1.2 MISCONDUCT IN CONTEXT

In section 17 and 18 of Employment of Educators Act of 76 of 1998 misconduct refers to a breakdown in the employment relationships which are stipulated in a list of 38 possible offences ranging from less serious misconduct to those types of serious misconduct which will inevitably lead to dismissal of educators, should the person be found guilty Rossouw (2002: 76).

Two lists of different forms of misconduct are presented in section 17 and 18 of Employment of Educators Act, No 76 Of 1998. Section 17 describes eight Forms of Serious Misconduct, and section 18 comprises a list of 38 forms of less serious Misconduct (Rossouw, 2002:76).

These two lists also show the varying degrees of misconduct, which justify varying degrees and level of Management as well as disciplinary action (Potter & Smellie 1995: 61). Adams (1992: 92) goes further to state that misconduct situations may arise for a variety of reasons hence they differ.

There could be a defiant or negligent repetition of minor infringements. Flagrant breaches of contract, some may be acts threatening the safety of learners or colleagues and some form of misconduct, may be in the form of abuse of authority and misuse of property.

This research would focus on Misconduct as in section 18 i.e. less serious misconduct.

2.1.2.1 More Serious Misconduct

These forms of misconduct are regarded as more serious. They are offences that could seriously harm learners and that could cause the educator to abuse his or her position of trust (Rossouw 2002: 76).

According to Section 17 of the Employment of Educators Act 76 of 1998 an Educator must be dismissed if he/she is found guilty of:

- a. Theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports;
- b. Committing an act of sexual assault on a learner, student or other employee.
- c. Having a sexual relationship with a learner of the school where he/she is employed.
- d. Seriously assaulting with the intention to cause grievous bodily harm to a learner, student or other employee.
- e. Illegal possession of an intoxicating, illegal or stupefying substance, or.
- f. Causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).

Rose (2001: 534) views these forms of misconduct as gross misconduct for which dismissal by the employer is a justifiable sanction provided all procedural mechanisms are adhered to. A school principal, as a delegated employer, does not have the powers to dismiss but take procedural steps to the employer to institute investigation for dismissal.

2.1.2.2 Less Serious Misconduct

Rose (2001: 534) explains less serious misconduct as the persistent rule breaking which can be dealt with quite straightforwardly both informally, and if that does not work, through the formal procedure. They are those types of misconduct that principals can be able to handle themselves, at least up to the conclusion of the informal phase.

The examples of less serious misconduct which can be handled by principals are insubordination dishonesty, absenteeism and desertion, bad or abusive language, lateness, negligence, sleeping on duty, drunkenness and drinking on duty, drug abuse and extending meal and tea breaks (Grosset & Venter 1998: 270-277, Rose 2001: 535-538 and Roberson 1995: 45-51).

These forms of less serious misconduct are categorised by Rossouw (2002:78) as misconduct cases delegated to the principals.

Table 2.2: Misconduct cases delegated to principals

CATEGORY	Misconduct refers to a breakdown in the employment relationship and an educator commits misconduct if he or she:
General	(a) fails to comply with this Act or any other legal obligation relation to education and the employment relationship;
Property and Finances	(c) without permission possesses wrongfully uses the property of a school another employee or a visitor; (w). operates any money-lending scheme for employees for his or her own benefit during working hours or from the premises of the educational institution where he or she is employed;
Safety regulations	(e) in the course of duty endangers the lives of himself or herself or others by disregarding a set of safety rules or regulation; (y) refuses to obey security regulations;
Criticism	(f) unjustifiably prejudices the administration, discipline or efficiency of the Department of Education or a school;
Misuse of position	(g) misuse his or her position in the school to promote or to prejudice the interest of any person; (j) absents himself or herself from work without a valid reason or permission;
Poor work	(1) performs poorly or inadequately for reason other than incapacity;

Performance	(o) without authorisation, sleeps on duty;
	(i) fails to carry out a lawful order or routine instruction without just or reasonable cause;
Improper behaviour	(q) while on duty , conducts himself or herself in an unacceptable manner;
	(s) incites other personnel to unprocedural and lawful conduct;
	(t) displays disrespect towards others in the workplace or demonstrates abusive or insolent behaviour;
	(u) intimidates or victimises fellow employees, learners or students

Rossouw (2002:78)

These forms of misconduct are typically those that most principals were involved in previously but with less decision making power section 4 (i) (a) of Education Laws Amendment Act 53 Of 2000, provides that the National Department of Education delegate in principals to deal with the handling and management of misconduct at school level. This further illustrates that principals must and should take the initial steps in the disciplinary process (Rossouw, 2001: 124).

2.1.3 Elements and Implications of forms of Misconduct

Rossouw (2001: 123) argues that the incidences of misconduct among teaching staff in South Africa is increasing at an alarming rate. The legislation in place give authority to school principals to handle misconduct cases.

Among those common are:

- Insubordination
- Dishonesty
- Absenteeism
- Desertion
- Bad or abusive language
- Late coming
- Negligence
- Sleeping on duty
- Drunkenness and drinking on duty
- Drug abuse.
- Extending meal and tea breaks.

These misconducts seem very minor but have serious effects on school activities. Hence they have become an important managerial duty of principal to manage. The elements and implications are discussed and the expected standards are given.

2.1.3.1. Insubordination

Insubordination is defined by McCarthy and Cambron (1992:395) as a wilful disregard of and/or refusal to obey school regulations and official orders. It is a constant or continuing intentional refusal to obey a direct or implied order reasonable in nature, and given by and with proper authority.

Everyone working under contracts of employment has a duty to obey lawful and reasonable orders. Rose (2001: 535) indicates that the following points need to be considered when dealing with insubordination:

- Employees may have a contractual duty to perform tasks beyond the type of work they normally carry out and refusal to do so would lead to disciplinary action.
- The reasonableness of disciplinary action is not to be determined solely by job description or contractual obligations.
- It is not automatically fair to charge an employee of misconduct for clear breach of the employer's rules unless it can be shown that the discipline is reasonable reaction to the circumstances of insubordination.
- Employers have a duty to act reasonably and where employees disobey orders on safety grounds, the matter should be investigated promptly before disciplinary action is taken.

