



CONFLICT MANAGEMENT

1. LEGISLATIVE BACKGROUND

CONSTITUTION (Act 108 of 1996)

South African Schools Act

84 of 1996

-Provide for the uniform system for the organisation, governance and funding of schools.

Employment of Educators Act

76 of 1998

-Provide for the employment of educators by the state, regulation of conditions of service, discipline, retirement and discharge of educators and matters connected herewith

-Schedule 1
Incapacity code and procedures for poor work performance & ill health/injury

-Schedule 2
Disciplinary code and procedures for educators

- PAM (Personal Admin measures) which contains the regulations

Labour Relations Act

66 of 1995

- Regulates Employee/ Employer Relationship
-Give effect to section 27 of the constitution
- Regulate organisational rights of trade unions
- Promote employee participation in decision making through establishment of workplace forums
- Promote and facilitate collective bargaining etc.

Basic Conditions of Employment Act

75 of 1997

-Prescribes certain minimum conditions of employment which must be applied

-These are not inflexible conditions, in the sense that the employer may offer a better condition, but may not offer nor include in any contract a condition that is less favourable to the employee than the corresponding condition prescribed by the BCEA

Employment Equity Act

55 of 1998

- Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination

- Implementation of affirmative action to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce

Occupational Health & Safety Act

85 of 1993

- Regulates and promotes Health and Safety standards for all Employees



LABOUR RELATIONS ACT

- CHAPTER 2: Freedom of Association and General Protections
 - Sec 4: Employees' right to freedom of association
 - Sec 5: Protection of employees and persons seeking employment



2. GRIEVANCE PROCEDURE

CHAPTER G OF PAM



3. INCAPACITY AND DISCIPLINARY PROCEDURES

SCHEDULE 1

- Poor Work Performance
- Ill Health

SCHEDULE 2

Section 17

- Serious Misconduct

Section 18

- Less Serious Misconduct



DEFINITIONS

COMPLAINTS, GRIEVANCES, DISPUTES AND MISCONDUCTS



COMPLAINTS, GRIEVANCES, DISPUTES AND MISCONDUCTS

Sources of Conflicts	Definition	Resolve Mechanisms
COMPLAINTS	A complaint is a dissatisfaction registered by an employee, arising as a result of various issues.	HR Function/Conflict management
GRIEVANCE	A grievance can be either individual or collective and involves the registration of a formal/ informal work-related complaint in the implementation of policy or rules etc.	Chapter G of Personnel Administrative Measures (PAM)
DISPUTES	A dispute is the breach of policy or procedure agreed upon.	Section 14 of the ELRC Constitution
MISCONDUCT	Breach of set of Rules or Standard	Section 17 & 18 (Schedule 2)

CASE HANDLING



PREPARATION FOR THE HANDLING OF GRIEVANCES/CASE MANAGEMENT

- Always remain calm;
- Listen to the worker's story patiently;
- Let the grievant explain the problem;
- Make sure you have got the facts right on key points;
- Keep clear notes of your discussion;
- Explain why you want to have all the facts before you meet with management;
- Try to figure out the employer's decision;



PREPARATION/Cont

- **Explain relevant contract language;**
- **Have the aggrieved write down the full story themselves, giving names, dates and places;**
- **Collect statements from all available witnesses;**
- **Brief members in advance of any meeting with employer;**
- **Call for expert advice before attending any meeting or taking any action;**
- **Withdraw to get specific advice on what to do next;**
- **Make a written record to ensure key points.**





CHECKLIST FOR A PROPER INVESTIGATION

- **WHO** is involved in the grievance? Name(s), address(es), telephone number(s), work location, site date of appointment, ID number, the grievers record – including absenteeism record, disciplinary record and lateness record – age, family status, name of others involved, management’s position and witness;
- **WHEN** did the grievance occur? Date and time;
- **WHERE** did the grievance occur? Exact location, department, classroom, etc.
- **WHY** is a grievance? What has been violated”? This “W” directs your attention to what has been violated.
- **WHAT** has happened that caused the violation? What is involved? What is management’s contention?
- **WANT** – What adjustments are necessary to completely correct the injustice and to place the aggrieved in the same position they would have been in had the grievance not occurred?