According to McCarthy and Cambron (1992:395) the forms of insubordination are:

1. Refusal to abide by specific school directives and legitimate instructions.
2. Unwillingness to co-operate with supervisors.
3. Unauthorised absences.
4. Insolences or lack of respect for authority.
5. Defiance.

Educators can be charged for misconduct for violation of administrative regulations and policies even though their performance is satisfactory. Teleki (2002: 20) points out that an employee who does not observe the authority vested in his or her employer or supervisor and rules laid down by his or her organisation is liable to a charge of misconduct.

In a school setting the principal is a manager delegated with duty to deal with misconduct at school level. As an employee, an educator need to obey a principal's legitimate instructions; observe the rules of the school and authority vested in the principal. If an educator persistently and deliberately disrespect and disobeys legitimate instructions of a principal such an educator commits insubordination.

2.1.3.2 Dishonesty

The word dishonesty is defined by Rose (2001: 535) and Carrel et al (1995: 320-321) as the stealing of an organisation's money or property, absenteeism, dodging, or loafing, not honouring the starting time or stopping time or by falsifying timekeeping records and abdication of disclosed relevant information such as criminal convictions. Teleki (2002: 27) defines dishonesty as when an employee deviates intentionally from performing normally in accordance with operational procedures, or when an employee unlawfully and secretly removes the property of the organisation for the purpose of possessing it, or when an employee tampers with the official documents so that he/she can gain financially.

Dishonesty is a term used to cover various forms of misconduct including bribery, theft, fraud, the dishonest use of sick notes, and use of by employees for their gain of any information gained in their course of their employ (Grosset & Venter, 1998: 270).

Dishonesty cases occur in varying degrees among educators in schools. Some dishonest actions like falsifying qualifications are dismissal offences. While minor offences like falsifying timekeeping records would have working as an appropriate sanction.

2.1.3.3 Bad or Abusive Language

The use of abusive language is not always a disciplinary offence. In deciding whether such use constitutes a disciplinary offence or not, one has to take into account whether the abusive language was directed to an individual or group, and what the circumstances were surrounding the use of abusive language. However, all abusive language directed at another individual or group is a disciplinary offence (Grosset & Venter, 1998: 273).

Rose (2001: 536) illustrates that any bad or abusive language used and directed to undermine the authority of a superior is a misconduct offence. The disciplinary action however appropriate for bad, foul or

abusive language will depend not on the actual words used but also on their context. Events prior to the bad language should be examined as well as the incident, which gave rise to the complaint. An example can be given of a heat-of-the-moment outburst that may be unlikely to recur and an apology may suffice as disciplinary action.

2.1.3.4 Absenteeism

Roberson (1995: 45) points out that all employers have problem with employee absenteeism. Absenteeism refers to unapproved employee absences and approved absences in those cases where approval was based on false information submitted by the employee.

Absenteeism is a very complex, subtle and elusive concept. Alcoholics tend to be absent on Mondays and Fridays, late for work and take long hours lunch. These are examples showing how complex absenteeism is.

Any unauthorised absence i.e. without medical certificate or acceptable reason can be provided, from work during the specified working hours, if continuous, and depending on the circumstances of the absence, will constitute either absenteeism or desertion (Grosset & Venter, 1998: 274).

Absence without leave is one of the most common types of misconduct an employee can commit. The necessity of employees to be present for duty at the time and place required is very important. No organisation of any kind could function if employees were able to come and go as they choose. However, absences for holidays and long-term absence due to ill health are not disciplinary matters (Rose, 2001: 538).

In some cases absenteeism occurs when an employee abuses sick leave procedures. This covers instances where an educator is absent from work without offering any excuse or phone in claiming to be sick when she/he is perfectly well (Potter & Smellie, 1995: 84).

Roberson (1995: 47) views absenteeism as the net result of a decisional process. The two major variables that determine if the employee will be absent are her/his ability to attend and motivation to attend. If the employee has the ability to attend, then she/he compares the benefits of going to work with the benefits of not going to work.

Unauthorised absence can constitute a serious breach of contract and pending investigation and giving the employee an opportunity to explain, would normally be regarded as a matter of justifying warnings rather than dismissal for the first offence.

Employees, who take leave after having been refused permission, and warned of the potential consequence of doing so, can be fairly dismissed. Such cases would be more justifiable if absence is monitored and records of absence are kept that show frequency, duration and any pattern based on time of the week, month or year of absence. This will enable the manager to substantiate whether a problem of persistent absence is real or imagined (Rose, 2001: 538).

Grosset & Venter (1998: 275) and Rose (2001:358) give a guide/advice to be followed on handling frequent and persistent short-term absence as follows:

- Absences should be investigated promptly and the employee asked to give an explanation.
- Where there is no medical advice to support frequent self-certified absences, the employee should be asked to consult a doctor to establish whether an underlying reason for absence is work related.
- If after investigation it appears that there were no good valid reasons for the absences, the matter should be dealt with under disciplinary procedures.
- In all cases the employee should be told what improvement in attendance is expected and warned of the likely consequences if this does not happen.
- If there is no improvement, the employee's age, length of service, performance, the likelihood of change, availability of

suitable alternative work and the effect of past and future absences should be taken into account when deciding appropriate action.

2.1.3.5 Late Coming

Lateness is absences without leave for the period between the time the employee is required to arrive and the time he actually does arrive, and as a species of unauthorised absences it too is misconduct. An employee cannot ignore an employer's warnings to arrive on time because she/he accomplishes her/his work on time and because there was little for him to do on arrival (Rose, 2001:541; Grosset & Venter, 1998:268).

Lawrence and Vachon (1995:127) indicate that lateness for only a few minutes may be misconduct, especially when the employee has been warned to be punctual. This misconduct is aggravated when the lateness is persistent, even if it is for a few minutes each time. The offence of lateness is further aggravated when the employee misses an important duty because of it.

When dealing with late coming, one must be aware of extenuating circumstances that may hinder an employee from reporting to work on time, and should consider the employee's record before taking a disciplinary action. If however there is a persistent pattern of arriving late or leaving early, the principal may take action so that an educator knows what conduct is expected. Late coming cases must be investigated properly and fairly for a relevant action to be taken (Lawrence & Vachon, 1995: 128).

2.1.3.6 Negligence

Neglect of duty arises when an educator fails to carry out assigned duties. Educators have a variety of duties to perform to ensure safe, orderly environment for learners and to keep school operating efficiently. The duties of educators are critical to the proper supervision

of learners during the time they are under the care of the school (Lawrence & Vachon, 1995:120)

Neglect of duty can be proven without difficulty, for instance an educator who is unable to keep her learners inside the classroom fails to attend to the duties assigned for that time. No child is to be left unsupervised while she/he is under the care of school authorities (McCarthy & Cambron, 1992: 396).

2.1.3.7 Sleeping on Duty

Section 18 (o) of the Employment of Educators' Act no 76 of 1998 states that sleeping on duty without authorisation is misconduct. Unless an employee has a valid reason, sleeping on duty is neglect of duty and is misconduct. Sleeping while on duty is determined by the actual and potential consequence of the action. The nature of the job and the responsibility are very important (Grosset & Venter, 1998: 277).

2.1.3.8 Liquor at the workplace

Alcohol is a substance, which has a devastating impact on the performance of an employee who abuses it. Alcohol in the workplace is regarded to be a case of drinking in the workplace, or being drunk while on duty or smelling of alcohol while on duty. Abuse of alcohol contravene section 17 (i) (h) of the Employment of Educators Act (No 76 Of 1998), which provides that an educator shall be guilty of misconduct if he or she is under the influence of intoxicating liquor or stupefying drugs, while on duty in an official capacity.

In terms of the Basic Conditions of Employment Act no 75 of 1997, an employer is prohibited from allowing an employee to work if she/he is under the influence of alcohol. The reason for this is that an employee under the influence of liquor is a danger to both herself/himself and to fellow employees. The reason that drunkenness is an offence is that it impairs the employee's ability to do his/her job (Avins, 1986: 610).

According to Grosset and Venter (1998: 279) the seriousness of being found with liquor in one's possession at work will to a large degree depend on the actual or potential consequences of such drunkenness or drinking. The consequences in return are determined primarily by the nature of the job being done by the individual.

The other effect of drinking as viewed by Salamon (2000: 574) is on the employee's work performance, safety and other aspects of an individual's behaviour such as violence or bad language that should be considered when dealing with alcohol in the workplace.

Potter and Smellie (1995: 84) points out that warning an educator for drinking is very difficult due to evidential problems. Despite such evidential problems, Grosset & Venter (1998: 279) suggest guidelines of dealing with drinking on duty as misconduct as the following:

1. Management must prove the offence. Smelling alcohol on the employee's breath is insufficient but persons witnessing an employee consuming alcohol at the time and in a place can prove consumption of alcohol on the premises, which is prohibited. Proving that the employee is under the influence of alcohol is a contentious issue, which needs to be handled with great care. The main reason is that if management accuses an employee of being drunk or under the influence of alcohol, it must have sufficient evidence to prove that the employee was not competent to do her work. It is acceptable for witnesses to give statements on the employee's actions and behaviour and require a drunk employee to do certain basic tasks, test coordination balance and judgement among others.
2. An employee who arrives at work under the influence of alcohol or who comes under the influence of alcohol while at the workplace should be sent home.
3. If an employee reports for work but shows that she is being intoxicated by alcohol it is not permitted to allow her to work. The

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employee must be sent home. A day's unpaid leave will be granted but she cannot be disciplined, as no offence has been committed. If however the behaviour persists after the employee has received counselling, regarding a possible alcohol dependency problem she may be disciplined.

2.1.4 Disciplinary Actions not Delegated to Principals

Section 4 (1) (a) of Education Law Amendments Act 53 of 2000 prescribes sanctions and procedures delegated to principals to handle misconduct at school level. Such misconduct offences are less serious misconduct. A principal cannot be delegated with duty to deal with more serious misconducts. Officials from the Department of Education should rather become involved right from the start of the informal phase (Rossouw, 2002: 81).

These forms of serious misconduct as mentioned in section 17 of Employment of Educators Act 76 of 1998 are typically those acts where an educator misuses her or his position and where the misconduct has a direct and immediate influence on the well being of learners, especially regarding sexual matters, assault and the misuse of drugs. Other acts of misconduct are those related to property and finances, theft, carrying of firearms or other dangerous weapons, dishonesty that involves falsifying records and documents and refusal of counselling and rehabilitation. These offences are so serious that section 17 of Employment of Educators Act 76 of 1998 use the words " must be dismissed". The employer get directly involved in such cases where dismissal is the likely sanction.

While school principals are delegated discretionary powers, there is a legal competence required and particular misconduct procedures to be followed when handling misconduct actions delegated to them as managers of schools.

2.2 Misconduct Procedures

Misconduct procedures are underpinned by the concepts, just cause, due process and progressive discipline. These concepts will ensure fair treatment of employees. For a clear understanding of misconduct procedures these concepts will be outlined. A firm understanding of these concepts is vital for a school principal in handling misconduct fairly (Lawrance & Vachon, 1995: 3).

There are also disciplinary procedures based on the Code of Good Practice contained in schedule 8 of the Labour Relations Act no 66 of 1995 and section 4 of Education Laws Amendment Act 53 of 2000.

Salamon (2000: 578-579) points out that the purpose of disciplinary procedure is to provide an acceptable mechanism within which management may exercise its control over employees when their performance or behaviour does not reach the required standards. The procedures will be attained in a way that satisfies requirements of fair treatment.

2.2.1 Just Cause

According to Lawrence and Vachon (1995: 3,4) just cause means that no educator can be charged with misconduct without good cause. Just cause serves as the basis for the impartial hearing body to make decisions and to determine whether or not the requirements of just cause were met. In meeting the requirements of just cause the following must be satisfied according to Adams (1992: 93):

1. Notify the staff members of the expected behaviour and probable disciplinary consequences.
2. Ensure that the staff members know the rules, conduct and/or procedures.
3. Make efforts to establish whether the rule or order of management was violated.
4. Conduct a fair and objective investigation prior to disciplinary action.
5. Provide substantial evidence and documentation to prove misconduct.