WHAT TO DO WHEN A MEMBER MAY BE CHARGED WITH AN OFFENCE

- Advise the member not to answer any questions from administrators or police before getting Union and legal advice.
- Terminate any meeting with management that becomes confrontational. You and the member are only attending the meeting to listen to what the management officials have to say.
- Advise the member not to discuss the situation with colleagues and not to talk to anyone involved in making the complaint
- Advise the member to maintain an accurate written record of events for the member's use only



IMPORTANT POINTS TO REMEMBER

- **Be Tactful and Understanding**
- **When in Doubt Ask**
- **Don't Try To Be Hero**



Grievance procedure

Chapter G of PAM



Process 1

Oral interview

Section in Chapter G

Section 3.1(a)

ISSUES

- No formal Grievances
- No records kept
- Process without prejudice



Process 2

Formal Written

Section in chapter G

Section 3.1(b)(i)

Grievance (Institution)

- Grievance lodged in writing within reasonable period (not later than 90 days) with the immediate senior.
- Outlined full details of the grievance.
- Signed copy of grievance to be filled.



Section 3.1(b)(ii)

Convene a Meeting (within 3 working days)

- Senior to confer with the aggrieved party within 3 working days.
- Presentation of facts.
- Attempts be made to resolve the matter.



Section 3.1(b)(iii)

- ❑ Communicate the outcome of the grievance within **5 Working Days**

(Resolved or Not)



Involve ISC

(provided 3.1(a) has been attempted)

Section 3.1(b)(iv)

- If the grievance involves the head of an institution, the aggrieved party may refer the matter directly to the Circuit Manager



Process 3

Formal Written
Grievance

Section in chapter G

Section 3.1(c)(i)

(Circuit / District
level)

- If the aggrieved party is not satisfied with the outcome, matter may be referred to the next senior office within **5 Working Days**.



Referral to Circuit / District

- The outcome should also be communicated.
- All involved parties must be served with the referral



Section 3.1(c)(ii)

- 5 Working Days
- Head refer the outcome to Circuit /District
 - The head shall forward the outcome together with all the relevant information to Circuit / District



Section 3.1(c)(iii)

- 5 Working Days
- Circuit Man / Dist Man attempt to resolve the grievance
- Circuit Man / Dist Man shall within 5 working days of receipt of all referrals attempt to resolve the matter within 5 Working Days.





Section 3.1(c)(iv)

- Dispute lodged with the ELRC.
- If the aggrieved party is not satisfied with the outcome, a formal dispute may be lodged with the ELRC.

Note: Parties to the aggrieved may by agreement extend the periods referred to in the above process

Disciplinary Procedure.



1. THE PURPOSE OF DISCIPLINE

“The key principle in the Code is that employers and employees should **treat one another with mutual respect**. A premium is placed on both employment justice and the efficient operation of the business. **While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees**”.

Extract from the Code of Good Practice: Dismissal – Item 1 (3)