6. Take a disciplinary action appropriate to the seriousness and nature of the offence by considering these factors:
 - a. Circumstances surrounding violation.
 - b. Seriousness of the offence.
 - c. Past record of the offender.
 - d. Disciplinary actions taken in similar situations i.e. apply rules consistently.

2.2.2 Fairness in the Workplace Discipline

According to Rossouw (2002: 59) fairness can be viewed in two forms; namely

Substantive fairness and Procedural fairness.

Substantive fairness has to do with reasons for the proposed or actual sanction for misconduct offence while procedural fairness implies that the employer must take certain procedural steps in accordance with the rules of natural justice before taking action against an employee

2.2.2.1 Substantive Fairness

Substantive fairness refers to reasons for disciplinary action. It requires school managers to provide valid reasons and substantial supporting evidence for misconduct (Franse, 1992: 104 and Nel, 1998: 126).

Rossouw (2002: 60) indicates that substantive fairness is determined by means of two enquiries; namely:

1. Whether the employer acted against the employee for a valid reason
2. Whether action taken was appropriate in the light of the proven reason

Swanepoel (2002: 100) gives the principles of substantive fairness to be applied as:

- Did the employee break a workplace rule?
- Was the rule reasonable and valid?

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- Was the employee aware or could she reasonably have been expected to be aware of the rule?
- Was the rule consistently applied?
- Is the sanction an appropriate punishment for the transgression?

Factors to be considered when taking a disciplinary action are:

- The seriousness of the transgression.
- The nature of the post and of the workplace.
- The employee's circumstances.
- The employer's circumstances.

2.2.2.2 Procedural Fairness

Procedural fairness may be regarded as the right of workers to fair procedures being followed when disciplinary action is being taken (Nel, 1998: 124) This simply means an employer has to take a number of procedural steps before an employee can be charged of misconduct. Such steps require the management to follow stipulated procedures regarding notices, hearings and unbiased decision-making. Failure to follow any procedural requirements can result in negative outcomes (Franse, 1992: 104).

Rossouw (2002: 61) further points out that an employer's failure to follow a fair procedure can, normally on its own be unfair, and the employee concerned will be entitled to some form of legal redress. Various sources of legislation can be quoted where in procedural fairness is provided for:

1. Section 23 of Bill of Rights stipulates that every employee has the right to fair labour practices by implication including fairness in procedures.
2. Section 33 of Bill of Rights stipulates the importance of administrative action that is lawful, reasonable and procedurally fair.

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3. Labour Relations Act 66, of 1995 Section 1998 and schedule 8 item 2, a dismissal is unfair if the employer fails to prove that the reason for dismissal is a fair reason.
4. Schedule 2 (Disciplinary Code and Procedures for Educators) of the Employment of Educators Act, 76 of 1998, determines that discipline must be applied in a prompt fair, consistent and just manner.

Nel et al (1998: 124) give the elements that ensure that discipline is applied, fairly and procedurally as:

1. The offence: The employee must be informed of the nature of the offence and the details of complaints.
2. Timely disciplining: Disciplinary action must be taken within a reasonable period after the offence has been discovered. If the management does not act timeously, it may seem as if the incident is been condoned.
3. Notice of hearing: The employee should received notification of the hearing date sufficiently in advance so that he can make the necessary preparation for his defence.
4. Representation: It is the employee's basic right to have a representative of her choice at the hearing. The representative has wide rights and duties because he has to ensure that each step progresses fairly.
5. The right to state one's case or defend oneself: If an employee so prefers, she has the right to defend herself and to take charge of her own defence without a representative.
6. The right to call a witness: An employee may call any witness to strengthen the defence. Written evidence is also acceptable, but a witness must be available for cross-examination.
7. The right to the finding: The employee must be informed of whether she is guilty or not guilty. If guilty she has the right to be fully informed of the facts and reasons leading up to the finding
8. Appeal: Every employee has the right to appeal if she is found guilty of an offence that can lead to written warning and dismissal.

2.2.3 Disciplinary Procedures

The purpose of the disciplinary procedure is to provide an acceptable mechanism within which management may exercise its control over employees when their performance or behaviour does not reach the required standard (Salamon, 2002: 578).

The disciplinary processes must have an element of progressive discipline. Progressive discipline refers to a series of steps in line with the corrective approach with the purpose of giving individuals the chance to change and modify their behaviour. This is done through a series of warnings and progressively more severe penalties given if instances of misconduct reoccur (Farnham & Pimilott, 1995: 312).

A summary of code of Good practice and discipline is provided below.

Schedule 2 of Employment of Educators Act, no 76 of 1998 stipulates the steps to be followed in disciplinary procedures. These disciplinary procedures should be viewed as means of imposing sanctions upon employees and to improve there personal conduct (Farnham & Pimilott, 1995: 313).

Rossouw (2002: 65), Salamon (2000: 579) and Towers (1992: 193) indicate the following elements of disciplinary procedures:

1. Should be in writing, preferably including an explanation as to why it is felt to be important to encourage a certain standard of conduct and performance from all employees.
2. Should specify to whom it applies and the appropriate employees should be provided with a copy.
3. Should specify what disciplinary actions may be taken and which level of management has the authority to take action.
4. Should ensure that the employee is notified of the complaint, given the opportunity to state the case and to be represented either by a union representative or fellow employee.
5. Should ensure that no disciplinary action is taken without fair investigation.

6. Provide a right of appeal and a description of the procedure to be followed and the action, which may be taken by those hearing the appeal.

However not all misconduct offences need to be dealt with under the same procedure. In less serious types of misconduct, the prescribed disciplinary actions in the informal phase range from informal verbal warnings by the principal before more serious steps are taken. The formal phase starts with a final written warning and may eventually end in dismissal if all prior sanctions have failed (Rossouw, 2002:65).

2.2.4 Warnings

The purpose of warnings is to rectify the behaviour or conduct of an employee. It is important for management to monitor the individual's behaviour after warnings have been issued. Warnings are also allowed to lapse after a specified period of six months. In case of no misconduct after six months of issuing first formal warning, it will be considered null and void and will be removed from the employees' record provided there are no further breaches of discipline for the period of six months (Towers, 1992: 195).

2.2.4.1 Oral or Verbal Warnings

It is the most frequent and least severe penalty. Oral warnings are verbal warnings, which starts with informal verbal warning to formal verbal warning (Potter & Smellie, 1995: 62).

Verbal warnings are normally given for the first offences because it is presumed that the employee did not understand why she erred, and so the standard of conduct is explained. It is made clear such misconduct will not be condoned and that further violations will require stronger action (Frunzi & Halloron, 1991: 284).

Informal verbal warnings are not part of the formal disciplinary procedure and are frequently administered by managers for minor misdemeanours as part of day-to-day control of subordinates (Salamon, 200: 597).

Formal verbal warnings form the first stage of the formal disciplinary procedures. These warnings should be recorded and employee provided with written confirmation that verbal warnings have been given (Frunzi & Halloran, 1991: 284).

Lawrence and Vachon (1995: 15) give the recommendation, which encourages managers to write a letter to inform the educator to appear for a formal verbal warning. Such letter must state clearly the date, time, location, individuals to be present and the offence. Written record of the warning is a valuable tool to use after the first oral warning and if misconduct is repeated, will serve as a source of procedural steps.

2.2.4.2 Written Warning

For the second offence, the employee is informed in writing that the misconduct is in violation of regulations and that the next infraction will result in further action. A copy of the warning is placed in the employees' personnel file and given to a union official (Frunzi 1991: 284). A sample of the written warning is provided by form A of schedule 2 of Education Law Amendment Act 53 of 2000.

Table 2.3: Written warning

WRITTEN WARNING [DATE] [NAME OF EMPLOYEE] [PERSAL NO.] [PERSONAL DETAILS] This is a written warning of the disciplinary procedure. Should you engage in further misconduct, this written warning may be taken into account in determining a more 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 filled together with this warning. The nature of the misconduct is: SIGNATURE OF REPRESENTATIVE OF EMPLOYER DATE SIGNATURE OF EMPLOYEE DATE SIGNATURE OF WITNESS (if applicable) DATE
--

2.2.4.3 Final Written Warning

This is a final warning in which the employee is informed that another violation will call for a more serious action. It should clearly state the offence for which the employee is being disciplined, refer to any previous oral or written warnings and indicate what future conduct is expected and the likely consequences if there is no improvement (Salamon, 2000: 579).

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Form B of final written warning is provided for by Schedule 2 of Education Laws of Amendment Act 53 of 2000. This form B is provided in appendix.

After the third offence it is presumed that the employee has been given every opportunity to conform. For the fourth offence, then dismissal or termination is considered to be in the best interests of both the employer and the employee. However in all these procedural steps and sanctions a proper investigation should be undertaken.

Table 24: Final written warning

FINAL WRITTEN WARNING
[DATE]
[NAME OF EMPLOYEE]
[PERSAL NO.]
[PERSONAL DETAILS OF THE EMPLOYEE]
<p>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 institute against you.</p> <p>This 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.</p> <p>Should you wish to do so, you may lodge a written objection to this final written warning, or provide additional information, which will be filled together with this final warning.</p> <p>The nature of the misconduct:</p>
SIGNATURE OF REPRESENTATIVE OF EMPLOYER
DATE
SIGNATURE OF EMPLOYEE
DATE
SIGNATURE OF WITNESS (if applicable)
DATE

2.2.5 Disciplinary Investigation and Inquiry

When allegations of misconduct are made against an educator, a principal must conduct fair and timely investigations. The investigation must gather all the relevant facts, including disciplinary record, other relevant documents and where appropriate witness statements (Lawrence & Vachon, 1995: 8).

Inform the educator of alleged misconduct and in writing require her to attend a disciplinary hearing. A notice of disciplinary meeting is provided for by form C of schedule 2 in the Education Laws Amendment Act 53 of 2000.

An educator must be given time to prepare for inquiry. At the inquiry in the presence of witnesses an educator must be given the opportunity to give

her/his side of the story before reaching a decision. When appropriate disciplinary action is given, the educator must be informed of the right to appeal (Potter & Smellie, 1995: 54).

2.2.6 Appeals

Confirmation in writing with details of the decision and disciplinary action taken should be communicated to the employee. A note thereof should be kept in the employee's file. Then the employee should be informed of the right to appeal and that the grounds of appeal should be set out in writing. Appeals should be heard promptly after the member of staff lodges the appeal. Appeal should be heard by people who were involved in the original disciplinary hearing and decision (Potter & Smellie, 1995: 56).

According to Rossouw (2002(b): 41) the appeal procedure requires that an appeal must be done in writing within five working days from the date on which disciplinary action was taken. The manager will review the case at a formal hearing, and give a decision within five working days after the appeal was lodged (Nel, 2002: 253).

In the disciplinary review the following checklist is important to Nel (2002: 253):

Reason: has to be valid for disciplining the employee.

Awareness: was the employee aware of the rule and breach of specific rule?

Previous warning: Did the employee receive sufficient warning? Were the previous warnings of similar offences? Was fair procedure followed?

Proof: was transgression actually proved?

Hearing: Was a proper hearing held with employee having rights of reasonable notice, time to prepare, and representation and presenting one's case?

Sanction: was the sanction imposed consistent with that imposed on other employees who commit similar offences. Did the sanction match the offence?

Appeal: was the employee informed of the right to appeal?

2.3 CONCLUSION

Managing misconduct requires the manager to have a clear understanding of all requirements entailed for each misconduct case. It is vital that when educators are charged with misconduct there is fairness and actions taken benefit those punished as well as the employers. The legislation provided should be utilised in a constant and fair manner to improve working conditions of both the employer and the employee.