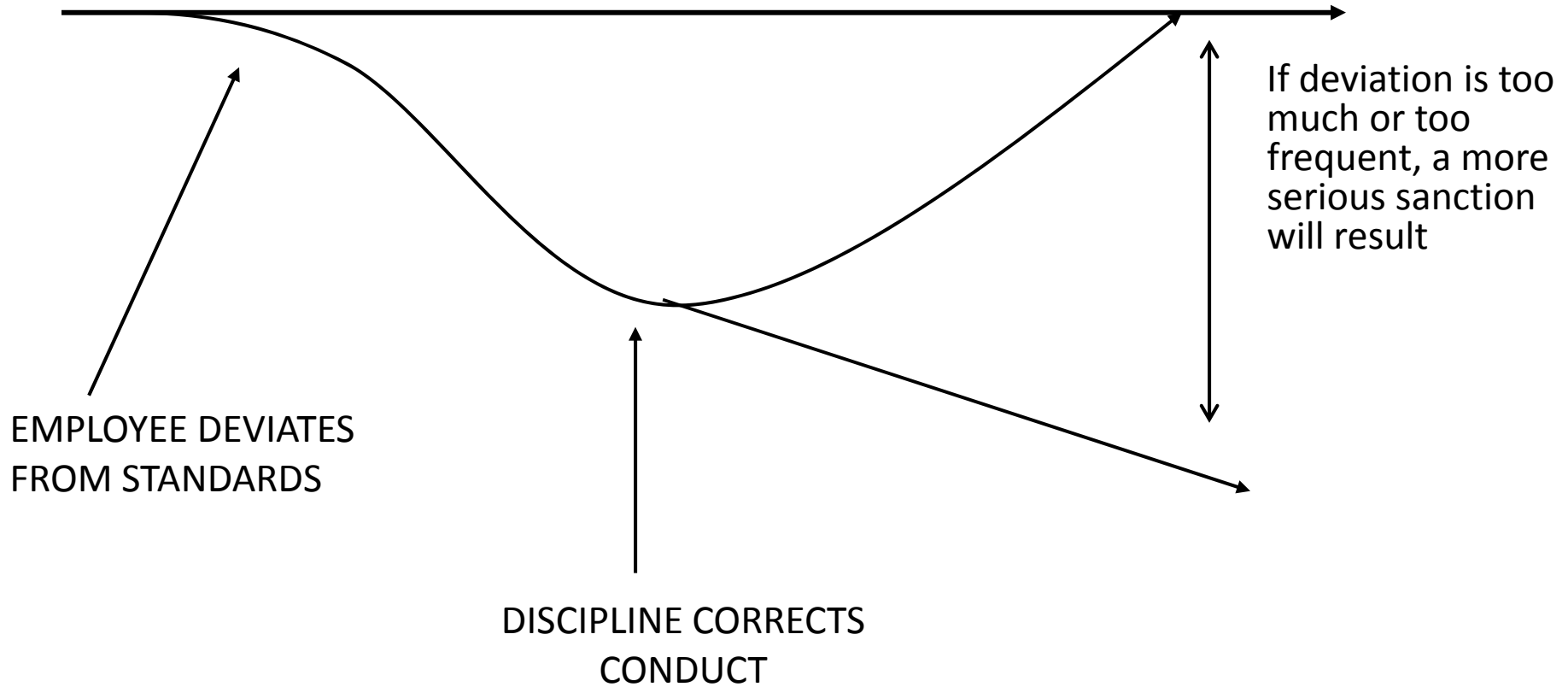
“The Courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for **employees to know and understand what standards are required of them**. Efforts should be made to correct employees’ behaviour through a system of graduated disciplinary measures such as counseling and warnings”.

Extract from the Code of Good Practice: Dismissal – Item 3 (2)

The purpose of discipline is accordingly to maintain acceptable standards of behaviour and performance in a fair manner.



STANDARD OF ACCEPTABLE CONDUCT



PROCEDURAL
AND
SUBSTANTIVE
FAIRNESS FOR A
MISCONDUCT



PROCEDURAL FAIRNESS FOR MISCONDUCT

- The most important principle relating to procedural fairness is that **an employee must be given an opportunity to state his/her case** before disciplinary action is taken against her/him.



FAIR PROCEDURE

- Notify the employee of the allegations using the form and language that the employee can reasonably understand
- The employee should be allowed an opportunity to state a case in response to the allegations
- The employee should be given reasonable time to prepare the response
- The employee is entitled to union representation or fellow employee



SUBSTANTIVE FAIRNESS

- Deciding whether or not an employee is **in fact guilty** of the offence
- Deciding on the **appropriate sanction** for the offence



CONTRAVENTION OF A RULE OR STANDARD REGULATING CONDUCT IN THE WORKPLACE

- Did the employee contravene a rule or standard? This factual question requires proof in the form of **evidence**.
- Awareness of the rule. The rules of conduct should be communicated to all employees
- Consistent application of the rule

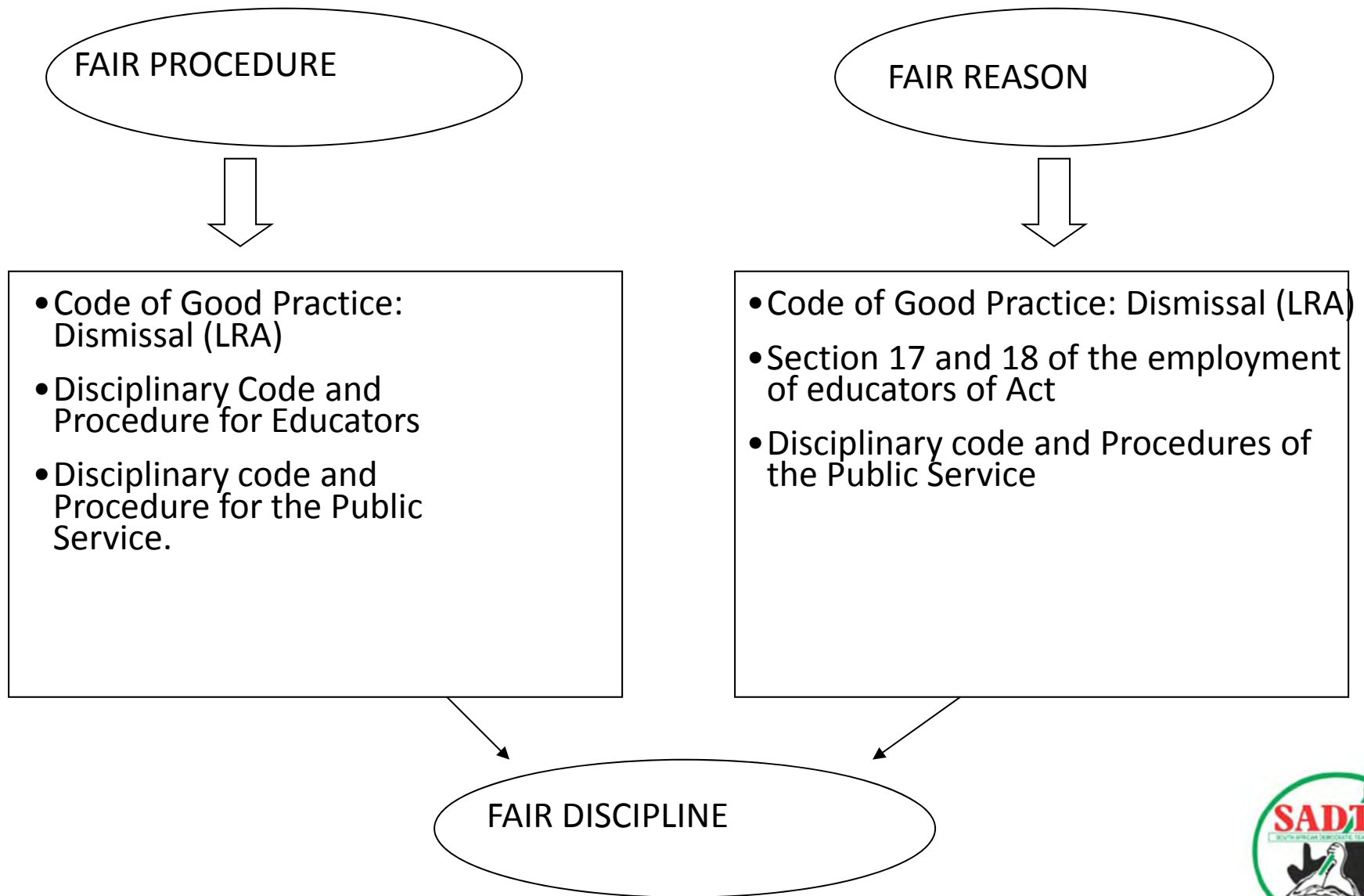


BURDEN OF PROOF AND STANDARD OF PROOF

- In criminal matters the State has to prove the charge against the accused beyond reasonable doubt
- In disciplinary hearings the presiding officer must be satisfied on a **balance of probabilities** that the employee committed the offence. *(This means that there must be facts to support the contravention, and these facts make it more probable that the employee did contravene the rule than not.)*