CHAPTER THREE

EMPIRICAL INVESTIGATION

3.1 Introduction

Cases of misconduct among educators in South Africa is increasing. The literature presented in the previous chapter indicates that misconduct occur in various forms due to different reasons of varying degree. The duty of managing misconduct as given to school principals is a very demanding managerial responsibility, which if properly administered through the right and fair procedures would be helpful for managerial efficiency and sound working professional relationships between principals and educators (Rossouw, 2001: 123).

In this chapter the researcher explains the research design methods used to collect data on principals and educators on managing educator misconduct as well as data analysis.

3.2 Research design and Methodology

It is important before research is undertaken to create guidelines that are going to give order and direction to the research project to assist the research and not to lose focus of the research inquiry. This is done through research design and methodology.

3.2.1 Research design

A research design is a strategic framework for an action that serves as a bridge between research questions and the execution or implementation of the research. Research designs are plans that guide the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to research purpose with economy in procedure (Terre Blanche, & Durrheim, 2002: 29).

According to Babbie (1998: 89), a research design addresses the planning of scientific inquiry, designing a strategy to explore, describe and explain something.

There are two broad approaches that are usually adopted by researchers to gather data, namely qualitative and quantitative approaches.

In this research, a descriptive qualitative approach was followed to be able to investigate how principals manage educator misconduct and the educator's perceptions on how principals manage educator misconduct.

3.2.2 Qualitative research

According to Gay and Airasian (2003: 9) qualitative research methods are based on collection and analysis of data such as observations, interviews, focus groups and videotaping. In this method all meaning is situated in a particular perspective or context and since different people and groups often have different perspectives and contexts, there are many different meanings in the world. Because data collection methods and the effort to understand the participants' own perspective, in using qualitative method, a researcher interacts extensively with participants during the study.

3.2.2 Characteristics of qualitative approach

The following characteristics of qualitative approach are identified by Gay & Airasian (2003: 13):

Qualitative research seeks to probe deeply into the research setting to obtain in deep understanding about the way things are, why they are that way, and how the participants in the context perceive them.

1. In addition to describing the way things are, a qualitative approach also provides insights into what people believe and feel about the way they are.
2. Researchers using a qualitative approach maintain physical presence in the chosen setting ranging from being an observer to an interviewer.
3. Qualitative approach involves text of written words to document variables as well as the inductive analysis of the collected information.

The qualitative research method used in this research was interviews.

3.2.3 Interviews

An Interview is a two-person conversation initiated by the interviewer for the specific purpose of obtaining research-relevant information and focused by the researcher on content specifies by research objectives of systematic description, production or explanation. It involves the gathering of data through direct verbal interaction between individuals (Cohen, Manion & Morrison, 2000: 260).

Interviews were conducted to enable research to gain in depth the understanding of participants and make follow-up questions where clarity is needed.

According to Maykut & Morehouse (1994: 43) interviews take place in a natural setting. A natural setting is the place where the researcher is most likely to discover or uncover what is to be known about the phenomenon of interest. Personnel meaning is tied to context, for example in this study the researcher interviewed principals and educators about their perceptive on management of educator misconduct.

Data was collected by way of person-to-person interviews. Ten schools comprising of five secondary schools and five primary schools from Bochum district, Limpopo Province, participated in this research.

Permission to conduct the research was granted by the provincial Department. Letters were sent by the researcher to principals of schools forming part of the sample with dates and time of interview still to be confirmed telephonically. (These letters for requesting permission, granting permission and arranging interviews are given in the appendix) All interviews were audio taped, and transcribed.

Semi-structured interviews were conducted to understand the perceptions of principals and educators on managing of educator misconduct. The semi-

structured interviews were done to make interviews flexible for the researcher to ask questions in order to gain in-depth data.

The semi-structured questions were based on the following topics on educator misconduct:

Forms of educator misconduct common in each school.

1. Causes of such misconduct problems.
2. Ways of dealing with such offences.
3. Structures involved in managing educator misconduct.
4. The roles of structure involved.
5. Policy on code of conduct and discipline of educators.
6. How principals arrive at a particular decision.
7. Educators' rights on misconduct.
8. Legislative provisions used.
9. Personal opinion on educator misconduct in general.

3.2.4 Data analysis

Data analysis is the process through which one understands more about the phenomenon one is investigating and to describe what one has learnt with a minimum of interpretation. It explains the procedures that one will use to analyse the data (De Vos 1998: 100 and Maykut & Morehouse 1994: 127).

The researcher has in the case of this project started analysing data after each interview since the interviews were recorded; they were transcribed immediately after each interview while the researcher still had a clear picture of process of interview (De Vos 2002: 305).

3.2.4.1 Steps followed in analysing data

According to Merriam (1998: 178), data analysis is the process of making out of data. Making sense out of data involves consolidating, reducing and interpreting what people have said and what the researcher have observed. Data analysis involves moving back and forth between concrete bits of data and between description and

interpretation. The researcher have organised the findings in the form of topics based on questions. The following steps were followed to collect and analyse data.

Step 1

The researcher developed an interview schedule by first brainstorming the focus of inquiry, the topic and formulated questions that served as guidelines in the interview.

Step 2

Interviews were conducted on person-to-person basis with principal and educator in each school. The process of interviewing principals and educators were done with least disruption depending on the school environment. In most cases principal's offices were found to be disruptive with telephones and people knocking.

Step 3

All interviews were transcribed immediately after each interview and hand written. Field notes were added as additional observations.

Step 4

Researcher went through transcripts to compare data on common elements and differences

Step 5

All data was grouped according to responses to each topic questions and then ranked on commonality.

3.3 Research findings

The researcher involved principals and educators in this project. In both instances of the interview the same questions on how principals manage educator misconduct were posed to both principals and educators. The details of findings will be given on topics indicating responses of principals and then educators.

3.3.1 Misconduct occurrences in schools and their causes

Nine schools out of ten participated in this project experienced some form of educator misconduct. Only one principal indicated that they are not experiencing educator misconduct.

a. Late coming and absenteeism

Late coming is the most common form of educator misconduct in schools that participated in this project. Of the ten schools, seven schools experience problem of late coming by educators. Following late coming, is absenteeism. It is somehow that late coming and absenteeism are related because both are more frequent on Mondays and Fridays.