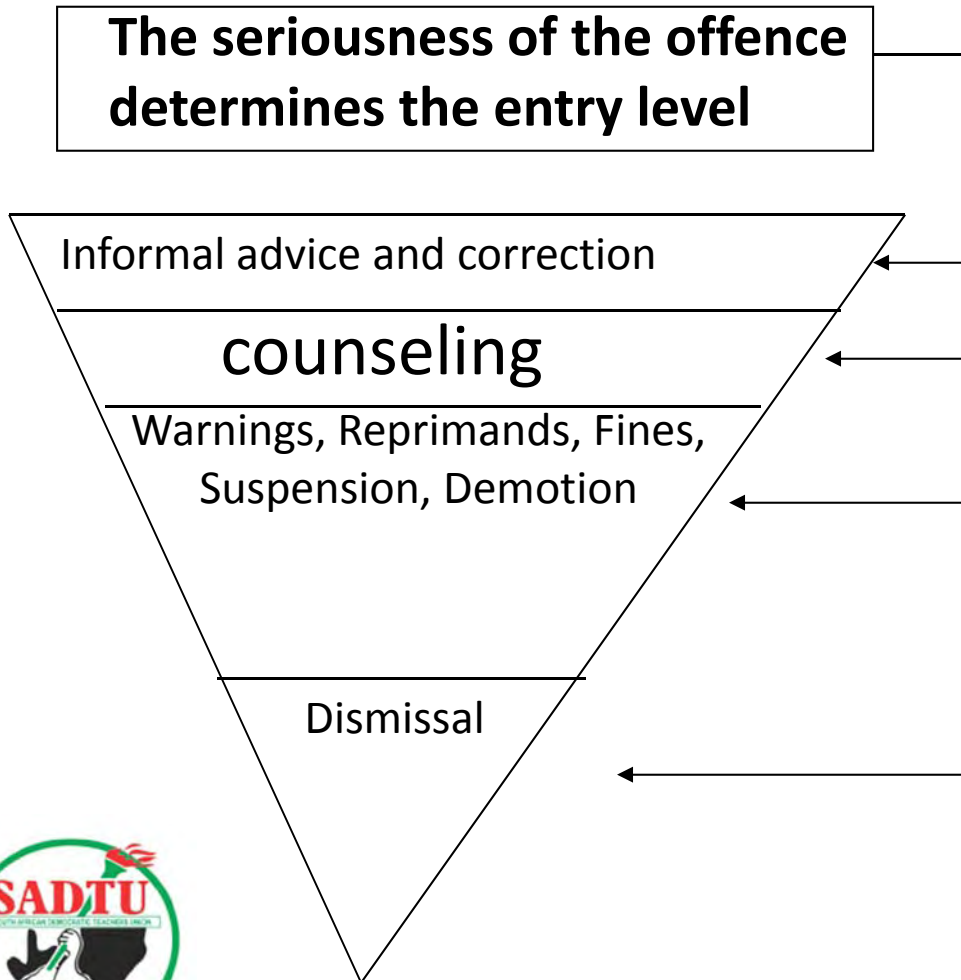


2. BASIC PROCEDURE AS OUTLINED IN THE LABOUR RELATIONS ACT



3. Basic procedure as outlined in the Labour Relations Act

STAGES OF DISCIPLINE

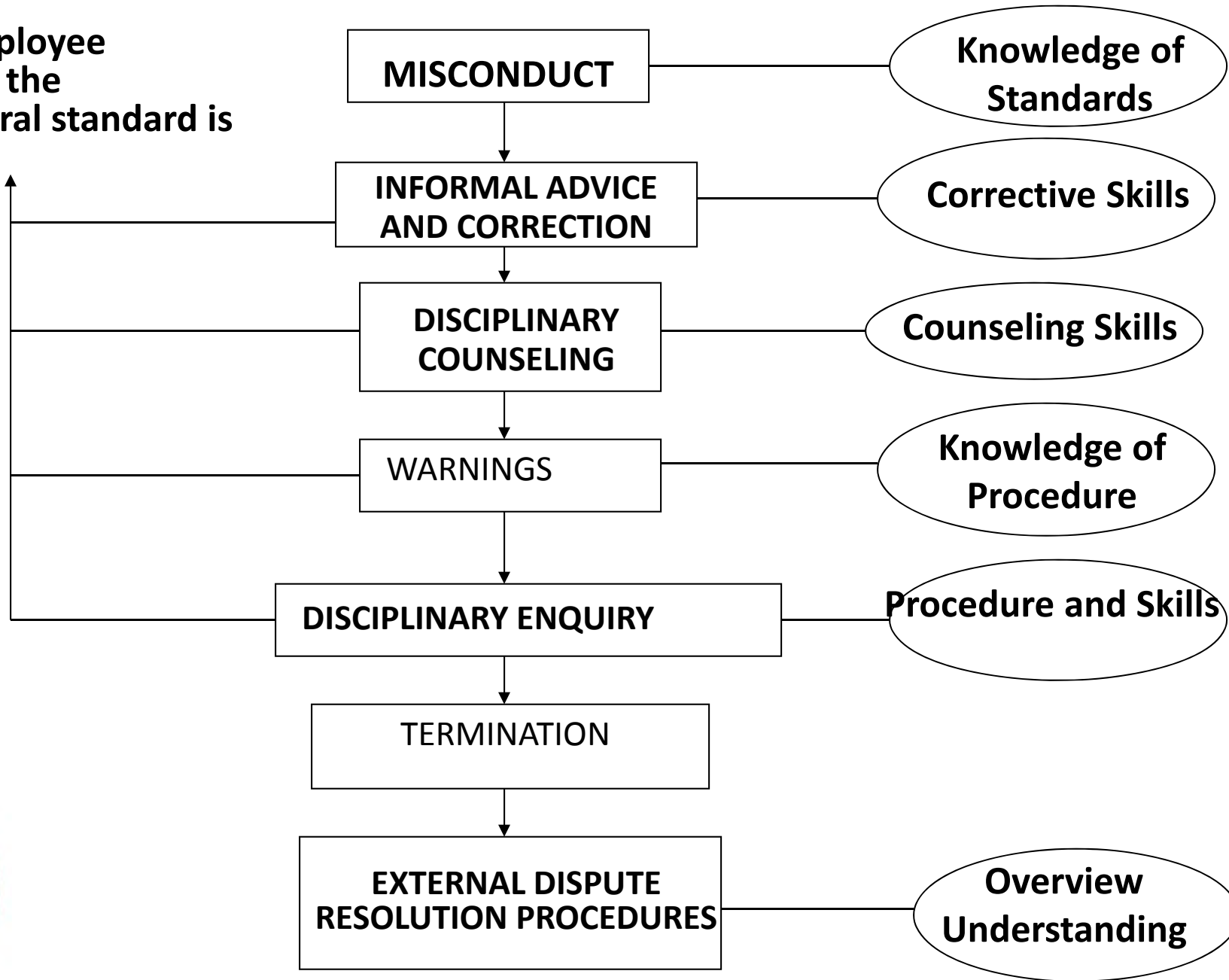


Formal procedures do not have to be invoked every time a rule is broken or standard is not met. **Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline.** Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated misconduct.



4. Basic Procedure as outlined in the Labour Relations Act.

If the employee responds the behavioural standard is restored





5. Procedure for Educators

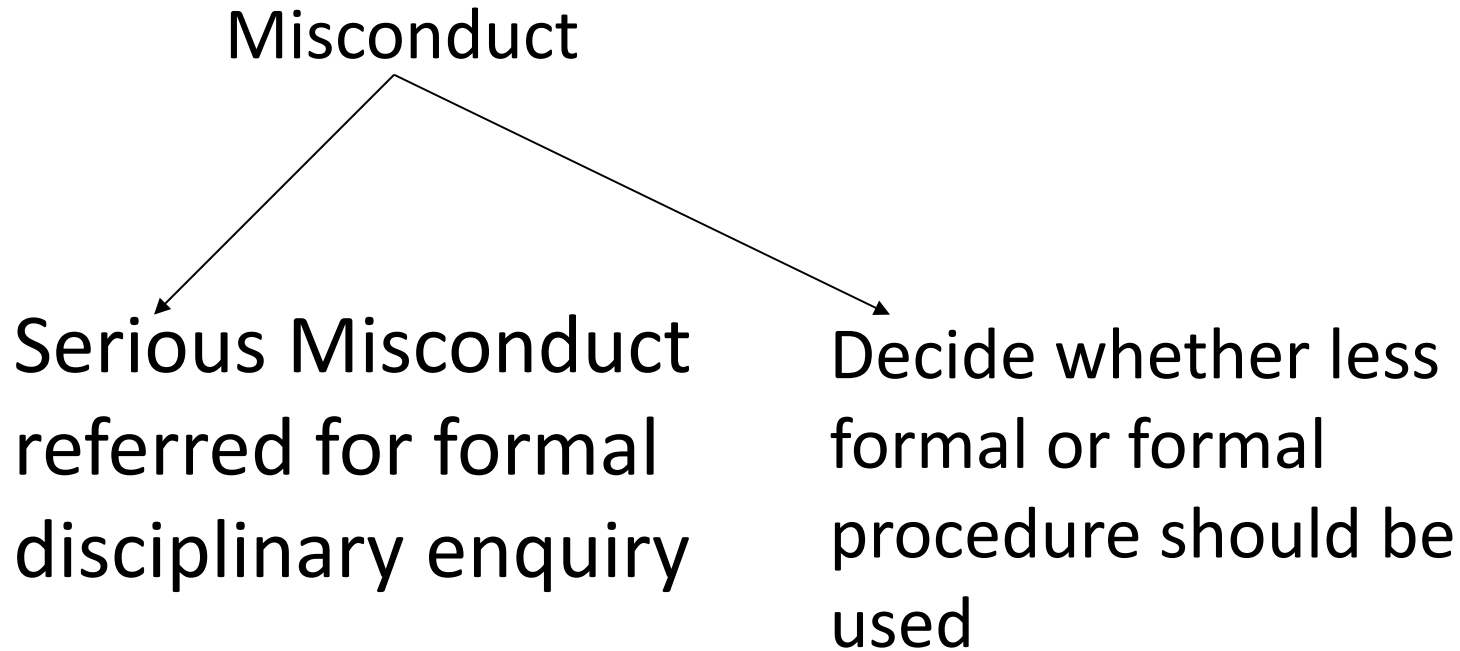
(In terms of Schedule 2 of Employment of Educators Act)

Less Formal Disciplinary Procedure by head of Institution (e.g. Principal) or immediate superior (Schedule 2, Item 4(1)(a))	Informal advice and correction	This occurs internally and informally. No records of the process is kept
	Counseling	The employer must bring the misconduct to the educator's attention, give the educator an opportunity to respond to the allegation, consult with the educator, decide on a method to remedy the conduct and implement the decision
	Verbal Warning	<p>The employer must convene a meeting and the educator may be represented by the educator's trade union representative who is based at the institution. Reasons should be given to the educator as to why it is necessary to initiate the procedure. The educator/educator's representative is heard on the misconduct in issue. The employer may counsel the educator or issue one of the three warnings set out in the column to the left hereof. Written warnings are on form A and final written warnings on form B. Warnings are valid for six (6) months. A sanction is filled in the educator's personal file and the educator has a right to object to the sanction. The objection is not an appeal and the objection is simply filed together with the sanction.</p>
	Written Warning	
	Final Warning	
Formal Disciplinary Procedure	Fines, Demotion and Suspension	A disciplinary enquiry is always required
	Dismissal	A disciplinary enquiry is always required

6. Procedure for Educators

Process:

Misconduct defined in Section 17 (1)
and 18 (1)



Procedure for less formal process (Mainly some Section 18 if delegated to Head of Institutions

Convene meeting

Item in Schedule 2

Item (4)6(b)

- No specific notification document is prescribed
- Should contain reasons why disciplinary process is being initiated
- Allow educator time to prepare



Item in Schedule 2

Item (4)6(b)(1)

Allow representative

- Trade Union representative
- Employee based at same institution

Repeat reasons why
procedure is being
initiated

Similar to “Putting the charge”



Item in Schedule 2

Item (4)6(b)(3)

Educator heard on Misconduct

- Not necessary to call witnesses or lead evidence
- Conduct inquisitorially
- Conduct fairly
- Try and establish facts without calling witnesses



Item in Schedule 2

Item (4)6(c)

Decide Sanction

- From Counseling to Final Written Warning



Item in Schedule 2

Item (4)6(d)(1)

Educator may lodge
objection (No Appeal)

- Objection lodged
- No appeal allowed