Both principals and educators reported the cases of late coming and absenteeism. An educator in one school indicated that some educators leave earlier when the principal is not at school without notifying the school management team member in charge. The cause is simply a lack of discipline.

Reasons that are taken to be causing late coming are mostly transport problems followed by family commitments and health conditions. One principal indicated that Department administrative inefficiency in not dealing with cases when reported formally as in form of leave forms is the main cause of absenteeism.

b. Negligence and sleeping on duty

Four schools reported negligence on the part of educators whereby lessons are not attended. Learners are left without being taught or be given tasks. This happens in both secondary schools primary schools. Negligence is mainly caused by the problem of sleeping on duty. There is no way in which an educator who sleeps can attend to lessons. Reasons for sleeping are more personal like not feeling healthy and having nothing to do in class hence sleeping. No educator indicated sleeping on duty but principals did indicate that there is negligence whereby they are sometimes forced to intervene by consulting the respective educator to attend to his/her period.

c. Drinking of alcohol

A school principal in one school indicated that there is slight occurrence of an educator sometimes coming to school under the influence of alcohol. This happens very rarely. The cause was attributed to financial and family problems. In another school an educator indicated that there is drinking which the principal does not notice. This is very frequent after payday.

d. Bad or abusive language

A principal indicated that this is common among female educators against each other. There is no indication that it was directed to the principal but the principal notice it when it is reported to her. Personal differences and characters cause this. Of all the forms of misconduct stipulated in section 17 and 18 of Employment of Educators' Act 76 of 1998 on my fear are reported to be experience in schools that participated in this research.

3.3.2 Ways of dealing with misconduct

Generally principals most of the times give advice to educators. No formal steps are taken. Procedural steps of dealing with these problems are not

followed. There is a common perception among principals that if they take formal steps working relationships will be affected. In some instances principals delegate the duty of dealing with a misconduct to deputy principals, Head of departments (school level), union representatives or making general reference to problems to all educators in staff without directly making an individual educator aware that such behaviour is not accepted.

In one school the principal has a disciplinary committee that handle such matters. Though in some cases references to verbal warnings were made, no serious attempt was ever made. Educators were aware that none of the educators was charged with misconduct except when a school principal give remarks on unacceptable behaviour in staff meetings. Principals find it very suitable to let union representatives in the school deal with problem of educator misconduct in case where such an educator belongs to the particular union.

3.3.3 Structures involved in handing educator misconduct

In almost all schools, School Management Teams (SMT) are involved in dealing with educator misconduct. It appears that every time there is an offence, principals involved SMT members even when advising educators. SMT's are involved more than principals. SMT's are always delegated with duty to deal with such common offences like late coming and absenteeism. It appears very likely that principals lack authority to deal with misconduct offences but officially and legally it is their duty as heads of schools. Union site committees, SGB, Disciplinary committees and (as reported in one school) are involved in dealing with educator misconduct.

The significant role played by these structures is to give advice or to warn the educators that they will take further steps if such behaviour is repeated.

3.3.4 Policy on Educator code of discipline

This is included in the school policy. At one school code of conduct as stated in SACE has been adopted as it is. Generally staff members as well as other stakeholders within the school formulate policies. Principals in two schools

however feel that it is difficult to improve such policies to avoid a tampering with working relationship.

3.3.5 Consistency of applying rules

Educators appear to be watchdogs among themselves. When someone has committed an offence the principal is expected to act in a particular way. There is an observation that principals give advice and will only involve SMT's to deal with the misconduct when it is repeated.

Rules need to be applied consistently, firmly and fairly to everyone. This means that for every offence there should be an action taken which may be informal verbal warning. Principals do not apply rules consistently, but wait for repeated offences before making the effort to end the habit.

3.3.6 Educators rights

It appears generally that there is knowledge of educators' rights relating to misconduct for both principals and educators. To educators' principals failure to take steps when offence is committed is a way of respecting their rights. Principals on one hand seem very cautious to avoid contravening an educator's rights. There is a satisfaction on both sides of principals and educators that rights are respected.

3.3.7 Legislative provisions

The main and common legislation in all schools that participate in the research for both educators and principals is the Educational Law and Policy Handbook of 2001 which is referred to as the "Bluebook". This document is the main source of references and forms the basis for everything that relates to labour relations matters. It appears that both principals and educators as given in the book know section 17 and 18 of Employment of Educators Act no 76 of 1998. However it looks likely that steps to be taken when such sections 17 and 18 are contravened are considered to be important.

3.4 Major findings

The major findings of this research can be detailed as following:

1. Principals are aware of misconduct offences but are afraid or reluctant to take steps.
2. Educators are aware of Principals' inefficiency to act promptly on offences.
3. There is a general perception that applying rules will affect working relationships.
4. Principals seem not to be aware of section 4 (a) of Education Laws Amendment Act no 53 of 2000 which indicates that legally it's the duty of the school principal as head of the institution to deal with problems of less serious educator misconduct.

3.5 Conclusion

This chapter focused on the research design and methodology. Data collection was detailed to give a clear understanding of how the data for this study was analysed and the research findings given in details. The following chapter focuses on recommendations, limitations and aspect of further research.

CHAPTER FOUR

OVERVIEW AND CONCLUSION OF THE STUDY

4.1 Introduction

The empirical investigation has confirmed that educators do commit misconduct. It has also revealed that school principals do not play the role they are supposed to play when dealing with educator misconduct. There is also no proper use of legislative provisions in handling misconduct of educators. This chapter gives the overview of this research project and provide some recommendations of practical nature to the problem of handling educator misconduct. The overview is given in the following summary.

Chapter one gave an introductory view and framework of this research on educator misconduct. The background and motivation for this research were outlined in this chapter as well as details relating to demarcation of the study, aim, methodology, validity and reliability of the research. Ethical aspects, which guide the researcher in conducting research within a particular scientific framework, were also outlined.

Chapter two basically deals with literature review on misconduct in context. The chapter outlined types of misconduct and the elements of misconduct within the context of this research. Very significantly the chapter outlined what substantive and procedural fairness are and the elements required for the procedures of handling misconduct.

Chapter three is an empirical investigation on how principals handle educator misconduct. The research methodology and data collection is outlined as well as giving the findings of the research conducted in schools.

Chapter four is the overview of the research giving the summary of the project as well as recommendations based on the findings of the research. The aspects of limitations and further research are also given in this chapter.

4.2 Recommendations

The following are recommended to help principals in handling educator misconduct in schools.

4.2.1 Support service for principals

The incidents discussed in this research project reveals that principals need to be given support services on management of educator misconduct. There is apparent lack of knowledge on the part of the principals about their responsibility and duties on handling misconduct. The fact that this research revealed that principals do not follow procedural steps on continuing misconduct offences support the need to workshop. Training and workshops given to principals looks insufficient. It is not sufficient for the Provincial Education Department to circulate policy documents to schools without follow up support services in the form of a workshop. It appears that principals are not aware of section 4 (a) of Education Laws Amendment Act no 53 of 2000, which statorially give authority to principals to handle misconduct of educators at school level.

4.2.2 Adherence to statutes, rules and regulations

Legal documents like the Labour Relations Act no 66 of 1995, Employment of Educators Act no 76 of 1998, South African School Act no 84 of 1996, Education Laws Amendment Act no 53 of 2000 are essential to education in our country. Documents like these provide rules and requisitions, which need to be observed and adhered to.

Principals need to adhere to procedures detailed in such legal documents when dealing with educator misconduct. This research revealed such words like "Advising" by principals to educators when they have committed misconduct whereas legislation provide counselling and warning in such cases.

4.2.3 Involvement of structures

The research indicates that principals involve structures like the SMT, SGB and union representatives. Though the SMT, SGB and union representatives

can be involved in handling misconduct, such involvement should be in the form of witnessing during meetings and hearing. It is the duty of the principal to handle misconduct offences as head of the school. Under no circumstances can such duty be delegated to deputy principals, SMT, SGB or disciplinary committees

4.2.4 Workshopping of educators

Educators need to be trained on labour related matters. It is vital that educators know the expected standards, their rights, the role of school principals and sanctions in case they commit misconduct. Knowledge of labour relations matters as well as statutes like Education Laws Amendment Act no 53 of 2000 will make the duty of principals easy and fair. This will also enable educators to know when and how unions should be involved as well as their rights in case they commit misconduct.

4.2.5 The handling of misconduct at provincial level

The feeling among some schools principals is that following recommended procedural steps is difficult due to administrative inefficiency of the Provincial Department. In case of educator absenteeism some principals provide leave forms with recommendations to the Provincial Department but no action is taken from Departmental level. It is necessary that a Provincial Department act promptly to support principals in cases where efforts are made to deal with misconduct as required. If nothing is done at Departmental level it becomes very difficult for principals to succeed in handling educator misconduct once educators with such habits find out there is no support to principals by the Provincial Department.

4.3 LIMITATIONS

The main limitation of the research was the preconceived perception among school principal that this project is part of a Departmental exercise on finding out how principals handle misconduct. It was taken that the research findings would be forwarded to the Department to act against such principals. Despite outlining the aim of the research and ethical code of the research, some principals based their

suspicion on the permission granted by the Provincial Department, which strengthen their belief that the Department is aware, so indirectly involved. The procedures are still memo. Most principals may not have prior experience and this influenced their responses.

This study is limited to some schools in the rural Bochum District. This area comprises a very small area in Limpopo Province, therefore further study needs to be done in other areas of the province and the country as a whole.

This research focuses on educator misconduct in schools and is limited to management procedures on misconduct. The interviews conducted for this study will not involve everyone in schools but a limited number of principals and educators in selected schools. The selected respondents should reflect the feelings and views of the entire population.

The researcher is a school principal and his position as a principal may influence respondents on the basis of personal experiences and perceptions as a principal. Another limitation of the researcher is that since school principals will be interview, the focus of this research should not be lost as this turns into a dialogue about individual principal experiences in their respective schools.

The nature of this research is such that it may be of interest to educators who have experience of principals that are inconsistent in handling misconduct and are themselves subject of misconduct actions. This research does not serve as a platform for allegations but aims at achieving the aims outlined.

4.4 FURTHER RESEARCH

Educator misconduct as a problem that was identified, researched or investigated, has revealed new problems that may be of future study. The study has for example triggered one to ask new questions such as the following: What is the impact of educator misconduct on learner performance? What are the social and psychological problems caused by educator misconduct on school management? There is also a backlog of unattended cases of misconduct at provincial level. What causes such delays? Investigations can be conducted on why there are delays at Departmental

level on dealing with misconduct cases. Other investigation can be conducted in future on the socio-psychological causes of educator misconduct.

4.5 CONCLUSION

This research collected and presented data from a number of sources on principals handling of educators misconduct. The qualitative research design was used to gain understanding of the phenomenon of educator misconduct management at school level. Many weaknesses in the process of handling educator misconduct were identified. The seriousness of educator misconduct problem is such that urgent action by all stakeholders is required.

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South African Legislation

Basic Conditions of Employment Act no 75 of 1997

Education Laws Amendment Act no 53 of 2000

Employment of Educators Act no 76 of 1998

Labour Relations Act no 66 of 1995

South African Schools Act no 84 of 1996

APPENDIX A

PO BOX 718

BOCHUM

0790

03 FEBRUARY 2003

THE REGIONAL DIRECTOR
CENTRAL REGION
DEPARTMENT OF EDUCATION
LIMPOPO PROVINCE

RESEARCH IN BOCHUM SCHOOLS

I hereby request permission to conduct research on “How do principals manage educator misconduct in public schools”.

This research is for MED studies registered with University of Pretoria.

Thank you for your considering this request.

Yours faithfully

MOTHEMANE K.D

APPENDIX B AN APPROVAL LETTER FROM THE LIMPOPO DEPARTMENT OF EDUCATION

(no letter attached)

APPENDIX C APPOINTMENT LETTER

(no letter attached)

APPENDIX D RESEARCH INTERVIEWS QUESTIONS

(no questionnaire attached)